10–5–98
Vol. 63 No. 192
Pages 53271–53542

federal register

Monday
October 5, 1998

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WHEN: October 13, 1998 at 9:00 a.m.

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800 North Capitol Street, N.W.
Washington, DC
(3 blocks north of Union Station Metro)

RESERVATIONS: 202–523–4538

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Presidential Documents

Title 3—

The President

Proclamation 7129 of September 30, 1998

National Domestic Violence Awareness Month, 1998

By the President of the United States of America

A Proclamation

Domestic violence is a leading cause of injury to American women, and teenage girls between the ages of 16 and 19 experience one of the highest rates of such violence. A woman is battered every 15 seconds in the United States, and 30 percent of female murder victims are killed by current or former partners. Equally disturbing is the impact of domestic violence on children. Witnessing such violence has a devastating emotional effect on children, and between 50 and 70 percent of men who abuse their female partners abuse their children as well. From inner cities to rural communities, domestic violence affects individuals of every age, culture, class, gender, race, and religion.

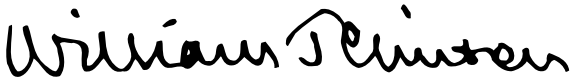
Combatting the violence that threatens many of our Nation's families is among my highest priorities as President. Through the Violence Against Women Act (VAWA), included in the historic Crime Bill I signed into law, we have more than tripled funding for programs that combat domestic violence and sexual abuse—investing over half a billion dollars since 1994. The Violence Against Women Office at the Department of Justice, which coordinates the Federal Government's implementation of the Act, is leading a comprehensive national effort to combine tough Federal laws with assistance to State and local programs designed to fight domestic violence and aid its victims. With VAWA grants, communities across our country have been able to hire more prosecutors and improve domestic violence training among police officers, prosecutors, and health and social service professionals.

My Administration has also worked to enact other important legislation that sends the clear message that family violence is a serious crime. The Interstate Stalking Punishment and Prevention Act of 1996 stiffens the penalties against perpetrators who pursue women across State lines to stalk, threaten, or abuse them; and an extension of the Brady Law prohibits anyone convicted of a domestic violence offense from owning a firearm. Since 1996, the 24-hour National Domestic Violence Hotline (1–800–799–SAFE) we established has provided immediate crisis intervention, counseling, and referrals for those in need, responding to as many as 10,000 calls each month.

In observing the month of October as National Domestic Violence Awareness Month, we also recognize the dedicated efforts of professionals and volunteers who take up this cause every day, offering protection, guidance, encouragement, and compassion to the survivors of family violence. We reaffirm our pledge to strengthen our collective national response to crimes of domestic violence. Most important, we strengthen our commitment to raise public awareness of the frequency of domestic violence, recognize the signs of such violence, and intervene before it escalates. If we are ever to erase the pain of these heinous crimes, we must help victims become survivors and, once and for all, end the scourge of violence in America's homes.

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 October 1998 as National Domestic Violence Awareness Month. I call upon government officials, law enforcement agencies, health professionals, educators, community leaders, and the American people to join together to end the domestic violence that threatens so many of our people.

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



[FR Doc. 98–26798
Filed 10–2–98; 8:45 am]
Billing code 3195–01–P

Presidential Documents

Executive Order 13103 of September 30, 1998

Computer Software Piracy

The United States Government is the world's largest purchaser of computer-related services and equipment, purchasing more than $20 billion annually. At a time when a critical component in discussions with our international trading partners concerns their efforts to combat piracy of computer software and other intellectual property, it is incumbent on the United States to ensure that its own practices as a purchaser and user of computer software are beyond reproach. Accordingly, by the authority vested in me as President by the Constitution and the laws of the United States of America, it is hereby ordered as follows:

Section 1. *Policy.* It shall be the policy of the United States Government that each executive agency shall work diligently to prevent and combat computer software piracy in order to give effect to copyrights associated with computer software by observing the relevant provisions of international agreements in effect in the United States, including applicable provisions of the World Trade Organization Agreement on Trade-Related Aspects of Intellectual Property Rights, the Berne Convention for the Protection of Literary and Artistic Works, and relevant provisions of Federal law, including the Copyright Act.

(a) Each agency shall adopt procedures to ensure that the agency does not acquire, reproduce, distribute, or transmit computer software in violation of applicable copyright laws.

(b) Each agency shall establish procedures to ensure that the agency has present on its computers and uses only computer software not in violation of applicable copyright laws. These procedures may include:

(1) preparing agency inventories of the software present on its computers;

(2) determining what computer software the agency has the authorization to use; and

(3) developing and maintaining adequate recordkeeping systems.

(c) Contractors and recipients of Federal financial assistance, including recipients of grants and loan guarantee assistance, should have appropriate systems and controls in place to ensure that Federal funds are not used to acquire, operate, or maintain computer software in violation of applicable copyright laws. If agencies become aware that contractors or recipients are using Federal funds to acquire, operate, or maintain computer software in violation of copyright laws and determine that such actions of the contractors or recipients may affect the integrity of the agency's contracting and Federal financial assistance processes, agencies shall take such measures, including the use of certifications or written assurances, as the agency head deems appropriate and consistent with the requirements of law.

(d) Executive agencies shall cooperate fully in implementing this order and shall share information as appropriate that may be useful in combating the use of computer software in violation of applicable copyright laws.

Sec. 2. *Responsibilities of Agency Heads.* In connection with the acquisition and use of computer software, the head of each executive agency shall:

(a) ensure agency compliance with copyright laws protecting computer software and with the provisions of this order to ensure that only authorized computer software is acquired for and used on the agency's computers;

(b) utilize performance measures as recommended by the Chief Information Officers Council pursuant to section 3 of this order to assess the agency's compliance with this order;

(c) educate appropriate agency personnel regarding copyrights protecting computer software and the policies and procedures adopted by the agency to honor them; and

(d) ensure that the policies, procedures, and practices of the agency related to copyrights protecting computer software are adequate and fully implement the policies set forth in this order.

Sec. 3. *Chief Information Officers Council.* The Chief Information Officers Council (''Council'') established by section 3 of Executive Order No. 13011 of July 16, 1996, shall be the principal interagency forum to improve executive agency practices regarding the acquisition and use of computer software, and monitoring and combating the use of unauthorized computer software. The Council shall provide advice and make recommendations to executive agencies and to the Office of Management and Budget regarding appropriate government-wide measures to carry out this order. The Council shall issue its initial recommendations within 6 months of the date of this order.

Sec. 4. *Office of Management and Budget.* The Director of the Office of Management and Budget, in carrying out responsibilities under the Clinger-Cohen Act, shall utilize appropriate oversight mechanisms to foster agency compliance with the policies set forth in this order. In carrying out these responsibilities, the Director shall consider any recommendations made by the Council under section 3 of this order regarding practices and policies to be instituted on a government-wide basis to carry out this order.

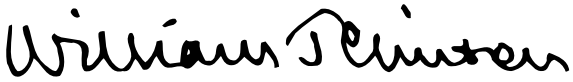
Sec. 5. *Definition.* ''Executive agency'' and ''agency'' have the meaning given to that term in section 4(1) of the Office of Federal Procurement Policy Act (41 U.S.C. 403(1)).

Sec. 6. *National Security.* In the interest of national security, nothing in this order shall be construed to require the disclosure of intelligence sources or methods or to otherwise impair the authority of those agencies listed at 50 U.S. 401a(4) to carry out intelligence activities.

Sec. 7. *Law Enforcement Activities.* Nothing in this order shall be construed to require the disclosure of law enforcement investigative sources or methods or to prohibit or otherwise impair any lawful investigative or protective activity undertaken for or by any officer, agent, or employee of the United States or any person acting pursuant to a contract or other agreement with such entities.

Sec. 8. *Scope.* Nothing in this order shall be construed to limit or otherwise affect the interpretation, application, or operation of 28 U.S.C. 1498.

Sec. 9. *Judicial Review.* This Executive order is intended only to improve the internal management of the executive branch and does not create any right or benefit, substantive or procedural, at law or equity by a party against the United States, its agencies or instrumentalities, its officers or employees, or any other person.



THE WHITE HOUSE,
September 30, 1998.

[FR Doc. 98–26799
Filed 10–2–98; 8:45 am]
Billing code 3195–01–P

Rules and Regulations

Federal Register
Vol. 63, No. 192
Monday, October 5, 1998

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.

OFFICE OF PERSONNEL MANAGEMENT

5 CFR Parts 430 and 534

RIN 3206–AH77

Performance Ratings

AGENCY: Office of Personnel Management.

ACTION: Final rule.

SUMMARY: The Office of Personnel Management (OPM) is issuing final regulations to codify longstanding policy regarding retroactive, assumed, and carry-over ratings of record. These regulations amend the performance management regulations to explicitly specify that ratings of record are final upon issuance unless challenged by the employee, and that retroactive, assumed, and carry-over ratings of record are prohibited.

DATES: Effective date: November 4, 1998.

FOR FURTHER INFORMATION CONTACT: Barbara Colchao, (202) 606–2720, FAX (202) 606–2395, email: performance-management@opm.gov.

SUPPLEMENTARY INFORMATION: On April 20, 1998, the Office of Personnel Management (OPM) issued proposed regulations to codify OPM's longstanding interpretation of the law regarding the finality of a rating of record and the prohibition of retroactive, carry-over, or assumed ratings of record (63 FR 19411). The proposed regulations addressed four issues: (1) A prohibition against an agency unilaterally changing a rating that has been issued as a final rating of record to an employee; (2) a prohibition against an agency going back to provide a rating of record for a past appraisal period where none was given; (3) a prohibition against an agency issuing an employee an ''assumed'' rating of record that does not reflect an appraisal of actual performance; and (4) a prohibition against ''carrying over'' a previous rating of record to cover more than one appraisal period.

Comments Received

We received comments from four agencies and one union. These comments, along with changes made to the proposed regulations, are summarized below.

Comment Summary: One commenter said that inasmuch as these provisions are longstanding policy it is good to see them finally in regulation. On the other hand, another commenter questioned why this regulation is needed and felt the matter should be left to agency discretion and interpretation.

Response: For a long time, OPM received periodic inquiries regarding these issues and the number of inquiries has been increasing, especially as agencies have been developing new performance management programs to encourage high performance organizations, and to conform to the requirements of the Government Performance and Results Act. Several agencies had suggested that these policies be codified in regulation, in order to provide, and ensure application of, this information in a more uniform and consistent manner. OPM concurs with this opinion.

Change: No change.

Comment Summary: One commenter asked whether the provision at § 430.208(i)(2) would apply in those situations where an agency issues a rating of record to cover a previously unrated period of time in compliance with the settlement of a grievance procedure. Similarly, another commenter asked whether this provision would cover settlement agreements reached through alternative dispute resolution processes.

Response: The intent in this section of the regulation is to provide for corrective action when ordered by a third party or as part of a *bona fide* settlement of a grievance, complaint, or other formal proceeding permitted by law. Therefore, if, as part of a grievance procedure, the decision or settlement agreement requires that a rating of record be provided where none had been given before, and the agency is able to do so, this would be considered to have been a change ordered by an appropriate authority as the result of a formal proceeding for purposes of complying with § 430.208(i)(2). Likewise, a changed rating of record could result from a bona fide settlement through an agency's alternative dispute resolution process.

Change: The language at § 430.208(i)(2) has been revised.

Comment Summary: Three commenters stated that by using the issuance of a new performance plan following a completed appraisal period as the event that would cause any subsequent ratings of record to be considered retroactive, the regulation sets up situations where it would be impossible for their organizations to issue ratings of record.

Response. This certainly was not the intent behind this regulation. OPM considered setting a 3- to 6-month time frame after the end of the appraisal period for completing performance appraisals. However, in the spirit of decentralization, a decision was made not to set a specific, Governmentwide time frame within which ratings of record must be issued. Rather, agencies may establish and use such time frames or use the issuance of a subsequent rating of record as the boundary that would cause a rating of record, which covers an earlier appraisal period where no rating of record originally had been given, to be considered retroactive.

Individual agencies and organizations must determine whether they need a policy that clearly establishes when it is too late to provide a rating of record for an appraisal period that has ended. Otherwise, the issuance of a subsequent rating of record will be considered to clearly indicate that any former appraisal period(s) not included within the scope of this single rating of record have been allowed to pass without the issuance of a rating of record. The regulations prohibit going back, after the fact, and creating ratings of record for these previous appraisal periods, unless so ordered by a third party under the provisions of § 430.208(i)(2).

Change: The language at § 430.208(i) has been revised.

Related Issue

In two separate discussions with agency representatives who were not commenting on the proposed regulations, an issue arose that is related to the regulation prohibiting carry over ratings of record. The discussions were to clarify that current agency policies

that permit using a previous rating of record for a subsequent appraisal period only after evaluating the employee's performance and confirming that it continues to be the same would not violate the proposed regulation. The regulation prohibits using a previous rating of record as the actual rating of record for a subsequent appraisal period without evaluating the employee's performance for that subsequent appraisal period. Since an actual evaluation of the employee's performance during the current appraisal period is required prior to ''revalidating'' or ''recertifying'' the last rating of record as the applicable rating of record for the current appraisal period, it does not violate the regulation. The language at § 430.208(h) has been revised to clarify this.

No comments were received regarding the technical correction, and these regulations become final as proposed.

Regulatory Flexibility Act

I certify that these regulations will not have a significant economic impact on a substantial number of small entities because they apply only to Federal agencies and employees.

List of Subjects

5 CFR Part 430

Decorations, Medals, Awards, Government employees.

5 CFR Part 534

Government employees, Hospitals, Students, Wages.

Office of Personnel Management.

Janice R. Lachance,

Director.

Accordingly, OPM is amending parts 430 and 534 of title 5, Code of Federal Regulations, as follows:

PART 430—PERFORMANCE MANAGEMENT

1. The authority citation for part 430 continues to read as follows:

Authority: 5 U.S.C. chapter 43.

2. In § 430.208, paragraphs (a)(1), (a)(2), (a)(3) and (i) are added; paragraph (h) is redesignated as paragraph (j) and a new paragraph (h) is added to read as follows:

§ 430.208 Rating performance.

(a) * * *

(1) A rating of record shall be based only on the evaluation of actual job performance for the designated appraisal period.

(2) An agency shall not issue a rating of record that assumes a level of performance by an employee without an actual evaluation of that employee's performance.

(3) Except as provided in § 430.208(i), a rating of record is final when it is issued to an employee with all appropriate reviews and signatures.

* * * * *

(h) Each rating of record shall cover a specified appraisal period. Agencies shall not carry over a rating of record prepared for a previous appraisal period as the rating of record for a subsequent appraisal period(s) without an actual evaluation of the employee's performance during the subsequent appraisal period.

(i) When either a regular appraisal period or an extended appraisal period ends and any agency-established deadline for providing ratings of record passes or a subsequent rating of record is issued, an agency shall not produce or change retroactively a rating of record that covers that earlier appraisal period except that a rating of record may be changed—

(1) Within 60 days of issuance based upon an informal request by the employee;

(2) As a result of a grievance, complaint, or other formal proceeding permitted by law or regulation that results in a final determination by appropriate authority that the rating of record must be changed or as part of a *bona fide* settlement of a formal proceeding; or

(3) Where the agency determines that a rating of record was incorrectly recorded or calculated.

PART 534—PAY UNDER OTHER SYSTEMS

3. The authority citation for part 534 continues to read as follows:

Authority: 5 U.S.C. 1104, 5307, 5351, 5352, 5353, 5376, 5383, 5384, 5385, 5541, and 5550a.

4. In § 534.505, paragraph (b) is revised to read as follows:

§ 534.505 Pay related matters.

* * * * *

(b) *Performance awards.* Performance awards may be paid under 5 U.S.C. chapter 45 and § 451.104(a)(3) of this chapter.

[FR Doc. 98–26623 Filed 10–2–98; 8:45 am]

BILLING CODE 6325–01–P

DEPARTMENT OF AGRICULTURE

Rural Utilities Service

7 CFR Part 1710

RIN 0572–AA89

Long-Range Financial Forecasts of Electric Borrowers

AGENCY: Rural Utilities Service, USDA.

ACTION: Final rule.

SUMMARY: This final rule amends the Rural Utilities Service's (RUS) regulations on long-range financial forecasting. This final rule provides that RUS may request a sensitivity study on a case-by-case basis.

EFFECTIVE DATE: This final rule is effective November 4, 1998.

FOR FURTHER INFORMATION CONTACT: Alex Cockey, STOP 1560, Deputy Assistant Administrator, Electric Program, Rural Utilities Service, U.S. Department of Agriculture, 1400 Independence Ave., SW., Washington, DC 20250–1560, telephone number: (202) 720–9545, E-mail: acockey@rus.usda.gov.

SUPPLEMENTARY INFORMATION:

Executive Order 12866

This final rule has been determined to be not significant for purposes of Executive Order 12866 and, therefore, has not been reviewed by OMB.

Executive Order 12988

This final rule has been reviewed in accordance with Executive Order 12988, Civil Justice Reform. RUS has determined that this final rule meets the applicable standards provided in section 3 of the Executive Order.

In accordance with the Executive Order and the rule; (1) all State and local laws and regulations that are in conflict with this rule will be preempted; (2) no retroactive effect will be given to the rule; and (3) administrative proceedings are required to be exhausted prior to initial litigation against the Department (7 U.S.C. 6912).

Regulatory Flexibility Act Certification

The Administrator of RUS has determined the Regulatory Flexibility Act (5 U.S.C. 601 *et seq.*) definition of the rule does not include rules related to the RUS electric program, and therefore, the Regulatory Flexibility Act does not apply to this rule.

Information Collection and Recordkeeping Requirements

The reporting and recordkeeping requirements contained in this final rule were approved by the Office of Management and Budget (OMB)

pursuant to the Paperwork Reduction Act of 1995 (44 U.S.C. chapter 35, as amended) under control number 0572–0032.

Send questions or comments regarding this burden or any other aspect of this collection of information, including suggestions for reducing the burden to F. Lamont Heppe, Jr., Director, Program Development and Regulatory Analysis, Rural Utilities Service, USDA, 1400 Independence Ave., STOP 1522, Washington, DC 20250–1522.

National Environmental Policy Act Certification

The Administrator of RUS has determined that this final rule will not significantly affect the quality of the human environment as defined by the National Environmental Policy Act of 1969 (42 U.S.C. 4321 *et seq.*). Therefore, this action does not require an environmental impact statement or assessment.

Catalog of Federal Domestic Assistance

The program described by this final rule is listed in the Catalog of Federal Domestic Assistance Programs under number 10.850, Rural Electrification Loans and Loan Guarantees. This catalog is available on a subscription basis from the Superintendent of Documents, the United States Government Printing Office, Washington, DC 20402–9325, telephone number (202) 512–1800.

Executive Order 12372

This rule is excluded from the scope of Executive Order 12372, Intergovernmental Consultation, which may require consultation with State and local officials. A final rule related notice entitled, ''Department Programs and Activities Excluded from Executive Order 12372,'' (50 FR 47034) determined that RUS loans and loan guarantees were not covered by Executive Order 12372.

Unfunded Mandates

This rule contains no Federal mandates (under the regulatory provision of Title II of the Unfunded Mandates Reform Act) for State, local, and tribal governments or the private sector. Thus today's rule is not subject to the requirements of section 202 and 205 of the Unfunded Mandates Reform Act.

National Performance Review

This regulatory action is being taken as part of the National Performance Review program to eliminate unnecessary regulations and improve those that remain in force.

Background

The Rural Utilities Services (RUS), makes loans, loan guarantees to RUS electric borrowers, and provides accommodations of its lien in order for the electric borrowers to provide electric service to new consumers, and to improve the quality and quantity of electric service to existing consumers in rural areas, as authorized by the Rural Electrification Act of 1936, as amended, 7 U.S.C. 901 *et seq.* (RE Act). RUS, pursuant to the RE Act, may make a loan only if the Administrator of RUS determines that the security thereof is reasonably adequate and such loan will be repaid within the time agreed.

RUS regulations establishing the requirement that borrowers submit a long-range financial forecast as part of and to support a loan application are contained at 7 CFR part 1710, subpart G. Part 1717, subparts R and S of 7 CFR contains the policies for lien accommodations and subordinations by RUS of its first lien on borrower's systems and facilities. RUS requires borrowers to submit a long-range financial forecast as part of certain applications requesting a lien accommodation or subordination of its lien. A long-range financial forecast demonstrates that a borrower's system is economically viable currently and in the projected time period. This rule changes some of the requirements regarding long-range financial forecasts.

On May 20, 1997, at 62 FR 27546, RUS published a proposed rule to clarify the financial forecasting requirement for all electric borrowers. The comment period on the proposed rule closed July 21, 1997. Comments received from one borrower regarding the proposed rule are presented as follows:

The proposed rule eliminated the minimum dollar threshold that, when met, necessitated a sensitivity analysis by the borrower. The commenter proposed that the minimum dollar amounts be retained. The commenter proposed that the dollar amounts be increased from $25 million to $40 million for power supply borrowers and from $3 million to $5 million for distribution borrowers.

RUS has determined that setting arbitrary thresholds for requiring sensitivity studies serves no useful purposes at this time. In some cases the dollar amounts would create unnecessary work for a borrower and for RUS if they remained. In other cases, where borrowers would fall under the minimum dollar amounts, sensitivity analysis would still be needed. RUS has concluded that the determination as to when a sensitivity analysis should be required should be done on a case-by-case basis at the time a borrower requests an action or approval by RUS. RUS has, however, added examples of those factors that will be taken into account in determining when a sensitivity analysis will be required. It is not, of course, possible to anticipate all factors that will affect the determination. Consequently, the factors listed are examples and are not intended to limit the determination of RUS. The variables to be tested by the sensitivity analysis will be determined by RUS in consultation with the borrower, at an appropriate time.

List of Subjects in 7 CFR Part 1710

Electric power, Electric utilities, Loan programs—energy, Reporting and recordkeeping, Rural areas.

For reasons set forth in the preamble, RUS hereby amends 7 CFR chapter XVII as follows:

PART 1710—GENERAL AND PRE-LOAN POLICIES AND PROCEDURES COMMON TO INSURED AND GUARANTEED ELECTRIC LOANS

1. The authority citation for part 1710 continues to read as follows:

Authority: 7 U.S.C. 901–905(b), Pub. L. 99–591, 100 Stat. 3341; Pub. L. 103–354, 108 Stat. 3178, (7 U.S.C. 6941 *et seq.*).

2. Section 1710.300 is amended by removing paragraph (f) and revising paragraph (d)(5) to read as follows:

§ 1710.300 General.

* * * * *

(d) * * *

(5) A sensitivity analysis may be required by RUS on a case-by-case basis taking into account such factors as the number and type of large power loads, projections of future borrowings and the associated interest, projected loads, projected revenues, and the probable future competitiveness of the borrower. When RUS determines that a sensitivity analysis is necessary for distribution borrowers, the variables to be tested will be determined by the General Field Representative in consultation with the borrower and the regional office. The regional office will consult with the Power Supply Division in the case of generation projects for distribution borrowers. For power supply borrowers, the variables to be tested will be determined by the borrower and the Power Supply Division.

* * * * *

3. Section 1710.302 is amended by revising paragraphs (b), (d)(1), and (d)(5), to read as follows:

§ 1710.302 Financial forecasts—power supply borrowers.

* * * * *

(b) The financial forecast shall cover a period of 10 years. RUS may request projections for a longer period of time if RUS deems necessary.

* * * * *

(d) * * *

(1) Identify all plans for generation and transmission capital additions and system operating expenses on a year-by-year basis, beginning with the present and running for 10 years, unless a longer period of time has been requested by RUS.

* * * * *

(5) Include sensitivity analysis if required by RUS pursuant to § 1710.300(d)(5).

* * * * *

Dated: September 28, 1998.

Jill Long Thompson,

Under Secretary, Rural Development.

[FR Doc. 98–26484 Filed 10–2–98; 8:45 am]

BILLING CODE 3410–15–P

DEPARTMENT OF TRANSPORTATION

Federal Aviation Administration

14 CFR Parts 23, 25 and 33

[Docket No. 28652; Amendment Nos. 23–53, 25–95, and 33–19]

RIN 2120–AF75

Airworthiness Standards; Rain and Hail Ingestion Standards; Correction

AGENCY: Federal Aviation Administration, DOT.

ACTION: Final rule; correction.

SUMMARY: This document corrects a final rule that was published in the **Federal Register** on March 26, 1998 (63 FR 14794). The final rule addressed engine power loss and instability phenomena attributed to operation in extreme rain or hail. Also, the final rule generally harmonized the Federal Aviation Administration and Joint Aviation Authorities rain and hail ingestion standards.

DATES: Effective October 5, 1998.

FOR FURTHER INFORMATION CONTACT: John Fisher, Burlington, Massachusetts 01803–5229; telephone (781) 238–7149; fax (781) 238–7199.

SUPPLEMENTARY INFORMATION: The Airworthiness Standards final rule on Rain and Hail Ingestion Standards, Docket No. 28652 was published in the **Federal Register** on March 26, 1998 (63 FR 14794). Under ''Discussion of Comments,'' there is an incorrect phrase, and under § 33.77 of the rule, the foreign object ingestion conditions table provides either misplaced or incorrect phrases.

1. On page 14795, under ''Discussion of Comments,'' third column, third paragraph, nine lines down, the phrase ''Some amount of sustained power or thrust loss is permitted following an ice ingestion test'' should be replaced with ''Some amount of sustained power or thrust loss is permitted following testing to the new rain and hail ingestion standards, but no power or thrust loss is permitted following an ice ingestion test.''

2. On page 14798, third column, under § 33.77(e), the ingestion conditions table is corrected to read as follows:

Foreign object	Test quantity	Speed of foreign object	Engine operation	Ingestion
BIRDS:				
3-ounce size	One for each 50 square inches of inlet area, or in fraction thereof, up to a maximum of 16 birds. Three-ounce bird will pass the inlet guide vanes into the rotor blades.	Liftoff speed of typical aircraft	Takeoff	In rapid sequence to simulate flock encounter and aimed at selected critical areas.
1½-pound size	One for the first 300 square inches of inlet area, if it can enter the inlet, plus one for each additional 600 square inches of inlet area, or fraction, thereof up to a maximum of 8 birds.	Initial climb speed of typical aircraft.	Takeoff	In rapid sequence to simulate a flock encounter and aimed at selected critical areas.
4-pound size	One, if it can enter the inlet.	Maximum climb speed of typical aircraft, if the engine has inlet guide vanes.	Maximum cruise	Aimed at critical area.
		Liftoff speed typical aircraft, if the engine does not have inlet guide vanes.	Takeoff	Aimed at critical area.
ICE	Maximum accumulation on a typical inlet cowl and engine face resulting from a 2-minute delay in actuating anti-icing system, or a slab of ice which is comparable in weight or thickness for that size engine.	Sucked in	Maximum cruise	To simulate a continuous maximum icing encounter at 25 °F.

Note: The term ''inlet area'' as used in this section means the engine inlet projected area at the front face of the engine. It includes the projected area of any spinner bullet nose that is provided.

Issued in Washington, DC on September 30, 1998.

Donald P. Byrne,

Assistant Chief Counsel.

[FR Doc. 98–26603 Filed 10–2–98; 8:45 am]

BILLING CODE 4910–13–M

DEPARTMENT OF TRANSPORTATION

Federal Aviation Administration

14 CFR Part 71

[Airspace Docket No. 98–AAL–6]

RIN 2120–AA66

Realignment of Colored Federal Airway; AK

AGENCY: Federal Aviation Administration (FAA), DOT.

ACTION: Final rule.

SUMMARY: This action modifies Colored Federal Airway Amber 4 (A–4) and revokes Colored Federal Airway Amber 6 (A–6) due to the decommissioning and subsequent removal of the Umiat Nondirectional Radio Beacon (NDB), AK, from the National Airspace System (NAS).

EFFECTIVE DATE: 0901 UTC, December 3, 1998.

FOR FURTHER INFORMATION CONTACT: Ken McElroy, Airspace and Rules Division, ATA–400, Office of Air Traffic Airspace Management, Federal Aviation Administration, 800 Independence Avenue, SW., Washington, DC 20591; telephone: (202) 267–8783.

SUPPLEMENTARY INFORMATION:

Background

On June 5, 1998, the FAA proposed to amend 14 CFR part 71 (part 71) to modify Colored Federal Airway A–4 and revoke Colored Federal Airway A–6 due to the decommissioning and subsequent removal of the Umiat NDB (63 FR 30666). Interested parties were invited to participate in this rulemaking by submitting written comments on the proposal to the FAA. One comment objecting to the proposal was received from the Cape Smythe Air Service Safety Officer, opposing the swiftness of the FAA action to decommission the Umiat NDB and the subsequent loss of an instrument flight rules (IFR) alternate airport.

The FAA does not agree with this comment for the following reasons: (1) there is no standard instrument approach procedure supporting Umiat Airport; (2) this airport does not meet the requirements to be used as an IFR alternate airport; (3) the airport weather information is unavailable; and (4) lighting at the airport is nonoperational. Airport operations at Umiat do not justify the cost of maintaining the Umiat NDB.

Except for editorial changes this amendment is the same as that proposed in the notice.

The Rule

The FAA is amending 14 CFR part 71 to modify Colored Federal Airway A–4 by removing that portion of the airway that extends beyond the Anaktuvuk, NDB, AK, and revoking Colored Federal Airway A–6. The FAA is taking this action due to the decommissioning and subsequent removal of the Umiat, NDB, AK, from the NAS.

The FAA has determined that this regulation only involves an established body of technical regulations for which frequent and routine amendments are necessary to keep them operationally current. Therefore, this regulation: (1) is not a ''significant regulatory action'' under Executive Order 12866; (2) is not a ''significant rule'' under DOT Regulatory Policies and Procedures (44 FR 11034; February 26, 1979); and (3) does not warrant preparation of a regulatory evaluation as the anticipated impact is so minimal. Since this is a routine matter that will only affect air traffic procedures and air navigation, it is certified that this rule, when promulgated, will not have a significant economic impact on a substantial number of small entities under the criteria of the Regulatory Flexibility Act.

Colored Federal airways are published in paragraph 6009 of FAA Order 7400.9F dated September 10, 1998, and effective September 16, 1998, which is incorporated by reference in 14 CFR 71.1. The colored Federal airway listed in this document will be published subsequently in the Order.

List of Subjects in 14 CFR Part 71

Airspace, Incorporation by reference, Navigation (air).

Adoption of the Amendment

In consideration of the foregoing, 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 the Federal Aviation Administration Order 7400.9F, Airspace Designations and Reporting Points, dated September 10, 1998, and effective September 16, 1998, is amended as follows:

Paragraph 6009(c)—Amber Federal Airways

* * * * *

A–4 [Revised]

From Evansville, NDB, AK to Anaktuvuk Pass, NDB, AK.

* * * * *

A–6 [Revoked]

* * * * *

Issued in Washington, DC, on September 29, 1998.

Reginald C. Matthews,

Acting Program Director for Air Traffic Airspace Management.

[FR Doc. 98–26599 Filed 10–2–98; 8:45 am]

BILLING CODE 4910–13–P

DEPARTMENT OF TRANSPORTATION

Federal Aviation Administration

14 CFR Part 73

[Airspace Docket No. 97–ASO–9]

RIN 2120–AA66

Amendment to Time of Designation for Restricted Area R–2908, Pensacola, FL

AGENCY: Federal Aviation Administration (FAA), DOT.

ACTION: Final rule.

SUMMARY: This action amends the time of designation for Restricted Area R–2908 (R–2908) by reducing the published time frame for routine activation of the area. A special use airspace utilization review conducted by the FAA determined that the user no longer requires regular use of the restricted area on a year-round basis. The amended time of designation more accurately reflects the user's current requirements.

EFFECTIVE DATE: 0901 UTC, December 3, 1998.

FOR FURTHER INFORMATION CONTACT: Paul Gallant, Airspace and Rules Division, ATA–400, Office of Air Traffic Airspace Management, Federal Aviation Administration, 800 Independence Avenue, SW., Washington, DC 20591; telephone (202) 267–8783.

SUPPLEMENTARY INFORMATION:

Background

Restricted Area R–2908 is currently designated for daily use, 12 months of

the year. However, the user's mission requirements for the airspace now occur during the months of November and December, during the time periods of 0800–1600 local time, Monday–Friday, with an occasional requirement to activate R–2908 outside these periods by Notice to Airmen (NOTAM). This change to the time of designation will more accurately reflect the user's airspace needs and to better inform the flying public as to when that area may be in use.

The Rule

This action amends 14 CFR part 73 by changing the time of designation for R–2908 from ''Intermittent, sunrise-sunset, daily; other times by NOTAM 24 hours in advance,'' to ''November–December, Monday–Friday, 0800–1600 local time; other times by NOTAM 24 hours in advance.'' This administrative change reduces the time of designation for R–2908 but does not alter the boundaries, altitudes, or activities conducted within the restricted area. Therefore, I find that notice and public procedures under 5 U.S.C. 553(b) are unnecessary because this action is a minor technical amendment in which the public would not be particularly interested.

Section 73.29 of part 73 was republished in FAA Order 7400.8E, dated November 7, 1997.

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

Environmental Review

This action is a minor administrative change to reduce the published time of designation for Restricted Area R–2908. There are no changes to air traffic control procedures or routes as a result of this action. Therefore, this action is not subject to environmental assessments and procedures in accordance with FAA Order 1050.1D, ''Policies and Procedures for Considering Environmental Impacts,'' and the National Environmental Policy Act of 1969.

List of Subjects in 14 CFR Part 73

Airspace, Navigation (air).

Adoption of the Amendment

In consideration of the foregoing, the Federal Aviation Administration amends 14 CFR part 73, as follows:

PART 73—SPECIAL USE AIRSPACE

1. The authority citation for part 73 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.

§ 73.29 [Amended]

2. § 73.29 is amended as follows:

* * * * *

R–2908 Pensacola, FL [Amended]

By removing the words ''Time of designation. Intermittent, sunrise-sunset, daily; other times by NOTAM 24 hours in advance,'' and adding the words ''Time of designation. November-December, Monday-Friday, 0800–1600 local time; other times by NOTAM 24 hours in advance.''

* * * * *

Issued in Washington, DC, on September 28, 1998.

Reginald C. Matthews,

Acting Program Director for Air Traffic Airspace Management.

[FR Doc. 98–26600 Filed 10–2–98; 8:45 am]

BILLING CODE 4910–13–P

DEPARTMENT OF LABOR

Occupational Safety and Health Administration

29 CFR Part 1952

Arizona State Plan; Change in Level of Federal Enforcement: Concrete and Asphalt Batch Plants Connected to Mines

AGENCY: Occupational Safety and Health Administration, Labor.

ACTION: Final rule.

SUMMARY: This document gives notice of the resumption of Federal enforcement responsibility in the State of Arizona over private sector employment at concrete and asphalt batch plants which are physically connected to a mine or so interdependent with the mine as to form one integral enterprise.

OSHA is hereby amending its regulations on approved plans to reflect this change to the level of Federal enforcement authority in Arizona.

EFFECTIVE DATE: October 5, 1998.

FOR FURTHER INFORMATION CONTACT: Bonnie Friedman, Director, Office of Information and Consumer Affairs, Occupational Safety and Health Administration, U.S. Department of Labor, Room, N–3637, 200 Constitution Avenue, N.W., Washington, D.C. 20210, (202) 219–8148.

SUPPLEMENTARY INFORMATION:

A. Background

Section 18 of the Occupational Safety and Health Act of 1970 (the Act), 29 U.S.C. 667, provides that States which wish to assume responsibility for developing and enforcing their own occupational safety and health standards, may do so by submitting, and obtaining Federal approval of, a State plan. State plan approval occurs in stages which include initial approval under section 18(c) of the Act and, ultimately, final approval under section 18(e).

The Arizona State plan was initially approved on October 29, 1974 (39 FR 39037). On June 20, 1985, OSHA announced the final approval of the Arizona State plan pursuant to section 18(e) and amended Subpart CC of 29 CFR Part 1952 to reflect the Assistant Secretary's decision (50 FR 25571). As a result, Federal OSHA relinquished its authority with regard to occupational safety and health issues covered by the Arizona plan. Federal OSHA retained its authority over safety and health in private sector maritime employment, in copper smelters, within Indian reservations and with regard to Federal government employers and employees.

29 CFR 1952.355, which codifies OSHA's final approval decision, provides that any hazard, industry, geographical area, operation or facility over which the State is unable to effectively exercise jurisdiction for reasons not related to the required performance or structure of the plan shall be deemed to be an issue not covered by the plan and shall be subject to Federal enforcement.

The Industrial Commission of Arizona, the State plan agency responsible for occupational safety and health enforcement, is precluded by law from covering working conditions with respect to which any State agency acting under Title 27, Chapter 3, of Arizona Revised Statutes, exercises statutory authority to prescribe or enforce standards or regulations affecting occupational safety or health (Arizona Revised Statutes, section 23–402). Under Arizona Revised Statutes section 27–301(8), the State Mine Inspector has jurisdiction over concrete and asphalt plants that are ''physically connected to the mine or so interdependent with the

mine as to form one integral enterprise.'' Therefore, such facilities are excluded from coverage under the State plan.

Section 4(b)(1) of the Federal Act provides that ''nothing in this Act shall apply to working conditions with respect to which other Federal agencies * * * exercise statutory authority to prescribe or enforce standards or regulations affecting occupational safety or health'' but does not include language precluding coverage of concrete or asphalt plants comparable to that in the Arizona statute. OSHA coverage of such facilities is specifically provided by a Memorandum of Understanding Between OSHA and the Mine Safety and Health Administration, which was signed on March 29, 1979 (see 44 FR 22,827).

B. Location of Supplement for Inspection and Copying

A copy of the legislation referenced in this notice as well as information on the Arizona plan is available during normal business hours at the following locations: Office of the Regional Administrator, U.S. Department of Labor—OSHA, 71 Stevenson Street, Suite 415, San Francisco, CA 94105; Industrial Commission of Arizona, 800 W. Washington, Phoenix, AZ 85007; and the Office of State Programs, 200 Constitution Avenue, N.W., Room N3700, Washington, D.C. 20210. For electronic copies of this notice, contact OSHA's Web Page at http://www.osha.gov/.

C. Public Participation

Under 29 CFR 1953.2(c), the Assistant Secretary may prescribe alternative procedures to expedite the review process or for other good cause which may be consistent with applicable laws. Arizona's Final Approval determination issued after an opportunity for public comment in 1985, specifically provides that Federal standards and enforcement will apply to safety or health issues the State is unable to cover under its State plan, and this notice implements that provision. State and Federal OSHA requirements applicable to employment in concrete and asphalt batch plants are identical. Accordingly, OSHA finds that further public participation is not necessary.

D. Decision

To assure worker protection under the OSH Act, Federal OSHA will assume coverage over concrete and asphalt batch plants that are physically connected to or interdependent with mines in Arizona. OSHA is hereby amending 29 CFR part 1952, Subpart CC, to reflect this change in the level of Federal enforcement.

List of Subjects in 29 CFR Part 1952

Intergovernmental relations, Law enforcement, Occupational safety and health.

This document was prepared under the direction of Charles Jeffress, Assistant Secretary of Labor for Occupational Safety and Health. It is issued under Section 18 of the OSH Act (29 U.S.C. 667), 29 CFR part 1902, and Secretary of Labor's Order No. 6–96 (62 FR 111).

Signed at Washington, D.C. this 21 day of August 1998.

Charles N. Jeffress,

Assistant Secretary of Labor.

For the reasons set out in the preamble 29 CFR part 1952, Subpart CC (Arizona) is hereby amended as set forth below:

PART 1952—APPROVED STATE PLANS FOR ENFORCEMENT OF STATE STANDARDS

1. The authority citation for Part 1952 continues to read as follows:

Authority: Sec. 18 Stat. 1608 (29 U.S.C. 667); 29 CFR part 1902, Secretary of Labor's Order No. 6–96 (62 FR 111).

Subpart CC—Arizona

2. Section 1952.354 is amended by revising paragraph (b) to read as follows:

§ 1952.354 Final approval determination.

* * * * *

(b) The plan which has received final approval covers all activities of employers and all places of employment in Arizona except for private sector maritime employment, copper smelters, concrete and asphalt batch plants that are physically connected to a mine or so interdependent with a mine as to form one integral enterprise, and Indian reservations.

* * * * *

3. Section 1952.355 is amended by revising the first four sentences of paragraph (b) to read as follows:

§ 1952.355 Level of Federal enforcement.

* * * * *

(b) In accordance with section 18(e), final approval relinquishes Federal OSHA authority only with regard to occupational safety and health issues covered by the Arizona plan. OSHA retains full authority over issues which are not subject to State enforcement under the plan. Thus, Federal OSHA retains its authority relative to safety and health in private sector maritime activities and will continue to enforce all provisions of the Act, rules or orders, and all Federal standards, current or future, specifically directed to maritime employment (29 CFR part 1915, shipyard employment; part 1917, marine terminals; part 1918, longshoring; part 1919, gear certification) as well as provisions of general industry standards (29 CFR part 1910) appropriate to hazards found in these employments. Federal jurisdiction is also retained with respect to Federal government employers and employees, in copper smelters, in concrete and asphalt batch plants which are physically connected to a mine or so interdependent with the mine as to form one integral enterprise, and within Indian reservations. * * *

* * * * *

[FR Doc. 98–26525 Filed 10–2–98; 8:45 am]

BILLING CODE 4510–26–P

DEPARTMENT OF TRANSPORTATION

Coast Guard

33 CFR Part 117

[CGD11–98–013]

Drawbridge Operation Regulations; Carquinez Strait, Solano and Contra Costa Counties, CA, Union Pacific Benicia-Martinez Railroad Bridge

AGENCY: Coast Guard, DOT.

ACTION: Notice of temporary deviation from regulations.

SUMMARY: Notice is hereby given that the Coast Guard has issued a temporary deviation to the regulations governing the opening of the Union Pacific Martinez Railroad vertical lift bridge over Carquinez Strait between Benicia and Martinez, CA. The deviation specifices that the bridge operator requires 1-hour advance notice from 7 a.m. to 5 p.m. to open the bridge on the following specified dates. Those dates are Tuesday, September 29, 1998, Wednesday, September 30, 1998, Tuesday, October 13, 1998, and Wednesday, October 14, 1998. The purpose of this deviation is to allow the Union Pacific Railroad and its contractors to replace the rail across the bridge. The advance notice is needed to allow sufficient time for workers to remove equipment from the lift span.

DATES: Effective period of the deviation is 7 a.m.–5 p.m. on September 29, 1998, September 30, October 13, and October 14, 1998.

FOR FURTHER INFORMATION CONTACT:

Mr. Jerry Olmes, Bridge Administrator, Eleventh Coast Guard District, Building 50–6 Coast Guard Island, Alameda, CA 94501–5100, telephone (510) 437–3515.

SUPPLEMENTARY INFORMATION: The Coast Guard anticipates that the economic consequences of this deviation will be minimal. The bridge opens upon demand, however, most vessels needing bridge openings give the bridge operator a preliminary call about 30 minutes before arriving at the bridge. The additional time required for advance notice should not pose an economic burden for waterway users. This deviation from the normal operating regulations in 33 CFR 117.5 is authorized in accordance with the provisions of 33 CFR 117.35.

Dated: September 18, 1998.

E. E. Page,

Captain, U.S. Coast Guard, Acting Commander, Eleventh Coast Guard District.

[FR Doc. 98–26577 Filed 10–2–98; 8:45 am]

BILLING CODE 4910–15–M

ENVIRONMENTAL PROTECTION AGENCY

40 CFR Part 52 and 81

[CT50–7208; A–1–FRL–6167–1]

Approval and Promulgation of Air Quality Implementation Plans and Designations of Areas for Air Quality Planning Purposes; State of Connecticut; Approval of Maintenance Plan, Carbon Monoxide Redesignation Plan and Emissions Inventory for the New Haven-Meriden-Waterbury area

AGENCY: Environmental Protection Agency (EPA).

ACTION: Direct final rule.

SUMMARY: EPA is approving a request by the Connecticut Department of Environmental Protection (CTDEP) on January 17, 1997 to redesignate the New Haven-Meriden-Waterbury area from nonattainment to attainment for carbon monoxide (CO). EPA is approving this request which establishes the area as attainment for carbon monoxide and requires the state to implement their 10 year maintenance plan that will insure that the area remains in attainment. Under the Clean Air Act as amended in 1990 (CAA), designations can be revised if sufficient data is available to warrant such revisions. EPA is approving the Connecticut request because it meets the redesignation requirements set forth in the CAA, and this action is being taken in accordance with Clean Air Act requirements. In this action, EPA is also approving the 1990 base year emission inventory for CO emissions, which includes emissions data for sources of CO in the New Haven nonattainment area.

DATES: This action is effective December 4, 1998, unless EPA receives adverse or critical comments by November 4, 1998. Should the Agency receive such comments, it will publish a timely withdrawal in the **Federal Register**.

ADDRESSES: Comments may be mailed to Susan Studlien, Deputy Director, Office of Ecosystem Protection (mail code CAA), U.S. Environmental Protection Agency, Region I, JFK Federal Bldg., Boston, MA 02203–2211. Copies of the documents relevant to this action are available for public inspection during normal business hours, by appointment at the Office of Ecosystem Protection, U.S. Environmental Protection Agency, Region I, One Congress Street, 11th floor, Boston, MA and the Bureau of Air Management, Department of Environmental Protection, State Office Building, 79 Elm Street, Hartford, CT 06106–1630.

FOR FURTHER INFORMATION CONTACT: Jeffrey S. Butensky, Environmental Planner, Air Quality Planning Unit of the Office of Ecosystem Protection (mail code CAQ), U.S. Environmental Protection Agency, Region I, JFK Federal Bldg., Boston, MA 02203–2211, (617) 565–3583 or at butensky.jeff@epamail.epa.gov

SUPPLEMENTARY INFORMATION: On January 17, 1997, the State of Connecticut submitted a formal redesignation request consisting of air quality data showing that the area is attaining the standard and a maintenance plan with all applicable requirements. In addition, on January 13, 1994, the State of Connecticut submitted a carbon monoxide inventory for the New Haven-Meriden-Waterbury area which is also being approved in today's action.

I. Summary of SIP Revision

A. Background

On March 31, 1978, (See 43 FR 8962), EPA published rulemaking which set forth attainment status for all States in relation to the National Ambient Air Quality Standards (NAAQS). The New Haven-Meriden-Waterbury area and surrounding towns (the ''New Haven area'') was designated as nonattainment for carbon monoxide (CO) through this notice. This includes the towns of New Haven, Thomaston, Watertown, Bethlehem, Woodbury, Wolcott, Waterbury, Middlebury, Southbury, Meriden, Cheshire, Prospect, Naugatuck, Oxford, Seymour, Shelton, Beacon Falls, Bethany, Hamden, Wallingford, Guilford, Branford, North Branford, Madison, North Haven, East Haven, Woodbridge, West Haven, Ansonia, Derby, Orange, and Milford.

Prior to the 1990 Clean Air Act amendments, a large area encompassing New Haven, Hartford, and Springfield, MA, was a single air quality control region. Pursuant to the CAA of 1990, the area was divided into specific nonattainment areas, one of which is the New Haven-Meriden-Waterbury CO nonattainment area. The Hartford CO nonattainment area was redesignated to attainment and a maintenance area on October 31, 1995. An ''unclassified area'' is an area with data showing no violations but had been designated as nonattainment prior to the 1990 Clean Air Act amendments. Therefore, the area continued as nonattainment by operation of law until the State completes all redesignation requirements and EPA takes action.

The New Haven area was designated ''unclassifiable'' as determined by EPA even though the area has ambient monitoring data showing attainment of the CO NAAQS since 1978. Therefore, this area is subject to the requirements of section 172 of the Clean Air Act which sets forth requirements for applicable nonattainment areas (see the technical support document for more information). The 1990 CAA required such areas to achieve the standard by November 15, 1995, and the New Haven area has fulfilled this requirement. Therefore, in an effort to comply with the CAA and to ensure continued attainment of the NAAQS, on January 17, 1997 the State of Connecticut submitted a CO redesignation request and a maintenance plan for the New Haven area. Connecticut submitted evidence that a public hearing was held on January 8, 1997.

B. Evaluation Criteria

Section 107(d)(3)(E) of the 1990 Clean Air Act Amendments provides five specific requirements that an area must meet in order to be redesignated from nonattainment to attainment.

1. The area must have attained the applicable NAAQS;
2. The area must have a fully approved SIP under section 110(k) of CAA;
3. The air quality improvement must be permanent and enforceable;
4. The area must have a fully approved maintenance plan pursuant to section 175A of the CAA;
5. The area must meet all applicable requirements under section 110 and Part D of the CAA.

C. Review of State Submittal

The Connecticut redesignation request for the New Haven-Meriden-Waterbury area meets the five requirements of section 107(d)(3)(E) noted above. The following is a brief description of how the State has fulfilled each of these requirements.

1. Attainment of the CO NAAQS

Connecticut has accurate CO air monitoring data which shows that the New Haven-Meriden-Waterbury area has met the CO NAAQS. The request by Connecticut to redesignate is based on an analysis of quality-assured monitoring data which is relevant to the maintenance plan and to the redesignation request. To attain the CO NAAQS, an area must have complete quality-assured data showing no more than one exceedance of the standard over at least two consecutive years. The ambient air CO monitoring data for calendar year 1994 through calendar year 1995 relied upon by Connecticut in its redesignation request shows no violations of the CO NAAQS, and the area has had no exceedances since 1978. Therefore, the area has complete quality assured data showing no more than one exceedance of the standard per year over at least two consecutive years and the area has met the first statutory criterion of attainment of the CO NAAQS (40 CFR 50.9 and appendix C). Connecticut also committed to continue to monitor CO in the City of New Haven. In addition, the state has used the MOBILE5A emission model and the CAL3QHC (version 2.0) dispersion model, and the modeling results show no violations of the CO NAAQS in the year 2007. No violations are expected throughout the maintenance period (through 2008).

2. Fully Approved SIP

Connecticut's CO SIP is fully approved by EPA as meeting all the requirements of Section 110 of the Act, including the requirement in Section 110(a)(2)(I) to meet all the applicable requirements of Part D (relating to nonattainment), which were due prior to the date of Connecticut's redesignation request. Connecticut's 1982 CO SIP was fully approved by EPA in 1984 as meeting the CO SIP requirements in effect under the CAA at that time. The 1990 CAA required that CO nonattainment areas achieve specific new requirements depending on the severity of the nonattainment classification. The requirements for the New Haven-Meriden-Waterbury area include the preparation of a 1990 emission inventory with periodic updates and development of conformity procedures. Each of these requirements, added by the 1990 Amendments to the CAA, are discussed in greater detail below.

New Source Review: Consistent with the October 14, 1994 EPA guidance from Mary D. Nichols entitled ''Part D New Source Review (part D NSR) Requirements for Areas Requesting Redesignation to Attainment,'' EPA is not requiring as a prerequisite to redesignation to attainment EPA's full approval of a part D NSR program by Connecticut. Under this guidance, nonattainment areas may be redesignated to attainment notwithstanding the lack of a fully-approved part D NSR program, so long as the program is not relied upon for maintenance. Connecticut has not relied on a NSR program for CO sources to maintain attainment. Regardless, the current NSR rules for Connecticut that were approved by EPA on February 23, 1993, are adequate to meet the CO NSR requirements applicable in this nonattainment area. Although EPA is not treating a part D NSR program as a prerequisite for redesignation, it should be noted that EPA is in the process of taking final action on the State's revised NSR regulation. Since the New Haven-Meriden-Waterbury area is being redesignated to attainment by this action, Connecticut's Prevention of Significant Deterioration (PSD) requirements will be applicable to new or modified sources in the New Haven-Meriden-Waterbury area.

Emission Inventory: Under the Clean Air Act as amended, States have the responsibility to inventory emissions contributing to NAAQS nonattainment, to track these emissions over time, and to ensure that control strategies are being implemented that reduce emissions and move areas towards attainment. The inventory is designed to address actual CO emissions for the area during the peak CO season. Connecticut submitted its base year inventory to EPA in November, 1993, and this included estimates for CO emissions for the New Haven-Meriden-Waterbury CO nonattainment area. EPA is approving the New Haven-Meriden-Waterbury portion of the 1990 CO Base Year emission inventory with this redesignation request.

Section 172(c)(3) of the CAA requires that nonattainment plan provisions include a comprehensive, accurate, and current inventory of actual emissions from all sources of relevant pollutants in the nonattainment area, and this was accomplished. Connecticut included the requisite inventory in the CO SIP, and the base year for the inventory was 1990 and used a three month CO season of November 1990 through January 1991. Stationary point sources, stationary area sources, on-road mobile sources, and non road mobile sources of CO were included in the inventory. Available guidance for preparing emission inventories is provided in the General Preamble (57 FR 13498, April 16, 1992). In this action, EPA is approving the emission inventory for the New Haven-Meriden-Waterbury nonattainment area.

The following list presents a summary of the CO peak season daily emissions estimates in tons per winter day by source category. The EPA is approving the New Haven-Meriden-Waterbury 1990 base year CO emissions inventory based on the technical review of the inventory.

Area	Non road	Mobile	Point	Total
157.38	54.86	479.91	3.85	696.00

Conformity: Under section 176(c) of the CAA, states are required to submit revisions to their SIPs that include criteria and procedures to ensure that Federal actions conform to the air quality planning goals in the applicable SIPs. The requirement to determine conformity applies to transportation plans, programs, and projects developed, funded or approved under Title 23 U.S.C. or the Federal Transit Act (''transportation conformity''), as well as all other federal actions (''general conformity''). Congress provided for the State revisions to be submitted one year after the date of promulgation of final EPA conformity regulations. EPA promulgated revised final transportation conformity regulations on August 15, 1997 (62 FR #43780) and final general conformity regulations on November 30, 1993 (58 FR #63214).

These conformity rules require that the States adopt both transportation and general conformity provisions in the SIP for areas designated nonattainment or subject to a maintenance plan approved under CAA section 175A. Pursuant to Sec. 51.390 of the transportation conformity rule, the State of Connecticut is required to submit a SIP revision containing transportation conformity criteria and procedures consistent with those established in the federal rule by August 15, 1998. Similarly, pursuant to Sec. 51.851 of the general conformity rule, Connecticut was required to submit a SIP revision containing general conformity criteria and procedures consistent with those established in the federal rule by December 1, 1994. Connecticut has not

yet submitted either of these conformity SIP revisions.

Although Connecticut has not yet adopted and submitted conformity SIP revisions, EPA may approve this redesignation request. EPA interprets the requirement of a fully approved SIP in section 107(d)(3)(E)(v) to mean that, for a redesignation request to be approved, the State must have met all requirements that become applicable to the subject area prior to or at time of the submission of the redesignation request. Although this redesignation request was submitted to EPA after the due date for the SIP revisions for the general conformity rule and the State has not promulgated their transportation conformity and general conformity rules, EPA believes it is reasonable to interpret the conformity requirements as not being applicable requirements for purposes of evaluating the redesignation request under section 107(d). The rationale for this is based on two factors. First, the requirement to submit SIP revisions to comply with the conformity provisions of the Act applies to maintenance areas and thereby continues to apply after redesignation to attainment. Therefore, Connecticut remains obligated to adopt the transportation and general conformity rules even after redesignation. While redesignation of an area to attainment enables the area to avoid further compliance with most requirements of section 110 and part D, since those requirements are linked to the nonattainment status of an area, the conformity requirements apply to both nonattainment and maintenance areas.

Second, EPA's federal conformity rules require the performance of conformity analyses in the absence of state-adopted rules. Therefore, a delay in adopting state rules does not relieve an area from the obligation to implement conformity requirements. Areas are subject to the conformity requirements regardless of whether they are redesignated to attainment and must implement conformity under federal rules if state rules are not yet adopted, therefore, it is reasonable to view these requirements as not being applicable requirements for purposes of evaluating a redesignation request. Furthermore, Connecticut has continually fulfilled all of the requirements of the federal transportation conformity and general conformity rules, so it is not necessary that the State have either their transportation or general conformity rules approved in the SIP prior to redesignation to insure that Connecticut meets the substance of the conformity requirements. It should be noted that approval of Connecticut's redesignation request does not obviate the need for Connecticut to submit the required conformity SIPs to EPA, and EPA will continue to work with Connecticut to assure that State rules are promulgated.

On April 1, 1996, EPA modified its national policy regarding the interpretation of the provisions of section 107(d)(3)(E) concerning the applicable requirements for purposes of reviewing a CO redesignation request (61 FR 2918, January 30, 1996). Under this new policy, for the reasons discussed, EPA believes that the CO redesignation request may be approved notwithstanding the lack of submitted and approved state transportation and general conformity rules.

For transportation conformity purposes, the 2008 on-road emission totals outlined in the chart later in this rule is designated as the emissions budget for the New Haven-Meriden-Waterbury CO nonattainment/maintenance area.

3. Improvement in Air Quality Due to Permanent and Enforceable Measures

EPA approved Connecticut's CO SIP, submitted in 1982, under the CAA, as amended in 1977. Emission reductions achieved through the implementation of control measures contained in that SIP are enforceable. These measures were: transportation plan reviews, a basic inspection and maintenance program, right turn on red, and the federal motor vehicle control program. The air quality improvements are due to the permanent and enforceable measures contained in the 1982 CO SIP. EPA finds that the combination of certain existing EPA-approved SIP and federal measures contribute to the permanence and enforceability of reduction in ambient CO levels that have allowed the area to attain the NAAQS.

4. Fully Approved Maintenance Plan Under Section 175A

Section 175A of the CAA sets forth the elements of a maintenance plan for areas seeking redesignation from nonattainment to attainment. The plan must demonstrate continued attainment of the applicable NAAQS for at least ten years after the Administrator approves a redesignation to attainment. Eight years after the redesignation, the state must submit a revised maintenance plan which demonstrates attainment for the ten years following the initial ten-year period. To provide for the possibility of future NAAQS violations, the maintenance plan must contain contingency measures, with a schedule for implementation adequate to assure prompt correction of any air quality problems. The contingency plan includes the implementation of reformulated gasoline, which is already occurring, and the implementation of a the enhanced inspection and maintenance program, which began implementation on January 1, 1998. Although these programs are being implemented as measures to achieve the NAAQS for ground level ozone, they are not required in unclassified carbon monoxide nonattainment areas under the Clean Air Act and can therefore be used as contingency measures. In this notice, EPA is approving the State of Connecticut's maintenance plan for the New Haven-Meriden-Waterbury area because EPA finds that Connecticut's submittal meets the requirements of section 175A. In addition, although vehicle miles traveled (VMT) may increase over the maintenance period, the decrease in emissions per vehicle will more than offset growth in VMT.

A. Attainment Emission Inventory

As previously noted, the State of Connecticut submitted a comprehensive inventory of CO emissions from the New Haven-Meriden-Waterbury area. The inventory includes emissions from area, stationary, and mobile sources using 1990 as the base year for calculations.

The 1990 inventory is considered representative of attainment conditions because the NAAQS was not violated during 1990 and was prepared in accordance with EPA guidance. Connecticut established CO emissions for the attainment year, 1990, as well as forecast years out to the year 2007. These estimates were derived from the State's 1990 emissions inventory. The State submittal contains the following data:

NEW HAVEN NONATTAINMENT AREA CO EMISSIONS INVENTORY SUMMARY

[Tons per day]

Year	Area	Non road	Mobile	Point	Total
1990	157.38	54.86	479.91	3.85	696.00

NEW HAVEN NONATTAINMENT AREA CO EMISSIONS INVENTORY SUMMARY—Continued

[Tons per day]

Year	Area	Non road	Mobile	Point	Total
2007	169.09	58.93	395.97	4.14	628.10
2008	169.09	58.93	395.97	4.14	628.10

To fulfill the requirements of a redesignation request, a maintenance plan must extend out 10 years or more from the date of this document. Therefore, this information had to be provided through the year 2008. As a result, Connecticut supplied additional information that indicated that the budget should be identical for 2007 and 2008. Emissions in 2008 will likely be different than 2007, but a precise modeling analysis is not required because the difference will be inconsequential and the actual CO emission levels in these years is expected to be significantly below the levels estimated in the analysis contained in the redesignation request. This has fulfilled the 10 year requirement (further explained in the technical support document).

B. Demonstration of Maintenance-Projected Inventories

Total CO emissions were projected from 1990 base year out to 2007. In addition, Connecticut was required to extend this analysis to 2008, and this was accomplished. These projected inventories were prepared in accordance with EPA guidance. These estimates are extremely conservative because they do not include reformulated gasoline, enhanced inspection and maintenance, or the low emission vehicle program. Therefore, it is anticipated that the area will maintain the CO standard.

C. Verification of Continued Attainment

Continued attainment of the CO NAAQS in the New Haven-Meriden-Waterbury area depends, in part, on the State's efforts toward tracking indicators of continued attainment during the maintenance period, and the State will submit periodic inventories of CO emissions. In addition, 8 years from today the state is required to submit another 10 year maintenance plan covering the period from 2008 through 2018.

D. Contingency Plan

The level of CO emissions in the New Haven-Meriden-Waterbury area will largely determine its ability to stay in compliance with the CO NAAQS in the future. Despite the State's best efforts to demonstrate continued compliance with the NAAQS, the ambient air pollutant concentrations may exceed or violate the NAAQS, although highly unlikely. Also, section 175A(d) of the CAA requires that the contingency provisions include a requirement that the State implement all measures contained in the SIP prior to redesignation. Therefore, Connecticut has provided contingency measures in the event of a future CO air quality problem.

Connecticut has developed a two-stage contingency plan. The first stage is the implementation of reformulated gasoline as indicated earlier in this notice. The second is the implementation of the enhanced inspection and maintenance program, also as indicated earlier. In order to be adequate, the maintenance plan should include at least one contingency measure that will go into effect with a triggering event. Connecticut is relying largely on these two contingency measures that will go into effect regardless of any triggering event, thereby fulfilling this requirement.

E. Subsequent Maintenance Plan Revisions

In accordance with section 175A(b) of the CAA, the State has agreed to submit a revised maintenance SIP eight years after the area is redesignated to attainment. Such revised SIP will provide for maintenance for an additional ten years.

5. Meeting Applicable Requirements of Section 110 and Part D

In this document, EPA has set forth the basis for its conclusion that Connecticut has a fully approved SIP which meets the applicable requirements of Section 110 and Part D of the CAA.

EPA is publishing this redesignation and approving the emissions budget for the New Haven-Meriden-Waterbury area without prior proposal because the Agency views this as noncontroversial and anticipates no adverse comments. However, in the proposed rules section of this **Federal Register** publication, EPA is publishing a separate document that will serve as the proposal should relevant adverse comments be filed. This action will be effective December 4, 1998 without further notice unless the Agency receives relevant adverse comments by November 4, 1998.

If the EPA receives such comments, then EPA will publish a timely withdrawal of the final rule and informing the public that it will not take effect. All public comments received will then be addressed in a subsequent final rule based on the proposal. The EPA will not institute a second comment period on this rule. Only parties interested in commenting on this rule should do so at this time. If no such comments are received, the public is advised that this redesignation will be effective on December 4, 1998 and no further action will be taken on the proposal.

II. Final Action

EPA is approving the New Haven-Meriden-Waterbury CO resignation and maintenance plan because it meets the requirements set forth in section 175A of the CAA. In addition, the Agency is approving the request to redesignate the New Haven-Meriden-Waterbury CO area to attainment, because the State has demonstrated compliance with the requirements of section 107(d)(3)(E) for redesignation.

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

III. Administrative Requirements

A. Executive Order 12866

The Office of Management and Budget (OMB) has exempted this regulatory action from E.O. 12866 review.

B. Executive Order 12875

Under E.O. 12875, EPA may not issue a regulation that is not required by statute and that creates a mandate upon

a state, local, or tribal government, unless the Federal government provides the funds necessary to pay the direct compliance costs incurred by those governments. If the mandate is unfunded, EPA must provide to the Office of Management and Budget a description of the extent of EPA's prior consultation with representatives of affected state, local, and tribal governments, the nature of their concerns, copies of written communications from the governments, and a statement supporting the need to issue the regulation. In addition, E.O. 12875 requires EPA to develop an effective process permitting elected officials and other representatives of state, local, and tribal governments and ''to provide meaningful and timely input in the development of regulatory proposals containing significant unfunded mandates.'' Today's rule does not create a mandate on state, local or tribal governments. The rule does not impose any enforceable duties on these entities. Accordingly, the requirements of section 1(a) of E.O. 12875 do not apply to this rule.

C. Executive Order 13084

Under E.O. 13084, EPA may not issue a regulation that is not required by statute, that significantly affects or uniquely affects the communities of Indian tribal governments, and that imposes substantial direct compliance costs on those communities, unless the Federal government provides the funds necessary to pay the direct compliance costs incurred by the tribal governments. If the mandate is unfunded, EPA must provide to the Office of Management and Budget, in a separately identified section of the preamble to the rule, a description of the extent of EPA's prior consultation with representatives of affected tribal governments, a summary of the nature of their concerns, and a statement supporting the need to issue the regulation. In addition, representatives of Indian tribal governments ''to provide meaningful and timely input in the development of regulatory policies on matters that significantly or uniquely affect their communities. Today's rule does not significantly or uniquely affect the communities of Indian tribal governments. Accordingly, the requirements of section 3(b) of E.O. 13084 do not apply to this rule.

D. Regulatory Flexibility Act

Redesignation of an area to attainment under section 107(d)(3)(E) of the CAA does not impose any new requirements on small entities. Redesignation is an action that affects the status of a geographical area and does not impose any regulatory requirements on sources. To the extent that the area must adopt new regulations, based on its attainment status, EPA will review the effect of those actions on small entities at the time the State submits those regulations. The Administrator certifies that the approval of the redesignation request will not affect a substantial number of small entities.

E. Unfunded Mandates

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

F. Submission to Congress and the Comptroller General

Congressional Review Act, 5 U.S.C. 801 *et seq.*, as added by the Small Business Regulatory Enforcement Fairness Act of 1996, generally provides that before a rule may take effect, the agency promulgating the rule must submit a rule report, which includes a copy of the rule, to each House of the Congress and to the Comptroller General of the United States. EPA will submit a report containing this rule and other required information to the U.S. Senate, the U.S. House of Representatives, and the Comptroller General of the United States prior to publication of the rule in the **Federal Register**. This rule is not a ''major rule'' as defined by 5 U.S.C. 804(2).

G. Executive Order 13045

Protection of Children from Environmental Health Risks and Safety Risks (62 FR 19885, April 23, 1997), applies to any rule that: (1) is determined to be ''economically significant'' as defined under Executive Order 12866, and (2) concerns an environmental health or safety risk that EPA has reason to believe may have a disproportionate effect on children. If the regulatory action meets both criteria, the Agency must evaluate the environmental health or safety effects of the planned rule on children, and explain why the planned regulation is preferable to other potentially effective and reasonably feasible alternatives considered by the Agency.

This rule is not subject to E.O. 13045 because it is does not involved decisions intended to mitigate environmental health or safety risks.

H. Petitions for Judicial Review

Under section 307(b)(1) of the Clean Air Act, petitions for judicial review of this action must be filed in the United States Court of Appeals for the appropriate circuit by December 4, 1998. Filing a petition for reconsideration by the Administrator of this final rule does not affect the finality of this for the purposes of judicial review nor does it extend the time within which a petition for judicial review may be filed, and shall not postpone the effectiveness of such an action. This action may not be challenged later in proceedings to enforce its requirements. (See section 307(b)(2).) EPA encourages interested parties to comment in response to the proposed redesignation rather than petition for judicial review, unless the objection arises after the comment period allowed for in the proposal.

List of Subjects

40 CFR Part 52

Environmental protection, Air pollution control, Carbon monoxide, Hydrocarbons, Intergovernmental relations, Nitrogen dioxide, Ozone, Particulate matter, Reporting and recordkeeping requirements, Sulfur oxides.

40 CFR Part 81

Air pollution Control, National Parks, Wilderness Areas.

Dated: September 11, 1998.

John P. DeVillars,

Regional Administrator, Region I.

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

PART 52—[AMENDED]

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

Authority: 42 U.S.C. 7401–7671q.

Subpart H—Connecticut

2. Section 52.376 is amended by revising paragraphs (a) and (b) and by adding paragraph (d) to read as follows:

§ 52.376 Control strategy: Carbon monoxide.

(a) Approval—On January 12, 1993, the Connecticut Department of Environmental Protection submitted a revision to the carbon monoxide State Implementation Plan for the 1990 base year emission inventory. The inventory was submitted by the State of Connecticut to satisfy Federal

requirements under sections 172(c)(3) and 187(a)(1) of the Clean Air Act as amended in 1990, as a revision to the carbon monoxide State Implementation Plan for the Hartford/New Britain/Middletown carbon monoxide nonattainment area and the New Haven/Meriden/Waterbury carbon monoxide nonattainment area.

(b) Approval—On September 30, 1994, the Connecticut Department of Environmental Protection submitted a request to redesignate the Hartford/New Britain/Middletown Area carbon monoxide nonattainment area to attainment for carbon monoxide. As part of the redesignation request, the State submitted a maintenance plan as required by 175A of the Clean Air Act, as amended in 1990. Elements of the section 175A maintenance plan include a base year (1993 attainment year) emission inventory for carbon monoxide, a demonstration of maintenance of the carbon monoxide NAAQS with projected emission inventories to the year 2005 for carbon monoxide, a plan to verify continued attainment, a contingency plan, and an obligation to submit a subsequent maintenance plan revision in 8 years as required by the Clean Air Act. If the area records a violation of the carbon monoxide NAAQS (which must be confirmed by the State), Connecticut will implement one or more appropriate contingency measure(s) which are contained in the contingency plan. The menu of contingency measure includes enhanced motor vehicle inspection and maintenance program and implementation of the oxygenated fuels program. The redesignation request and maintenance plan meet the redesignation requirements in sections 107(d)(3)(E) and 175A of the Act as amended in 1990, respectively.

* * * * *

(d) Approval—On January 17, 1997, the Connecticut Department of Environmental Protection submitted a request to redesignate the New Haven/Meriden/Waterbury carbon monoxide nonattainment area to attainment for carbon monoxide. As part of the redesignation request, the State submitted a maintenance plan as required by 175A of the Clean Air Act, as amended in 1990. Elements of the section 175A maintenance plan include a base year emission inventory for carbon monoxide, a demonstration of maintenance of the carbon monoxide NAAQS with projected emission inventories to the year 2008 for carbon monoxide, a plan to verify continued attainment, a contingency plan, and an obligation to submit a subsequent maintenance plan revision in 8 years as required by the Clean Air Act. If the area records a violation of the carbon monoxide NAAQS (which must be confirmed by the State), Connecticut will implement one or more appropriate contingency measure(s) which are contained in the contingency plan. The menu of contingency measure includes reformulated gasoline and the enhanced motor vehicle inspection and maintenance program. The redesignation request and maintenance plan meet the redesignation requirements in sections 107(d)(3)(E) and 175A of the Act as amended in 1990, respectively.

PART 81—[AMENDED]

1. The authority citation for part 81 continues to read as follows:

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

Subpart C—Connecticut

2. Section 81.307 is amended by revising the table for ''Connecticut-Carbon Monoxide'' to read as follows:

§ 81.307 Connecticut.

* * * * *

CONNECTICUT—CARBON MONOXIDE

Designated area	Designation		Classification	
	Date	Type	Date	Type
Hartford-New Britain-Middletown Area:				
Hartford County (part)	1/2/96	Attainment.		
Bristol City, Burlington Town, Avon Town, Bloomfield Town, Canton Town, E. Granby Town, E. Hartford Town, E. Windsor Town, Enfield Town, Farmington Town, Glastonbury Town, Granby Town, Hartford city, Manchester Town, Marlborough Town, Newington Town, Rocky Hill Town, Simsbury Town, S. Windsor Town, Suffield Town, W. Hartford Town, Wethersfield Town, Windsor Town, Windsor Locks Town, Berlin Town, New Britain city, Plainville Town, and Southington Town				
Litchfield County (part)	1/2/96	Attainment.		
Plymouth Town	1/2/96	Attainment.		
Middlesex County (part):				
Cromwell Town, Durham Town, E. Hampton Town, Haddam Town, Middlefield Town, Middleton City, Portland Town, E. Haddam Town				
Tolland County (part):				
Andover Town, Boton Town, Ellington Town, Hebron Town, Somers Town, Tolland Town, and Vernon Town	1/2/96	Attainment.		
New Haven—Meriden—Waterbury Area	10/5/98	Attainment.		
Fairfield County (part) Shelton City	.....	Attainment.		
Litchfield County (part):				
Bethlehem Town, Thomaston Town, Watertown, Woodbury Town.	.....	Nonattainment.		
New Haven County	.....	Attainment.		
New York-N. New Jersey-Long Island Area:				
Fairfield County (part):				
All cities and townships except Shelton City	.....	Nonattainment	.....	Moderate > 12.7 ppm.
Litchfield County(part)	.....	.....	.....	Moderate > 12.7 ppm.

CONNECTICUT—CARBON MONOXIDE—Continued

Designated area	Designation		Classification	
	Date	Type	Date	Type
Bridgewater Town, New Milford Town				
AQCR 041 Eastern Connecticut Intrastate.		Unclassifiable/Attainment.		
Middlesex County (part):				
All portions except cities and towns in Hartford Area				
New London County:				
Tolland County (part):				
All portions except cities and towns in Hartford Area				
Windham County:				
AQCR 044 Northwestern Connecticut Intrastate.		Unclassifiable/Attainment.		
Hartford County (part) Hartland Township				
Litchfield County (part):				
All portions except cities and towns in Hartford, New Haven, and New York Areas.				

* * * * *

[FR Doc. 98–26453 Filed 10–2–98; 8:45 am]

BILLING CODE 6560–50–P

ENVIRONMENTAL PROTECTION AGENCY

40 CFR Part 60

[FRL–6168–9]

New Source Performance Standards (NSPS)—Applicability of Standards of Performance for Coal Preparation Plants to Coal Unloading Operations

AGENCY: Environmental Protection Agency (EPA).

ACTION: Interpretation of standards of performance.

SUMMARY: EPA issued an interpretation of the New Source Performance Standards (NSPS) for Coal Preparation Plants, 40 CFR part 60, subpart Y, on October 3, 1997, in response to an inquiry from the Honorable Barbara Cubin, United States House of Representatives. After a careful review of NSPS Subpart Y, the relevant regulations under Title V of the Clean Air Act, and associated documents, EPA issued an interpretation concluding that coal unloading that involves conveying coal to coal plant machinery is subject to the NSPS, and that fugitive emissions, if any, from coal dumping must be included in a determination of whether a coal preparation plant is a major source subject to Title V permitting requirements. The full text of the interpretation appears in the **SUPPLEMENTARY INFORMATION** section of today's document.

FOR FURTHER INFORMATION CONTACT: Mr. Chris Oh, United States Environmental Protection Agency (2223A), 401 M Street, SW., Washington, D.C. 20460, telephone (202) 564–7004.

SUPPLEMENTARY INFORMATION: This interpretation does not supersede, alter, or in any way replace the existing NSPS Subpart Y—Standards of Performance for Coal Preparation Plants. This notice is intended solely as a guidance and does not represent an action subject to judicial review under section 307(b) of the Clean Air Act or section 704 of the Administrative Procedures Act.

Analysis Regarding Regulatory Status of Fugitive Emissions From Coal Unloading at Coal Preparation Plants

This analysis addresses the treatment of fugitive emissions from coal unloading at coal preparation plants. The first question is whether coal unloading is regulated under the New Source Performance Standard (NSPS) for coal preparation plants, 40 CFR part 60, subpart Y. The second question is whether fugitive emissions from coal unloading must be included in determining whether the plant is a major source subject to Title V permitting requirements. In this analysis, we use the term ''coal unloading'' to encompass ''coal truck dumping'' and ''coal truck unloading,'' as well as dumping or unloading from trains, barges, mine cars, and conveyors.

In a February 24, 1995, letter to the Wyoming Department of Environmental Quality, signed by the Branch Chief for Air Programs, EPA Region VIII concluded that coal unloading is not regulated by NSPS Subpart Y (i.e., is not an ''affected facility''). Region VIII approached the Title V issue by first determining whether coal unloading is part of the NSPS coal preparation plant source category. Having decided that coal unloading at the coal preparation plant site is part of the source category, Region VIII concluded that fugitive emissions from coal unloading must be included in determining whether the plant is a major source subject to Title V permitting requirements.

Our independent review of NSPS Subpart Y and associated documents leads us to conclude that coal unloading that involves conveying coal to plant machinery is regulated under Subpart Y. Thus, we disagree with the Region VIII letter to the extent it says that this type of coal unloading is not an affected facility. We agree with Region VIII's conclusion that fugitive emissions from coal unloading must be included in determining whether the plant is a major source subject to Title V permitting requirements. However, the relevant Title V regulations and related provisions indicate that the analysis should focus on the ''source'' rather than the ''source category.'' In other words, the central question is not whether coal unloading is within the NSPS source category. Rather, it is whether coal unloading at a coal preparation plant is part of the source that belongs to this source category.

Accordingly, this analysis primarily addresses two issues: whether coal unloading is an affected facility under NSPS Subpart Y, and whether coal unloading is part of the source belonging to the coal preparation plant NSPS source category. Underlying the second issue is the question of whether fugitive emissions associated with coal unloading should be included in major source determinations.

The question of whether fugitive emissions from coal unloading should be included in major source determinations has implications for permitting requirements under Title V of the Clean Air Act (''CAA'' or ''the Act''). Under the current Title V

implementing regulations, States must require ''major sources'' to obtain a permit. 40 CFR 70.3. ''Major source,'' in turn, is defined as ''any stationary source (or any group of stationary sources that are located on one or more contiguous or adjacent properties, and are under common control of the same person (or persons under common control)) belonging to a single major industrial grouping * * *'' that is also a major source under section 112 or a major stationary source under section 302 or part D of Title I of the Act. 40 CFR 70.2. Relevant to the analysis here is the section 302(j) definition of major stationary source as any stationary source that emits or has the potential to emit 100 tons per year (tpy) or more of any air pollutant. Section 302(j) also provides that fugitive emissions count towards the 100 tpy threshold as determined by EPA by rule.

Pursuant to CAA section 302(j), the EPA has determined by rule that fugitive emissions count towards the major source threshold for all sources that belong to source categories regulated under the New Source Performance Standards (NSPS) as of August 7, 1980. 49 FR 43202, 43209 (October 26, 1984). Because coal preparation plants are regulated by an NSPS (40 CFR part 60, subpart Y) which was proposed on October 24, 1974 and promulgated on January 15, 1976, fugitive emissions from sources that belong to the coal preparation plant source category count towards this threshold. Thus, if coal unloading is part of the source belonging to the coal preparation plant source category, then fugitive emissions from coal unloading must be included in the major source determination.

After a careful review of NSPS Subpart Y, the relevant Title V regulations, and associated documents, we conclude that: (1) Coal unloading that involves conveying coal to plant machinery is an affected facility under NSPS Subpart Y; and (2) All coal unloading at a coal preparation plant is a part of the source belonging to the coal preparation plant source category. We also determine that all coal unloading at a coal preparation plant fits within the NSPS source category. Finally, we conclude that fugitive emissions from coal unloading must be counted in determining whether a coal preparation plant is a major source subject to Title V permitting requirements. The reasons for our conclusions are discussed below.

I. Is Coal Unloading an Affected Facility Under NSPS Subpart Y?

In NSPS Subpart Y, several emission points are identified and regulated as part of a coal preparation plant. Subpart Y lists the following affected facilities: thermal dryers, pneumatic coal-cleaning equipment (air tables), coal processing and conveying equipment (including breakers and crushers), coal storage systems, and coal transfer and loading systems. Because coal unloading is not specifically listed, the relevant question is whether it is covered under one of the listed affected facilities.

EPA concludes that coal unloading that involves conveying coal to plant machinery fits within the definition of ''coal processing and conveying equipment.'' 40 CFR 60.251(g) defines ''coal processing and conveying equipment'' as ''any machinery used to reduce the size of coal or to separate coal from refuse, and the equipment used to convey coal to or remove coal and refuse from the machinery. This includes, but is not limited to, breakers, crushers, screens, and conveyor belts.'' The key phrases are ''the equipment used to convey coal to * * * machinery'' and ''but is not limited to.'' While the ''equipment'' involved in coal unloading varies from plant to plant (the definition is written broadly enough to accommodate the differences), what is important is that the equipment perform the function of conveying. It should be noted that if the coal is unloaded for the purpose of storage, then the unloading activity is not an affected facility under NSPS Subpart Y. The coal must be directly unloaded into receiving equipment, such as a hopper, to be subject to the provisions of NSPS Subpart Y.

In addressing this question, EPA also reviewed a number of supplementary documents associated with NSPS Subpart Y.[1] The supplementary documents, with one exception, are consistent with our conclusion that coal unloading, if it involves conveying coal to plant machinery, is an affected facility.

The 1977 Inspection Manual identifies coal unloading areas as key areas for fugitive emissions. It addresses fugitive emissions from coal unloading in the context of both emission performance tests and periodic compliance inspections. The manual states that the emission performance tests are ''intended to serve as a basis for determining [the] compliance status of the plant during later inspections.'' The manual provides a checklist for recording test results; this checklist includes places for recording emission opacity percentages associated with unloading from trucks, barges, or railroads. The manual also instructs the inspectors to use the emissions test checklist for periodic compliance inspections. The inspectors are instructed to compare current plant operations with those recorded during the emissions performance tests. Clearly, this manual, which was issued less than a year after Subpart Y was promulgated, treats coal unloading as an affected facility.

The 1980 Review, in contrast, states that ''[a] significant source of potential fugitive emission not regulated by current NSPS are coal 'unloading' or 'receiving' systems.'' This is later tempered by the statement that ''coal unloading systems were not mentioned as affected facilities.'' The 1980 Review does not explore whether coal unloading, although not specifically listed, might be covered by the definition of ''coal processing and conveying equipment.''

The 1988 Review does not specifically address coal unloading as an affected facility, but it assumes that coal unloading is one of the sources of fugitive emissions covered by the NSPS. For example, the 1988 Review identifies truck dumps as one of the sources of fugitive emissions at a coal preparation plant and lays out the cost of controlling fugitive emission sources at the plant. These cost figures are used in calculating the cost effectiveness of the existing NSPS. This cost effectiveness calculation is based on the premise that complying with the NSPS means controlling fugitive emissions, including emissions from truck dumps.

In light of the above information, EPA concludes that coal unloading that involves conveying coal to machinery at coal preparation plants is an affected facility under the NSPS for coal preparation plants (40 CFR part 60, subpart Y) and is subject to all requirements applying to ''coal processing and conveying equipment.'' EPA recognizes that past determinations on the applicability of Subpart Y to coal unloading varied from Region to Region. Therefore, we will notify all Regional Offices of this conclusion. In the Regions that have been exempting coal unloading from NSPS Subpart Y, no penalties will be sought for past violations. We expect that coal preparation plants will be able to control emissions from such coal

[1] The documents used in this discussion are the following: EPA document number 340/1–77–022 (dated 11/77): ''Inspection Manual for Enforcement of New Source Performance Standards: Coal Preparation Plants'' (''1977 Inspection Manual''); EPA document number 450/3–80–022 (dated 12/80): ''A Review of Standards of Performance for New Stationary Sources—Coal Preparation Plants'' (''1980 Review''); EPA document number 450/3–88–001 (dated 2/88): ''Second Review of New Source Performance Standards for Coal Preparation Plants'' (''1988 Review'').

unloading in the future through use of add-on controls.

II. Is Coal Unloading Part of the Source That Belongs to the Source Category for Coal Preparation Plants?

Whether a facility has been regulated as an affected facility does not determine whether fugitive emissions from that facility are to be counted in determining whether the source as a whole is major under Title V. Rather, if the facility is part of a source that falls within a source category which has been listed pursuant to section 302(j) of the Act, then all fugitive emissions of any regulated air pollutant from that facility are to be included in determining whether that source is a major stationary source under section 302 or part D of Title I of the Act and accordingly required to obtain a Title V permit.

Section 302(j) of the Act provides that EPA may determine whether fugitive emissions from a ''stationary source'' count towards the major source threshold. For purposes of the 302(j) rulemaking, the term ''stationary source'' is defined as ''any building, structure, facility, or installation which emits or may emit any air pollutant subject to regulation under the Act.'' 40 CFR 51.166(b)(5) and 52.21(b)(5). Building, structure, facility, or installation means ''all of the pollutant emitting activities which belong to the same industrial grouping, are located on one or more contiguous or adjacent properties, and are under the control of the same person (or persons under common control) except the activities of any vessel.'' 40 CFR 51.166(b)(6) and 52.21(b)(6).

EPA has determined by rule that fugitive emissions count towards the major source threshold for all sources that belong to the source category regulated by NSPS Subpart Y. 49 FR 43202, 43209 (October 26, 1984). Under the definition of source used in the 302(j) rulemaking, all types of coal unloading at coal preparation plants are covered. Coal unloading normally belongs to the same industrial grouping as other activities at coal preparation plants, is located on contiguous or adjacent property, and is under common control. Therefore, EPA concludes that all coal unloading at a coal preparation plant is part of the source belonging to the source category for coal preparation plants.

Coal unloading of all types also fits within the NSPS source category. A survey of EPA Regional Offices indicated that the majority of the Regions treat coal unloading at a coal preparation plant as being within the NSPS source category. Coal unloading that is regulated under Subpart Y is clearly within the source category. Common sense would dictate that coal unloading for temporary storage be treated no differently. It is performed at the same facility and is an integral part of the operations at that facility. The latter type of coal unloading is simply an optional first step in the coal preparation process.

EPA concludes that fugitive emissions from coal unloading must be counted in determining whether a coal preparation plant is a major source subject to Title V permitting requirements.

Dated: September 16, 1998.

Kenneth A. Gigliello,

Acting Director, Manufacturing, Energy and Transportation Division, Office of Compliance.

[FR Doc. 98–26632 Filed 10–2–98; 8:45 am]

BILLING CODE 6560–50–P

ENVIRONMENTAL PROTECTION AGENCY

40 CFR Part 82

[FRL–6171–9]

Protection of Stratospheric Ozone: Reconsideration of Petition Criteria and Incorporation of Montreal Protocol Decisions

AGENCY: Environmental Protection Agency (EPA).

ACTION: Partial withdrawal of direct final rule.

SUMMARY: With this action, due to receipt of adverse comments, EPA is withdrawing thirteen of the provision included in the direct final rule published in the **Federal Register** on August 4, 1998. EPA published both the direct final rule (63 FR41625) and a notice of proposed rulemaking (63 FR 41652) on August 4, 1998, to reflect changes in U.S. obligations under the Montreal Protocol on Substance that Deplete the Ozone Layer (Protocol) due to recent decision by signatory counties to this international agreement, to respond to a petition regarding the requirement in the petition process for imports of used class I controlled substances that a person must certify knowledge of tax liability, and to ease the burden on affected companies while continuing to ensure compliance with Title VI of the CAA and meet U.S. obligation under the Protocol.

DATES: The following provisions of the direct final rule published at 63 FR 41626 (August 4, 1998) are withdrawn, as of October 5, 1998.

(1) The addition to 40 CFR 82.3 of the definition for ''individual shipment,''

(2) The addition to 40 CFR 82.3 of the definition for ''national security allowances,''

(3) The addition to 40 CFR 82.3 of the definition for ''non-objection notice,''

(4) The addition to 40 CFR 82.3 of the definition for ''source facility,''

(5) The revision of newly designated 40 CFR 82.4(j),

(6) The addition of paragraph (t)(3) in newly designated 40 CFR 80.4(t),

(7) The addition of paragraph (u)(3) in newly designated 40 CFR 80.4(u),

(8) The addition of paragraph (a)(5) in revised 40 CFR 82.9(a),

(9) The addition of 40 CFR 82.9(g),

(10) The addition of 40 CFR 82.12(a)(3),

(11) The addition of 40 CFR 82.13(f)(2)(xvii), (g)(1)(xvii), and (g)(4)(xv) and the revision of newly designated 40 CFR 82.13(f)(3)(xiii),

(12) The revision of 40 CFR 82.13(g)(2) and (3), and

(13) The revision of 40 CFR 82.13(u).

ADDRESSES: Comments and materials supporting this rulemaking are contained in Public Docket No. A–92–13 at: U.S. Environmental Protection Agency, 401 M Street SW, Washington, D.C. 20460. The Public docket is located in Room M–1500, Waterside Mall (Ground Floor). Dockets may be inspected from 8 a.m. until 12 noon, and from 1:30 p.m. until 3 p.m., Monday through Friday. A reasonable fee may be charged for copying docket materials.

FOR FURTHER INFORMATION CONTACT: Tom Land, U.S. Environmental Protection Agency, Stratospheric Protection Division, Office of Atmospheric Programs, 6205J, 401 M Street, SW., Washington, DC, 20460, (202)–564–9185.

SUPPLEMENTARY INFORMATION: As stated in the **Federal Register** document, if adverse comments were received by September 3, 1998 on one or more of the provisions, a timely notice of withdrawal would be published in the **Federal Register**. EPA received adverse comments on the following thirteen provisions: (1) the addition to 40 CFR 82.3 of the definition for ''individual shipment,'' (2) the addition to 40 CFR 82.3 of the definition for ''national security allowances,'' (3) the addition to 40 CFR 82.3 of the definition for ''non-objection notice,'' (4) the addition to 40 CFR 82.3 of the definition for ''source facility,'' (5) the revision to newly designated 40 CFR 82.4(j) prohibiting the import of used class I controlled substance without a non-objection notice, (6) the addition to newly designated 40 CFR 82.4(t) of paragraph (t)(3), under which EPA would allocate

essential-use allowances by means of a confidential letter and would subsequently publish a notice of the allocation in the **Federal Register**, (7) the addition of 40 CFR 82.4(u)(3) for an exemption process for national security interests for HCFC–141b, (8) the addition of paragraph (a)(5) in revised 40 CFR 82.9(a) for granting 15 percent of baseline production allowances as Article 5 allowances for class I, Group VI controlled substances, (9) the addition of 40 CFR 82.9(g) establishing the petition process for national security allowances, (10) the addition of 40 CFR 82.12(a)(3) for transfers of essential-use allowances for metered-dose inhalers in emergency situations, (11) the addition of 40 CFR 82.13(f)(2)(xvii), 40 CFR 82.13(g)(1)(xvii), and 40 CFR 82.13(g)(4)(xv) and the revision of newly designated 40 CFR 82.13(b)(3)(xiii) for the certification of purchases of controlled substances that will be used as a process agent, (12) the revision of paragraphs in 40 CFR 82.13(g)(2) and 40 CFR 82.13(g)(3) for petitioning to import used class I controlled substances, and (13) the revision to 40 CFR 82.13(u) for the reporting by holders of essential-use holders. EPA will address the comments received in a subsequent final action on these thirteen provisions in the near future and issue a final rule based on the parallel proposal also published on August 4, 1998. As stated in the parallel proposal, EPA will not institute a second comment period on this action. The thirty-eight amendments that did not receive adverse comments will become effective on October 5, 1998, as provided in the August 4, 1998 direct final rule. EPA will make the text of the thirty-eight amendments that did not receive adverse comments available at the following website address: www.epa.gov/ozone/title6/phaseout/.

List of Subjects in 40 CFR Part 82

Environmental protection, Administration practice and procedure, Air pollution control, Chemicals, Chlorofluorocarbons, Exports, Hydrochlorofluorocarbons, Imports, Ozone layer, Reporting and recordkeeping requirements.

Dated: September 29, 1998.

Robert Perciasepe,

Assistant Administrator for the Office of Air and Radiation.

[FR Doc. 98–26456 Filed 10–2–98; 8:45 am]

BILLING CODE 6560–50–M

ENVIRONMENTAL PROTECTION AGENCY

40 CFR Part 180

[OPP–300728; FRL–6032–2]

RIN 2070–AB78

Alder Bark; Exemption from the Requirement of a Tolerance

AGENCY: Environmental Protection Agency (EPA).

ACTION: Final rule.

SUMMARY: This regulation establishes an exemption from the requirement of a tolerance for residues of alder bark when used as an inert ingredient (seed germination stimulator) in pesticide formulations applied to growing crops. Platte Chemical Company requested this tolerance exemption under the Federal Food, Drug and Cosmetic Act (FFDCA), as amended by the Food Quality Protection Act of 1996 (Pub. L. 104–170).

DATES: This regulation is effective October 5, 1998. Objections and requests for hearings must be received by EPA on or before November 4, 1998.

ADDRESSES: Written objections and hearing requests, identified by the docket control number, [OPP–300728], must be submitted to: Hearing Clerk (1900), Environmental Protection Agency, Rm. M3708, 401 M St., SW., Washington, DC 20460. Fees accompanying objections and hearing requests shall be labeled ''Tolerance Petition Fees'' and forwarded to: EPA Headquarters Accounting Operations Branch, OPP (Tolerance Fees), P.O. Box 360277M, Pittsburgh, PA 15251. A copy of any objections and hearing requests filed with the Hearing Clerk identified by the docket control number, [OPP–300728], must also be submitted to: Public Information and Records Integrity Branch, Information Resources and Services Division (7502C), Office of Pesticide Programs, Environmental Protection Agency, 401 M St., SW., Washington, DC 20460. In person, bring a copy of objections and hearing requests to Rm. 119, CM #2, 1921 Jefferson Davis Hwy., Arlington, VA.

A copy of objections and hearing requests filed with the Hearing Clerk may also be submitted electronically by sending electronic mail (e-mail) to: opp-docket@epamail.epa.gov. Copies of objections and hearing requests must be submitted as an ASCII file avoiding the use of special characters and any form of encryption. Copies of objections and hearing requests will also be accepted on disks in WordPerfect 5.1 file format or ASCII file format. All copies of objections and hearing requests in electronic form must be identified by the docket control number [OPP–300728]. No Confidential Business Information (CBI) should be submitted through e-mail. Electronic copies of objections and hearing requests on this rule may be filed online at many Federal Depository Libraries.

FOR FURTHER INFORMATION CONTACT: By mail: Indira Gairola, Registration Division 7505C, Office of Pesticide Programs, Environmental Protection Agency, 401 M St., SW., Washington, DC 20460. Office location, telephone number, and e-mail address: Rm. #707G, Crystal Mall #2, 1921 Crystal Drive, Arlington, VA, 22202. Telephone No. (703)–308–8371, e-mail: gairola.indira@epamail.epa.gov.

SUPPLEMENTARY INFORMATION: In the **Federal Register** of April 29,1998 (63 FR 23438)(FRL–5783–4) EPA issued a notice pursuant to section 408 of the FFDCA, 21 U.S.C. 346a announcing the filing of a pesticide petition (PP) 6E4742 for a tolerance exemption from Platte Chemical Company, 419 18th Street, P.O. Box 667, Greeley, CO 80632, This notice included a summary of the petition prepared by Platte Chemical Company, the petitioner. There were no comments received in response to the notice of filing.

The petition requested that 40 CFR 180.1001(d) be amended by establishing an exemption from the requirement of a tolerance for residues of the inert ingredient alder bark when used as an inert ingredient (seed germination stimulator) in pesticide formulations applied to growing crops only.

I. Risk Assessment and Statutory Findings

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

exposure to the pesticide chemical residue. . . .''

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

II. Inert Ingredient Definition

Inert ingredients are all ingredients that are not active ingredients as defined in 40 CFR 153.125 and include, but are not limited to, the following types of ingredients (except when they have a pesticidal efficacy of their own): solvents such as alcohols and hydrocarbons; surfactant such as polyoxyethylene polymers and fatty acids; carriers such as clay and diatomaceous earth; thickeners such as carrageenan and modified cellulose; wetting, spreading, and dispersing agents; propellants in aerosol dispensers; microencapsulating agents; and emulsifiers. The term ''inert'' is not intended to imply nontoxicity; the ingredient may or may not be chemically active. Generally, EPA has exempted inert ingredients from the requirement of a tolerance based on the low toxicity of the individual inert ingredients.

III. Risk Assessment and Statutory Findings

EPA establishes exemptions from the requirement of a tolerance only in those cases where it can be clearly demonstrated that the risks from aggregate exposure to pesticide chemical residues under reasonably foreseeable circumstances will pose no appreciable risks to human health. In order to determine the risks from aggregate exposure to pesticide inert ingredients, the Agency considers the toxicity of the inert ingredient in conjunction with possible exposure to residues of the inert ingredient in food, drinking water, and other nonoccupational exposures. If EPA is able to determine that a finite tolerance is not necessary to ensure that there is a reasonable certainty that no harm will result from aggregate exposure to the inert ingredient, an exemption from the requirement of a tolerance may be established.

IV. Aggregate Risk Assessment and Determination of Safety

Consistent with section 408(b)(2)(D), EPA has reviewed the available scientific data and other relevant information in support of this action, EPA has sufficient data to assess the hazards of alder bark and to make a determination on aggregate exposure, consistent with section 408(b)(2), an exemption from the requirement of a tolerance for residues of alder bark when used as an inert ingredient in pesticide formulations applied to growing crops. EPA's assessment of the dietary exposures and risks associated with establishing an exemption from the requirement of a tolerance follows.

The data submitted in the petition and other relevant material have been evaluated. As part of the EPA policy statement on inert ingredients published in the **Federal Register** of April 22, 1987 (52 FR 13305) (FRL–3190–1), the Agency set forth a list of studies which would generally be used to evaluate the risks posed by the presence of an inert ingredient in a pesticide formulation. However, where it can be determined without that data that the inert ingredient will present minimal or no risk, the Agency generally does not require some or all of the listed studies to rule on the proposed tolerance or exemption from the requirement of a tolerance for an inert ingredient.

A. Toxicological Profile

Alder bark is the bark of an alder tree (*Alnus glutinosa*) that has been dried and ground into a powder or flour form. The use of alder bark as an inert ingredient in pesticide formulations is not expected to result in adverse effects since it is primarily comprised of lignin, hemicellulose and cellulose, each of which has been extensively studied and been found not to exhibit any adverse toxicological effects.

B. Exposures and Risks

1. *From food and feed uses, drinking water, and non-dietary exposures.* For the purposes of assessing the potential dietary exposure, EPA considered that under this tolerance exemption alder bark could be present in all raw and processed agricultural commodities and drinking water and that non-occupational, non-dietary exposure was possible. However, based on the use of alder bark as a seed germination stimulator, it is likely that residues of alder bark would not be present in or on food or drinking water. EPA therefore concludes that, based on the lack of expected adverse effects and the lack of expected residues of alder bark in or on raw agricultural commodities or drinking water, there are no concerns for risks associated with any exposure scenarios that are reasonably foreseeable.

2. *Cumulative exposure to substances with common mechanism of toxicity.* Section 408(b)(2)(D)(v) requires that, when considering whether to establish, modify, or revoke a tolerance, the Agency consider ''available information'' concerning the cumulative effects of a particular pesticide's residues and ''other substances that have a common mechanism of toxicity.''Because EPA has concluded that alder bark is basically non-toxic, EPA has not assumed that alder bark has a common mechanism of toxicity with other substances.

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

Based on the lack of expected adverse effects resulting from the use of alder bark, EPA concludes that there is a reasonable certainty that no harm to the U.S. population will result from aggregate exposure to alder bark. EPA believes this compound presents no dietary risk under reasonably foreseeable circumstances.

D. Aggregate Risks and Determination of Safety for Infants and Children

FFDCA section 408 provides that EPA shall apply an additional tenfold margin of safety for infants and children in the case of threshold effects to account for pre-and postnatal toxicity and the completeness of the database unless EPA determines that a different margin of safety will be safe for infants and children. Margins of safety are incorporated into EPA risk assessments either directly through use of a MOE analysis or through using uncertainty (safety) factors in calculating a dose level that poses no appreciable risk to humans.

In this instance, the Agency believes that there are reliable data to support that fact that alder bark would be expected to be practically nontoxic to humans, and thus EPA has not used a safety factor analysis in assessing the risk of this compound. For the same reasons the additional safety factor is unnecessary.

E. International Residue Limits

No Codex maximum residue levels have been established for alder bark.

V. Conclusion

Therefore, an exemption from the requirement of a tolerance is established for residues of alder bark when used as

an inert ingredient in pesticide formulations applied to growing crops.

VI. Objections and Hearing Requests

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

Any person may, by December 4, 1998, file written objections to any aspect of this regulation and may also request a hearing on those objections. Objections and hearing requests must be filed with the Hearing Clerk, at the address given above (40 CFR 178.20). A copy of the objections and/or hearing requests filed with the Hearing Clerk should be submitted to the OPP docket for this rulemaking. The objections submitted must specify the provisions of the regulation deemed objectionable and the grounds for the objections (40 CFR 178.25). Each objection must be accompanied by the fee prescribed by 40 CFR 180.33(i). If a hearing is requested, the objections must include a statement of the factual issues on which a hearing is requested, the requestor's contentions on such issues, and a summary of any evidence relied upon by the requestor (40 CFR 178.27). A request for a hearing will be granted if the Administrator determines that the material submitted shows the following: There is genuine and substantial issue of fact; there is a reasonable possibility that available evidence identified by the requestor would, if established, resolve one or more of such issues in favor of the requestor, taking into account uncontested claims or facts to the contrary; and resolution of the factual issues in the manner sought by the requestor would be adequate to justify the action requested (40 CFR 178.32). Information submitted in connection with an objection or hearing request may be claimed confidential by marking any part or all of that information as Confidential Business Information (CBI). Information so marked will not be disclosed except in accordance with procedures set forth in 40 CFR part 2. A copy of the information that does not contain CBI must be submitted for inclusion in the public record. Information not marked confidential may be disclosed publicly by EPA without prior notice.

VII. Public Record and Electronic Submissions

EPA has established a record for this rulemaking under docket control number [OPP–300728] (including any comments and data submitted electronically). A public version of this record, including printed, paper versions of electronic comments, which does not include any information claimed as CBI, is available for inspection from 8:30 a.m. to 4 p.m., Monday through Friday, excluding legal holidays. The public record is located in Room 119 of the Public Information and Records Integrity Branch, Information Resources and Services Division (7502C), Office of Pesticide Programs, Environmental Protection Agency, Crystal Mall #2, 1921 Jefferson Davis Highway, Arlington, VA.

Electronic comments can be sent directly to EPA at:

opp-docket@epamail.epa.gov

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

VIII. Regulatory Assessment Requirements

A. Certain Acts and Executive Orders

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

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

B. Executive Order 12875

Under Executive Order 12875, entitled *Enhancing Intergovernmental Partnerships* (58 FR 58093, October 28, 1993), EPA may not issue a regulation that is not required by statute and that creates a mandate upon a State, local or tribal government, unless the Federal government provides the funds necessary to pay the direct compliance costs incurred by those governments. If the mandate is unfunded, EPA must provide to the Office of Management and Budget (OMB) a description of the extent of EPA's prior consultation with representatives of affected State, local and tribal governments, the nature of their concerns, copies of any written communications from the governments, and a statement supporting the need to issue the regulation. In addition, Executive Order 12875 requires EPA to develop an effective process permitting elected officials and other representatives of State, local and tribal governments ''to provide meaningful and timely input in the development of regulatory proposals containing significant unfunded mandates.''

Today's rule does not create an unfunded federal mandate on State, local or tribal governments. The rule does not impose any enforceable duties on these entities. Accordingly, the requirements of section 1(a) of

Executive Order 12875 do not apply to this rule.

C. Executive Order 13084

Under Executive Order 13084, entitled *Consultation and Coordination with Indian Tribal Governments* (63 FR 27655, May 19,1998), EPA may not issue a regulation that is not required by statute, that significantly or uniquely affects the communities of Indian tribal governments, and that imposes substantial direct compliance costs on those communities, unless the Federal government provides the funds necessary to pay the direct compliance costs incurred by the tribal governments. If the mandate is unfunded, EPA must provide OMB, in a separately identified section of the preamble to the rule, a description of the extent of EPA's prior consultation with representatives of affected tribal governments, a summary of the nature of their concerns, and a statement supporting the need to issue the regulation. In addition, Executive Order 13084 requires EPA to develop an effective process permitting elected and other representatives of Indian tribal governments ''to provide meaningful and timely input in the development of regulatory policies on matters that significantly or uniquely affect their communities.''

Today's rule does not significantly or uniquely affect the communities of Indian tribal governments. This action does not involve or impose any requirements that affect Indian Tribes. Accordingly, the requirements of section 3(b) of Executive Order 13084 do not apply to this rule.

IX. Submission to Congress and the Comptroller General

The Congressional Review Act, 5 U.S.C. 801 *et seq.*, as added by the Small Business Regulatory Enforcement Fairness Act of 1996, generally provides that before a rule may take effect, the Agency promulgating the rule must submit a rule report, which includes a copy of the rule, to each House of the Congress and the Comptroller General of the United States. EPA will submit a report containing this rule and other required information to the U.S. Senate, the U.S. House of Representatives and the Comptroller General of the United States prior to publication of the rule in the **Federal Register**. This rule is not a ''major rule'' as defined by 5 U.S.C. 804(2).

List of Subjects in 40 CFR Part 180

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

Dated: September 24, 1998.

Arnold E. Layne,

Acting Director, Registration Division, Office of Pesticide Programs.

Therefore, 40 CFR chapter I is amended as follows:

PART 180—[AMENDED]

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

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

2. In § 180.1001 the table in paragraph (d) is amended by adding alphabetically the following inert ingredient to read as follows:

§ 180.1001 Exemptions from the requirement of a tolerance.

* * * * *

(d) * * *

Inert ingredients	Limits	Uses
* * * * * * *		
Alder bark		Seed germination stimulator
* * * * * * *		

[FR Doc. 98–26618 Filed 10–2–98; 8:45 am]

BILLING CODE 6560–50–F

ENVIRONMENTAL PROTECTION AGENCY

40 CFR Part 180

[OPP–300725; FRL–6031–5]

RIN 2070–AB78

Pyridaben; Pesticide Tolerances for Emergency Exemptions

AGENCY: Environmental Protection Agency (EPA).

ACTION: Final rule.

SUMMARY: This regulation establishes a time-limited tolerance for combined residues of pyridaben and its metabolites PB–7 (2-tert-butyl-5-[4-(1-carboxy-1-methylethyl) benzylthio]-4-chloropyridazin-3 (2*H*)-one) and PB–9 (2-tert-butyl-4-chloro-5-[4-(1,1-dimethyl-2-hydroxyethyl) benzylthio]-chloropyridazin-3 (2*H*)-one) in or on cranberries. This action is in response to EPA's granting of an emergency exemption under section 18 of the Federal Insecticide, Fungicide, and Rodenticide Act authorizing use of the pesticide on cranberries. This regulation establishes a maximum permissible level for residues of pyridaben in this food commodity pursuant to section 408(l)(6) of the Federal Food, Drug, and Cosmetic Act, as amended by the Food Quality Protection Act of 1996. The tolerance will expire and is revoked on December 31, 1999.

DATES: This regulation is effective October 5, 1998. Objections and requests for hearings must be received by EPA on or before December 4, 1998.

ADDRESSES: Written objections and hearing requests, identified by the docket control number, [OPP–300725], must be submitted to: Hearing Clerk (1900), Environmental Protection Agency, Rm. M3708, 401 M St., SW., Washington, DC 20460. Fees accompanying objections and hearing requests shall be labeled ''Tolerance Petition Fees'' and forwarded to: EPA Headquarters Accounting Operations Branch, OPP (Tolerance Fees), P.O. Box 360277M, Pittsburgh, PA 15251. A copy of any objections and hearing requests filed with the Hearing Clerk identified by the docket control number, [OPP–300725], must also be submitted to: Public Information and Records Integrity Branch, Information Resources and Services Division (7502C), Office of Pesticide Programs, Environmental Protection Agency, 401 M St., SW., Washington, DC 20460. In person, bring a copy of objections and hearing requests to Rm. 119, Crystal Mall #2, 1921 Jefferson Davis Hwy., Arlington, VA.

A copy of objections and hearing requests filed with the Hearing Clerk may also be submitted electronically by sending electronic mail (e-mail) to: opp-docket@epamail.epa.gov. Copies of objections and hearing requests must be submitted as an ASCII file avoiding the use of special characters and any form of encryption. Copies of objections and hearing requests will also be accepted on disks in WordPerfect 5.1/6.1 file format or ASCII file format. All copies

of objections and hearing requests in electronic form must be identified by the docket control number [OPP–300725]. No Confidential Business Information (CBI) should be submitted through e-mail. Electronic copies of objections and hearing requests on this rule may be filed online at many Federal Depository Libraries.

FOR FURTHER INFORMATION CONTACT: By mail: David Deegan, Registration Division 7505C, Office of Pesticide Programs, Environmental Protection Agency, 401 M St., SW., Washington, DC 20460. Office location, telephone number, and e-mail address: Crystal Mall #2, 1921 Jefferson Davis Hwy., Arlington, VA, (703) 308–9358, e-mail: deegan.dave@epamail.epa.gov.

SUPPLEMENTARY INFORMATION: EPA, on its own initiative, pursuant to sections 408(e) and (l)(6) of the FFDCA, 21 U.S.C. 346a(e) and (l)(6), is establishing a tolerance for combined residues of the insecticide pyridaben and its metabolites PB–7 (2-tert-butyl-5-[4-(1-carboxy-1-methylethyl) benzylthio]-4-chloropyridazin-3 (2*H*)-one) and PB–9 (2-tert-butyl-4-chloro-5-[4-(1,1-dimethyl-2-hydroxyethyl) benzylthio]-chloropyridazin-3 (2*H*)-one), in or on cranberries at 0.75 part per million (ppm). This tolerance will expire and is revoked on December 31, 1999. EPA will publish a document in the **Federal Register** to remove the revoked tolerance from the Code of Federal Regulations.

I. Background and Statutory Authority

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

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

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

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

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

II. Emergency Exemption for Pyridaben on Cranberries and FFDCA Tolerances

The southern red mite is a sporadic but serious pest of cranberries in Massachusetts. Until 1996, propargite (Omite) was commonly used to control this pest. However, in 1996 propargite was voluntarily cancelled by the product's registrant, leaving no product registered for control of the mite species. After having reviewed the submission, EPA concurs that emergency conditions exist for this state. EPA has authorized under FIFRA section 18 the use of pyridaben on cranberries for control of Southern Red Mites in Massachusetts.

As part of its assessment of this emergency exemption, EPA assessed the potential risks presented by residues of pyridaben in or on cranberries. In doing so, EPA considered the safety standard in FFDCA section 408(b)(2), and EPA decided that the necessary tolerance under FFDCA section 408(l)(6) would be consistent with the safety standard and with FIFRA section 18. Consistent with the need to move quickly on the emergency exemption in order to address an urgent non-routine situation and to ensure that the resulting food is safe and lawful, EPA is issuing this tolerance without notice and opportunity for public comment under section 408(e), as provided in section 408(l)(6). Although this tolerance will expire and is revoked on December 31, 1999, under FFDCA section 408(l)(5), residues of the pesticide not in excess of the amounts specified in the tolerance remaining in or on cranberries after that date will not be unlawful, provided the pesticide is applied in a manner that was lawful under FIFRA, and the residues do not exceed a level that was authorized by this tolerance at the time of that application. EPA will take action to revoke this tolerance earlier if any experience with, scientific data on, or other relevant information on this pesticide indicate that the residues are not safe.

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

III. Aggregate Risk Assessment and Determination of Safety

EPA performs a number of analyses to determine the risks from aggregate exposure to pesticide residues. For further discussion of the regulatory requirements of section 408 and a complete description of the risk assessment process, see the Final Rule on Bifenthrin Pesticide Tolerances (62 FR 62961, November 26, 1997)(FRL–5754–7).

Consistent with section 408(b)(2)(D), EPA has reviewed the available

scientific data and other relevant information in support of this action EPA has sufficient data to assess the hazards of pyridaben and to make a determination on aggregate exposure, consistent with section 408(b)(2), for a time-limited tolerance for combined residues of pyridaben and its metabolites PB–7 and PB–9 on cranberries at 0.75 ppm. EPA's assessment of the dietary exposures and risks associated with establishing the tolerance follows.

A. Toxicological Profile

EPA has evaluated the available toxicity data and considered its validity, completeness, and reliability as well as the relationship of the results of the studies to human risk. EPA has also considered available information concerning the variability of the sensitivities of major identifiable subgroups of consumers, including infants and children. The nature of the toxic effects caused by pyridaben are discussed below.

1. *Acute toxicity*— i. *Subpopulation females 13+ years old. NOAEL = 13 mg/kg.* In a developmental toxicity study, Sprague-Dawley rats (22/group) from Charles River, U.K., received NC–129 (Pyridaben, 98.0% active ingredient (a.i.)) via gavage at dose levels of 0, 2.5, 5.7, 13.0, or 30.0 milligrams/kilogram/day (mg/kg/day) from gestation day 6 through 15, inclusive. Natural mating was used. Maternal toxicity, observed at 13.0 and 30.0 mg/kg/day, consisted of decreased body weight/weight gain and food consumption during the dosing period. Based on these effects, the Maternal Toxicity LOEL is 13.0 mg/kg/day and the Maternal Toxicity NOAEL is 4.7 mg/kg/day (82% of 5.7 mg/kg/day based on concentration analysis). Developmental toxicity NOAEL is 13.0 mg/kg/day based on observed decreased fetal body weight and increased incomplete ossification in selected bones at 30.0 mg/kg/day (LOEL). With the 100 uncertainty factor (UF) (10X for inter-species extrapolation and 10X for intra-species variability) the acute Reference dose (RfD) for females 13+ is 0.13 mg/kg/day.

ii. *General population including infants and children*. NOAEL = 50 mg/kg. In an acute neurotoxicity study, CD Rats (10/sex/group) were administered a single oral dose (gavage) of NC–129 in 1% aqueous carboxymethyl cellulose of 0 (vehicle), 50, 100, and 200 mg/kg (a.i. equivalents: 44.3, 79.6, and 190.0 mg/kg for males and 44.5, 99.7, and 190.0 mg/kg body weight for females). The animals were observed for mortality and clinical signs of toxicity for 14 days post-dosing. During the first 5 days, compound-related decreases in body weight gain were noted in mid-dose males (17%) and females (36%) and high-dose males (74%); the high-dose females lost weight (4 g) during the first 4 days of the observation period. Food consumption was low in all treated groups on the day of dosing with severe effect seen in the high-dose males (73% lower than controls). Dose-dependent increases in clinical signs (piloerection, hypoactivity, tremors, and partially closed eyes) were seen in mid-dose males and high-dose males and females. These effects were reversible by observation Day 4. Treatment-related findings in the functional observational battery consisted of lower body temperature and reduced motor activity (≧ 44%) among the high-dose males. No treatment-related gross or microscopic neuropathologic findings were present. The NOAEL for systemic toxicity is 50 mg/kg for both sexes. The LOEL of 100 mg/kg/day is based on systemic toxicity including clinical signs and decreased food consumption and body weight gain. With the 100 UF (10X for inter-species extrapolation and 10X for intra-species variability) the Acute RfD for the general population is calculated to be 0.5 mg/kg/day.

2. *Short-and intermediate-term toxicity.* NOAEL = 100 mg/kg/day. In a 21–day dermal toxicity study, repeated doses of pyridaben were applied topically to approximately 10% of the body surface area of rats at doses of 0, 30, 100, 300, or 1,000 mg/kg/day for 21 days. Increased squamous cell hyperplasia and/or surface accumulation of desquamated epithelial cells were noted sporadically in the 100, 300, and 1,000 mg/kg/day dose groups. These findings appear to be due to abrasions of the skin when the powdered substance was applied onto the skin, rather than a dose-related effect. No gross dermal irritation effects were noted. Based on the results of the study, the systemic dermal toxicity NOAEL is 100 mg/kg/day. The systemic dermal toxicity LOEL is determined to be 300 mg/kg/day based on decreased body weight in the females. The dermal irritation NOAEL is 100 mg/kg/day. (Note: In agreement, a dermal equivalent dose of 94 mg/kg/day is derived if the maternal oral NOAEL of 4.7 mg/kg/day (based on decreased body weight/weight gain and food consumption) in the rat oral developmental toxicity study is adjusted by the proposed 5% dermal absorption rate).

3. *Chronic toxicity*. EPA has established the RfD for pyridaben at 0.005 mg/kg/day. This RfD is based on a 1–year feeding study in dogs with a NOAEL of 0.5 mg/kg/day and an uncertainty factor of 100 based on decreased body weight, emesis, and ptyalism.

4. *Carcinogenicity*. Because pyridaben has been classified by EPA as a Group E chemical-''no evidence of carcinogenicity to humans,'' no additional analysis is necessary regarding carcinogenicity of this chemical.

B. Exposures and Risks

1. *From food and feed uses.* Tolerances have been established (40 CFR 180.494) for the combined residues of pyridaben and its metabolites PB–7 (2-tert-butyl-5-[4-(1-carboxy-1-methylethyl)benzylthio]-4-chloropyridazin-3(2*H*)-one) and PB–9 (2-tert-butyl-4-chloro-5-[4-(1,1-dimethyl-2-hydroxyethyl) benzylthio]-chloropyridazin-3(2*H*)-one), in or on a variety of raw agricultural commodities, ranging from 0.05 ppm on almonds to 10 ppm in citrus oil. Tolerances have also been established for the combined residues of pyridaben and its metabolites PB–7 and PB–9 in or on animal commodities at levels ranging from 0.01 in milk to 0.05 ppm in cattle commodities. Risk assessments were conducted by EPA to assess dietary exposures and risks from pyridaben as follows:

i. *Acute exposure and risk.* Acute dietary risk assessments are performed for a food-use pesticide if a toxicological study has indicated the possibility of an effect of concern occurring as a result of a 1 day or single exposure. In conducting this acute dietary risk assessment, HED has made very conservative assumptions--100% of the necessary section 18 tolerance and all commodities having published pyridaben tolerances will contain pyridaben regulable residues, those residues will be at the level of the tolerance, and plant residues will be adjusted using the ratio of organosoluble residues to pyridaben (see ''Metabolism in Plants'' section below)--all of which result in an overestimation of human dietary exposure. Thus, in making a safety determination for this tolerance, EPA is taking into account this conservative exposure assessment.

From the acute dietary (food only) risk assessment, the calculated exposure yields dietary (food only) percentage of the acute RfD for females 13+ years old ranging from 29% for females 13+ years old--not pregnant, non-nursing, to 42% for females 13+ years old--pregnant, not nursing. The calculated exposure yields dietary (food only) percentage of the acute RfD for the remainder of the population ranging from 9% for males 13–19 years old to 77% for nursing

infants < 1 year old. This risk estimate should be viewed as highly conservative; refinement using anticipated residue values and percent crop-treated data in conjunction with a Monte Carlo analysis will result in a lower acute dietary exposure estimate.

ii. *Chronic exposure and risk.* In conducting this chronic dietary risk assessment, EPA has made somewhat conservative assumptions--that 100% of cranberries will contain pyridaben residues and those residues will be at the level of the tolerance plus the ratio of organosoluble residues to pyridaben, and all commodities having published and pending pyridaben tolerances will contain pyridaben regulable residues, those residues will be at the anticipated residue level for the commodity, no percent crop treated data were used, and plant anticipated residues will be adjusted using the ratio of organosoluble residues to pyridaben (see ''Metabolism in Plants'' section below)--all of which result in an overestimation of human dietary exposure. Thus, in making a safety determination for this tolerance, EPA is taking into account this somewhat conservative exposure assessment. The existing pyridaben tolerances (published, pending, and including the necessary section 18 tolerance) result in an Anticipated Residue Contribution (ARC) that is equivalent to the following percentages of the RfD:

Subpopulation	ARC_{food}	%RfD
U.S. Population (48 States)	0.001016	20
All Infants (< 1 year old)	0.003404	68
Nursing infants (< 1 year old)	0.001335	27
Non-nursing infants (< 1 year old)	0.004275	86
Children (1–6 years old)	0.003829	77
Children (7–12 years old)	0.001651	33
Males (13–19 years old)	0.000528	11
Females (13+ nursing)	0.001525	31
U.S. Population (Autumn)	0.001203	24
U.S. Population (Winter)	0.001162	23
Northeast Region	0.001148	23
Pacific Region	0.001211	24
Western Region	0.001162	23
Non-Hispanic Whites	0.001064	21
Non-Hispanic Others	0.001178	23

The subgroups listed above are: (1) the U.S. population (48 states); (2) those for infants and children; (3) the other subgroups for which the percentage of the RfD occupied is greater than that occupied by the subgroup U.S. population (48 states); and, other populations of special interest..

2. *From drinking water.* Based on information currently available to EPA, pyridaben is immobile and thus unlikely to leach to groundwater. There is no established Maximum Contaminant Level for residues of pyridaben in drinking water. No health advisory levels for pyridaben in drinking water have been established.

EPA uses the Generic expected enviromental concentration (GENEEC) and SCI-GROW screening models to estimate surface and groundwater concentrations for first-tier exposure assessments. As screening models designed to estimate the concentrations found in surface and groundwater for use in ecological risk assessment, they provide upper-bound values on the concentrations that might be found in ecologically sensitive environments because of the use of a pesticide.

The models predict that as much as 2.3 ppb and 0.0003 ppb of pyridaben may be found in surface and groundwater, respectively. The modeling data were compared to the results from modeling equations used to calculate the acute and chronic drinking water level of concern (DWLOC) for pyridaben in surface and ground water.

i. *Acute exposure and risk.* Acute drinking water levels of concern have been calculated by EPA at the following amounts: U.S. Population-> 14,000 µg/L; Adult Male 20+ years old-- > 15,000 µg/L; Adult Female 13+, Pregnant, Not-nursing--> 2,200 µg/L; Infant < 1, nursing-- > 1,100 µg/L.

ii. *Chronic exposure and risk.* Chronic Drinking Water Level of Concern have been calculated by EPA at the following amounts: U.S. Population--140 µg/L; Adult Male, 13–19 years old--160 µg/L; Adult Female 13+, Nursing--100 µg/L; Infant <1, non-nursing--7 µg/L.

3. *From non-dietary exposure.* Pyridaben is currently not registered for use on residential non-food sites.

4. *Cumulative exposure to substances with common mechanism of toxicity.* Pyridaben is structurally similar to members of the pyridazinone class of herbicides (i.e., pyrazon and norflurazon). Section 408(b)(2)(D)(v) of the FQPA requires that, when considering whether to establish, modify, or revoke a tolerance, the Agency consider ''available information'' concerning the cumulative effects of a particular pesticide's residues and ''other substances that have a common mechanism of toxicity.'' The Agency believes that ''available information'' in this context might include not only toxicity, chemistry, and exposure data, but also scientific policies and methodologies for understanding common mechanisms of toxicity and conducting cumulative risk assessments. For most pesticides, although the Agency has some information in its files that may turn out to be helpful in eventually determining whether a pesticide shares a common mechanism of toxicity with any other substances, EPA does not at this time have the methodologies to resolve the complex scientific issues concerning common mechanism of toxicity in a meaningful way. EPA has begun a pilot process to study this issue further through the examination of particular classes of pesticides. The Agency hopes that the results of this pilot process will increase the Agency's scientific understanding of this question such that EPA will be able to develop and apply scientific principles for better determining which chemicals have a common mechanism of toxicity and evaluating the cumulative effects of such chemicals. The Agency anticipates, however, that even as its understanding of the science of common mechanisms increases, decisions on specific classes of chemicals will be heavily dependent on chemical-specific data, much of which may not be presently available.

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

EPA does not have, at this time, available data to determine whether pyridaben has a common mechanism of toxicity with other substances or how to include this pesticide in a cumulative risk assessment. Unlike other pesticides for which EPA has followed a cumulative risk approach based on a common mechanism of toxicity, pyridaben does not appear to produce a toxic metabolite produced by other substances. For the purposes of this tolerance action, therefore, EPA has not assumed that pyridaben has a common mechanism of toxicity with other substances. For more information regarding EPA's efforts to determine which chemicals have a common

mechanism of toxicity and to evaluate the cumulative effects of such chemicals, see the Final Rule for Bifenthrin Pesticide Tolerances (62 FR 62961, November 26, 1997).

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

1. *Acute risk.* Using the published and pending tolerances, the dietary (food only) percentage of the acute RfD range from 9% for males 13–19 years old to 77% for nursing infants < 1 year old, with the U.S. population at 18%. This risk estimate should be viewed as highly conservative; refinement using additional anticipated residue values and percent crop-treated data in conjunction with Monte Carlo analysis will result in a lower acute dietary exposure estimate. The acute dietary exposure does not exceed EPA's level of concern.

Pyridaben is immobile and thus unlikely to leach to groundwater. The modeling data for pyridaben in drinking water indicate levels less than EPA's DWLOC for acute exposure. Since a refined acute risk for food only would not exceed EPA's levels of concern for acute dietary exposures and the monitoring and modeling levels in water are less than the acute DWLOC, EPA does not expect aggregate acute exposure to pyridaben will pose an unacceptable risk to human health.

2. *Chronic risk.* Using the somewhat conservative ARC exposure assumptions described in Unit III.B. of this preamble, EPA has concluded that aggregate exposure to pyridaben from food will utilize 20% of the RfD for the U.S. population. The major identifiable subgroup with the highest aggregate exposure is discussed below. EPA generally has no concern for exposures below 100% of the RfD because the RfD represents the level at or below which daily aggregate dietary exposure over a lifetime will not pose appreciable risks to human health. The residues of pyridaben in drinking water do not exceed EPA's DWLOC. Pyridaben does not have any residential uses. EPA does not expect the aggregate exposure to exceed 100% of the RfD.

3. *Short-and intermediate-term risk.* Short-and intermediate-term aggregate exposure takes into account chronic dietary food and water (considered to be a background exposure level) plus indoor and outdoor residential uses. Since there are no residential uses, a short-or intermediate-term aggregate risk assessment is not required.

4. *Aggregate cancer risk for U.S. population.* Since pyridaben has been classified as a Group E chemical-''no evidence of carcinogenicity to humans,'' a cancer risk assessment is not required.

5. *Endocrine disrupter effects.* EPA is required to develop a screening program to determine whether certain substances (including all pesticides and inerts) ''may have an effect in humans that is similar to an effect produced by a naturally occurring estrogen, or such other endocrine effect...'' The Agency is currently working with interested stakeholders, including other government agencies, public interest groups, industry and research scientists in developing a screening and testing program and a priority setting scheme to implement this program. Congress has allowed three years from the passage of FQPA (August 3, 1999) to implement this program. At that time, EPA may require further testing of this active ingredient and end use products for endocrine disrupter effects.

6. *Determination of safety.* Based on these risk assessments, EPA concludes that there is a reasonable certainty that no harm will result from aggregate exposure to pyridaben residues.

D. Aggregate Risks and Determination of Safety for Infants and Children

1. *Safety factor for infants and children—i. In general.* In assessing the potential for additional sensitivity of infants and children to residues of pyridaben, EPA considered data from developmental toxicity studies in the rat and rabbit and a 2–generation reproduction study in the rat. The developmental toxicity studies are designed to evaluate adverse effects on the developing organism resulting from maternal pesticide exposure during gestation. Reproduction studies provide information relating to pre-and post-natal effects from exposure to pyridaben, effects from exposure to the pesticide on the reproductive capability of mating animals and data on systemic toxicity.

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

ii. *Developmental toxicity studies*— a. *Rats.* In a developmental toxicity study in rats, the maternal (systemic) NOAEL was 4.7 mg/kg/day. The maternal LOEL of 13 mg/kg/day was based on decreases in body weight, body weight gain, and food consumption during the dosing period (GD 6–15). The developmental (fetal) NOAEL was 13 mg/kg/day. The developmental LOEL of 30 mg/kg/day was based on decreased fetal body weight and increased incomplete ossification in selected bones.

b. *Rabbits.* In an oral developmental toxicity study in rabbits, the maternal (systemic) NOAEL was not established. The maternal LOEL of < 1.5 mg/kg/day was based on decreases in body weight gain and food consumption. There was no developmental toxicity observed at any dose tested. Therefore, the developmental (fetal) NOAEL is > 15 mg/kg/day at the highest dose tested.

iii. *Reproductive toxicity study—Rats.* In the 2–generation reproductive toxicity study in rats, the parental (systemic) NOAEL was 2.3 mg/kg/day. The parental(systemic) LOEL of 7 mg/kg/day was based on decreased body weight, decreased body weight gains, and decreased food efficiency. The reproductive (pup) NOAEL was > 7 mg/kg/day and the LOEL was > 7 mg/kg/day at the highest dose tested.

iv. *Pre-and post-natal sensitivity.* The toxicological data base for evaluating pre-and post-natal toxicity for pyridaben is complete with respect to current data requirements. There are no pre-or post-natal toxicity concerns for infants and children, based on the results of the rat and rabbit developmental toxicity studies as well as the 2–generation rat reproductive toxicity study. Based on the above, EPA has concluded that reliable data support removing the 10X safety factor for protection of infants and children.

v. *Conclusion.* There is a complete toxicity data base for pyridaben and exposure data is complete or is estimated based on data that reasonably accounts for potential exposures.

2. *Acute risk.* Using the somewhat conservative exposure assumptions described above, the percentage of the acute RfD that will be utilized by dietary (food) exposure to residues of pyridaben for infants and children range from 16% for children 7–12 years old to 77% for nursing infants < 1 year old. The acute

DWLOC does not exceed EPA's level of concern.

Taking into account the completeness and reliability of the toxicity data and this conservative exposure assessment, EPA concludes that there is a reasonable certainty that no harm will result to infants and children from acute aggregate exposure to pyridaben residues.

3. *Chronic risk*. Using the somewhat conservative exposure assumptions described above, EPA has calculated that the percentage of the RfD that will be utilized by dietary (food) exposure to residues of pyridaben ranges from 27 percent for nursing infants less than 1 year old, up to 85 percent for non-nursing infants less than 1 year old. The chronic DWLOC does not exceed HED's level of concern. There are no residential uses for pyridaben.

Taking into account the completeness and reliability of the toxicity data and this conservative exposure assessment, HED concludes that there is a reasonable certainty that no harm will result to infants and children from chronic aggregate exposure to pyridaben residues.

4. *Short-or intermediate-term risk*. Short-and intermediate-term aggregate exposure takes into account chronic dietary food and water (considered to be a background exposure level) plus indoor and outdoor residential uses. Since the chronic food and chronic DWLOC do not exceed HED's level of concern and there are currently no indoor or outdoor residential uses of pyridaben, the short-and intermediate-term aggregate risk does not exceed EPA's level of concern.

5. *Determination of safety*. Based on these risk assessments, EPA concludes that there is a reasonable certainty that no harm will result to infants and children from aggregate exposure to pyridaben residues.

IV. Other Considerations

A. Metabolism in Plants and Animals

1. *Metabolism in plants*. The nature of the residue in plants is adequately understood. The residue of concern is pyridaben per se as specified in 40 CFR 180.494.

EPA has determined that the tolerance expression for plant commodities will include residues of pyridaben per se. EPA has also concluded that all organosoluble residues may be presumed to be of comparable toxicity to the parent. Thus, the risk assessment for human dietary consumption of pyridaben treated plant commodities will include all organosoluble residues. EPA has calculated a value of 2.3 for the ratio of organosoluble residues to pyridaben (O/P Ratio) based upon the low dose pyridaben apple and orange metabolism studies. For dietary risk evaluation (DRES) analyses, tolerance levels of pyridaben in/on plant commodities will be multiplied by the ratio of organosoluble residues to pyridaben (2.3). The use of anticipated residues for pyridaben DRES analysis has been previously conducted.

2. *Metabolism in animals*. The nature of the residue in animals is adequately understood. The residue of concern is pyridaben and its metabolites PB–7 (2-tert-butyl-5-[4-(1-carboxy-1-methylethyl)benzylthio]-4-chloropyridazin-3(2*H*)-one) and PB–9 (2-tert-butyl-4-chloro-5-[4-(1,1-dimethyl-2-hydroxyethyl) benzylthio]-chloropyridazin-3(2*H*)-one) as specified in 40 CFR 180.494.

For livestock commodities, EPA determined that the tolerance expression for ruminant commodities will include pyridaben and its metabolites PB–7 and PB–9. As all organosoluble residues are presumed to be of comparable toxicity to the parent, the risk assessment for human dietary consumption of commodities from livestock exposed to pyridaben will include all organosoluble residues. As tolerance levels for meat and milk are based upon a ruminant feeding study in which the dose levels were exaggerated by a factor of approximately seven, it is not necessary to further adjust the levels to be utilized in the dietary exposure analysis.

B. Analytical Enforcement Methodology

For the purpose of the associated section 18 exemption only, the BASF gas chromatography/electron capture (GC/EC) Method D9312 is adequate for enforcement purposes. Adequate enforcement methodology (example-gas chromotography) is available to enforce the tolerance expression. The method may be requested from: Calvin Furlow, PRRIB, IRSD (7502C), Office of Pesticide Programs, Environmental Protection Agency, 401 M St., SW., Washington, DC 20460. Office location and telephone number: Rm 101FF, Crystal Mall #2, 1921 Jefferson Davis Hwy., Arlington, VA 22202, (703–305–5229).

C. Magnitude of Residues

The cranberry data supplied with the submission is minimal (a three line summary table). The table listed an average residue of 0.28 ppm and a maximum residue of 0.39 ppm. EPA has translated existing field trial residue data for grapes (maximum residue = 0.68 ppm) to establish the cranberry tolerance. Residues of pyridaben and its regulated metabolites are not expected to exceed 0.75 ppm in/on cranberries as a result of this section 18 use.

Applying the o/p ratio described in Unit IV.A.1 of this preamble to the anticipated residue for pyridaben on cranberries yields 0.64 (0.28 ppm × 2.3). Since this level is lower than the proposed tolerance, and the cranberry residue data are minimal, for this section 18, the tolerance level has been used for the chronic and acute dietary risk analyses. Secondary residues are not expected in animal commodities as no feed items are associated with this section 18 use.

D. International Residue Limits

There are no CODEX, Canadian, or Mexican Maximum Residue Limits (MRL) established for pyridaben on cranberries.

E. Rotational Crop Restrictions

Since cranberries are not rotated to other crops, a discussion of rotational crop residues is not germane to this action.

V. Conclusion

Therefore, the tolerance is established for combined residues of pyridaben and its metabolites PB–7 (2-tert-butyl-5-[4-(1-carboxy-1-methylethyl) benzylthio]-4-chloropyridazin-3 (2*H*)-one) and PB–9 (2-tert-butyl-4-chloro-5-[4- (1,1-dimethyl-2-hydroxyethyl) benzylthio]-chloropyridazin-3(2*H*)-one) in cranberries at 0.75 ppm.

VI. Objections and Hearing Requests

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

Any person may, by December 4, 1998, file written objections to any aspect of this regulation and may also request a hearing on those objections. Objections and hearing requests must be filed with the Hearing Clerk, at the address given above (40 CFR 178.20). A copy of the objections and/or hearing requests filed with the Hearing Clerk should be submitted to the OPP docket

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

VII. Public Record and Electronic Submissions

EPA has established a record for this rulemaking under docket control number [OPP–300725] (including any comments and data submitted electronically). A public version of this record, including printed, paper versions of electronic comments, which does not include any information claimed as CBI, is available for inspection from 8:30 a.m. to 4 p.m., Monday through Friday, excluding legal holidays. The public record is located in Room 119 of the Public Information and Records Integrity Branch, Information Resources and Services Division (7502C) Office of Pesticide Programs, Environmental Protection Agency, Crystal Mall #2, 1921 Jefferson Davis Highway, Arlington, VA.

Electronic comments may be sent directly to EPA at:

opp-docket@epamail.epa.gov.

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

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

VIII. Regulatory Assessment Requirements

A. Certain Acts and Executive Orders

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

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

B. Executive Order 12875

Under Executive Order 12875, entitled *Enhancing the Intergovernmental Partnership* (58 FR 58093, October 28, 1993), EPA may not issue a regulation that is not required by statute and that creates a mandate upon a State, local, or tribal government, unless the Federal government provides the funds necessary to pay the direct compliance costs incurred by those governments. If the mandate is unfunded, EPA must provide to OMB a description of the extent of EPA's prior consultation with representatives of affected State, local, and tribal governments, the nature of their concerns, copies of any written communications from the governments, and a statement supporting the need to issue the regulation. In addition, Executive Order 12875 requires EPA to develop an effective process permitting elected officials and other representatives of State, local, and tribal governments ''to provide meaningful and timely input in the development of regulatory proposals containing significant unfunded mandates.''

Today's rule does not create an unfunded Federal mandate on State, local, or tribal governments. The rule does not impose any enforceable duties on these entities. Accordingly, the requirements of section 1(a) of Executive Order 12875 do not apply to this rule.

C. Executive Order 13084

Under Executive Order 13084, entitled *Consultation and Coordination with Indian Tribal Governments* (63 FR 27655, May 19,1998), EPA may not issue a regulation that is not required by statute, that significantly or uniquely affects the communities of Indian tribal governments, and that imposes substantial direct compliance costs on those communities, unless the Federal government provides the funds necessary to pay the direct compliance costs incurred by the tribal governments. If the mandate is unfunded, EPA must provide to OMB, in a separately identified section of the preamble to the rule, a description of the extent of EPA's prior consultation with representatives of affected tribal governments, a summary of the nature of their concerns, and a statement supporting the need to issue the regulation. In addition, Executive Order 13084 requires EPA to develop an effective process permitting elected officials and other representatives of

Indian tribal governments ''to provide meaningful and timely input in the development of regulatory policies on matters that significantly or uniquely affect their communities.''

Today's rule does not significantly or uniquely affect the communities of Indian tribal governments. This action does not involve or impose any requirements that affect Indian tribes. Accordingly, the requirements of section 3(b) of Executive Order 13084 do not apply to this rule.

IX. Submission to Congress and the Comptroller General

The Congressional Review Act, 5 U.S.C. 801 *et seq.*, as added by the Small Business Regulatory Enforcement Fairness Act of 1996, generally provides that before a rule may take effect, the agency promulgating the rule must submit a rule report, which includes a copy of the rule, to each House of the Congress and to the Comptroller General of the United States. EPA will submit a report containing this rule and other required information to the U.S. Senate, the U.S. House of Representatives, and the Comptroller General of the United States prior to publication of the rule in the **Federal Register**. This rule is not a ''major rule'' as defined by 5 U.S.C. 804(2).

List of Subjects in 40 CFR Part 180

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

Dated: September 24, 1998.

Arnold E. Layne,

Acting Director, Registration Division, Office of Pesticide Programs.

Therefore, 40 CFR chapter I is amended as follows:

PART 180— [AMENDED]

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

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

2. In § 180.494, by revising paragraph (b) to read as follows:

§ 180.494 Pyridaben; tolerance for residues.

* * * * *

(b) *Section 18 emergency exemptions*. Time-limited tolerances are established for the combined residues of pyridaben and its metabolites PB–7 (2-tert-butyl-5-[4- (1-carboxy-1-methylethyl) benzylthio]-4-chloropyridazin-3 (2*H*)-one) and PB–9 (2-tert-butyl-4-chloro-5-[4- (1,1-dimethyl-2-hydroxyethyl) benzylthio]-chloropyridazin-3 (2*H*)-one) in connection with use of the pesticide under section 18 emergency exemptions granted by EPA. The tolerance is specified in the following table:

Commodity	Parts per million	Expiration/ Revocation Date
Cranberries	0.75	12/31/99

* * * * *

[FR Doc. 98–26617 Filed 10–2–98; 8:45 am]

BILLING CODE 6560–50–F

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Health Care Financing Administration

42 CFR Parts 409, 410, 411, 413, 424, 483 and 489

[HCFA–1913–CN]

RIN 0938–AI47

Medicare Program; Prospective Payment System and Consolidated Billing for Skilled Nursing Facilities; Correction

AGENCY: Health Care Financing Administration (HCFA), HHS.

ACTION: Correction of interim final rule with comment period.

SUMMARY: This document corrects technical errors that appeared in the interim final rule with comment period published in the **Federal Register** on May 12, 1998 entitled ''Medicare Program; Prospective Payment System and Consolidated Billing for Skilled Nursing Facilities.''

EFFECTIVE DATE: These corrections are effective July 1, 1998.

FOR FURTHER INFORMATION CONTACT: Bill Ullman, (410) 786–5667.

SUPPLEMENTARY INFORMATION:

Background

In FR Doc. 98–12208 of May 12, 1998 (63 FR 26252), there were a number of technical errors. In the preamble, the errors relate to incorrect listings in two tables, technical errors in the discussion of one issue, a typographical error in a table, and an incorrect paragraph designation. In the regulations text, the errors relate to two incorrect paragraph designations, a misspelled word in the heading to a section, and a grammatical correction. In addition, we inadvertently erased a change made by the regulation titled ''Medicare Program; Scope of Medicare Benefits and Application of the Outpatient Mental Health Treatment Limitation to Clinical Psychologist and Clinical Social Worker Services (HCFA–3706–F)'' published in the **Federal Register** April 23, 1998 at 63 FR 20110. That regulation's revision to 42 CFR 424.32(a)(2) (see 63 FR 20130), regarding basic requirements for claims, was inadvertently erased by the interim final rule, which this notice corrects, titled ''Medicare Program; Prospective Payment System and Consolidated Billing for Skilled Nursing Facilities'' published May 12, 1998 when it subsequently revised the same section (see 63 FR 26311). This correction notice incorporates the revisions made by both rules. Finally, we are correcting § 483.20 (Resident assessment) because we erroneously used a superseded version of regulations text when revising that section. The corrections appear in this document under the heading ''Correction of Errors.''

Correction of Errors

In FR Doc. 98–12208 of May 12, 1998 (63 FR 26252), we are making the following corrections:

Corrections To Preamble

Page 26262, Table 2.C

1. The dot lead-in between the ''Category'' column and the ''ADL index'' column and between the ''End splits'' column and the ''MDS RUG–III codes'' column is removed.

2. *First column titled ''Category''*

Under the heading ''IMPAIRED COGNITION,'' the first line is corrected to read as follows: ''Score on MDS2.0 Cognitive Performance Scale >=3.'' The second and third lines under the heading are retained but are blank.

3. *Second column titled ''ADL index''*

After existing line 29, line 30 is added to read ''4–5.''

Existing line 34 is removed.

Existing line 37 is removed.

After existing line 38, line 39 is added to read ''11-15.''

4. *Third column titled ''End splits''*

Line 28 is corrected to read ''Nursing rehabilitation.''

Line 29 is corrected to read ''Not receiving nursing rehabilitation.''

Line 30 is corrected to read ''Nursing rehabilitation.''

Line 31 is corrected to read ''Not receiving nursing rehabilitation.''

Line 32 is corrected to read ''Nursing rehabilitation.''

Line 33 is corrected to read ''Not receiving nursing rehabilitation.''

Line 34 is corrected to read ''Nursing rehabilitation.''

Line 35 is corrected to read ''Not receiving nursing rehabilitation.''

Line 37 is corrected to read ''Nursing rehabilitation.''

Line 38 is corrected to read ''Not receiving nursing rehabilitation.''

Line 39 is corrected to read ''Nursing rehabilitation.''

Line 40 is corrected to read ''Not receiving nursing rehabilitation.''

Line 43 is corrected to read ''Nursing rehabilitation.''

Line 44 is corrected to read ''Not receiving nursing rehabilitation.''

Line 45 is corrected to read ''Nursing rehabilitation.''

Line 46 is corrected to read ''Not receiving nursing rehabilitation.''

5. *Fourth column, titled ''MDS RUG III codes''*

Line 35, ''BA1,'' is removed.

The corrected table is set forth below:

BILLING CODE 4210–01–P–

Table 2.C
Crosswalk of MDS 2.0 Items and RUG III Groups

CATEGORY	ADL INDEX	END SPLITS	MDS RUG III CODES
REHABILITATION			
ULTRA HIGH Rx 720 minutes/week minimum At least 2 disciplines, one at least 5 days/week	16-18 9-15 4-8	NOT USED NOT USED NOT USED	RUC RUB RUA
VERY HIGH Rx 500 mins. a wk. minimum At least 1 discipline - 5 days	16-18 9-15 4-8	NOT USED NOT USED NOT USED	RVC RVB RVA
HIGH Rx 325 mins. a wk. minimum 1 discipline 5 days a week	13-18 8-12 4-7	NOT USED NOT USED NOT USED	RHC RHB RHA
MEDIUM Rx 150 mins. a wk. minimum 5 days across 3 disciplines	15-18 8-14 4-7	NOT USED NOT USED NOT USED	RMC RMB RMA
LOW Rx 45 minutes/week over at least 3 days Nursing rehabilitation 6 days/week, 2 activities	14-18 4-13	NOT USED NOT USED	RLB RLA
EXTENSIVE SERVICES--(ADLSUM <7 SPECIAL) IV Feeding in last 7 days; In last 14 days, IV medications, suctioning, Tracheostomy care, ventilator/respirator	7-18 7-18 7-18	count of other categories code into plus IV Meds + Feed	SE3 SE2 SE1

SPECIAL CARE--(ADLSUM <7 Clin. Complex)			
MS, Quad, or CP with ADLsum >=10, Resp. Ther.=7 days	17-18	NOT USED	SSC
Tube fed and aphasic; Radiation tx; Rec'g tx for surgical	15-16	NOT USED	SSB
wnds/lesions or ulcers (2=sites, any stg; 1 site stg 3 or 4)	7-14	NOT USED	SSA
Fever with Dehy., Pneu., Vomit., Weight Loss, or Tube Fed		(Extensive <7 ADL)	
CLINICALLY COMPLEX--Burns, Coma, Septicemia, Pneumonia, Footwnds, Internal Bld, Dehyd, Tube fed (minimum	17-18D	Signs of Depression	CC2
501 ml. fl, 26% cals),	17-18		CC1
Oxygen, Transfusions, Hemiplegia with ADL sum >=10, Chemotherapy, Dialysis,	12-16D	Signs of Depression	CB2
No. of Days in last 14 - Phys. Visits/makes order changes:	12-16		CB1
visits>=1 and chng.>=4; or visits>=2 and chng.>=2	4-11D	Signs of Depression	CA2
Diabetes with injection 7 days/wk and order chng.>=2 days	4-11	(Special <7 ADL)	CA1

IMPAIRED COGNITION Score on MDS2.0 Cognitive Performance Scale >=3	6-10	Nursing rehabilitation	IB2
	6-10	Not receiving nursing rehab	IB1
	4-5	Nursing rehabilitation	IA2
	4-5	Not receiving nursing rehab	IA1
BEHAVIOR ONLY Code on MDS 2.0 items:	6-10	Nursing rehabilitation	BB2
4+ days a week -	6-10	Not receiving nursing rehab	BB1
wandering, physical or verbal abuse	4-5	Nursing rehabilitation	BA2
inappropriate behavior or resists care; or hallucinations, or delusions	4-5	Not receiving nursing rehab	BA1

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PHYSICAL FUNCTION REDUCED			
No clinical variables used	16-18	Nursing rehabilitation	PE2
	16-18	Not receiving nursing rehab	PE1
Nursing Rehab. Activities >=2, at least 6 days a wk:	11-15	Nursing rehabilitation	PD2
	11-15	Not receiving nursing rehab	PD1
Passive or Active ROM, amputation care, splint care,	9-10	Nursing rehabilitation	PC2
Training in dressing or grooming, eating or swallowing,	9-10	Not receiving nursing rehab	PC1
transfer, bed mobility or walking, communication, scheduled toileting program or bladder retraining.	6-8	Nursing rehabilitation	PB2
	6-8	Not receiving nursing rehab	PB1
	4-5	Nursing rehabilitation	PA2
	4-5	Not receiving nursing rehab	PA1
			Default

Source: Analysis of the 1995 Medicare Units Staff Time Study: Update of RUG III Classification MDS

BILLING CODE 4210–01–C

Page 26260

In the second column, in lines 7 to 11, the second full sentence is corrected to read as follows: ''On average, case-mix values based on MDS data are the same as analog-based values for the nursing index and 29 percent higher for the therapy index.''

Page 26265

In the third column, in lines 4 to 9, the sentence beginning ''As rehabilitation services * * *'' is removed.

Page 26266

In the third column, in lines 15 to 21, the sentence beginning ''Although the PPS rules * * *'' is corrected to read as follows: ''Although the PPS rules allow a 5-day grace period for setting the assessment reference date for the Medicare 90-day assessment, the Quarterly Review assessment must be completed within 92 days of completion of the last comprehensive assessment.''

In the third column, in lines 21 to 28, the sentence beginning ''Therefore, if a facility * * *'' is corrected to read as follows: ''Therefore, if a facility is using the Medicare 90-day assessment to also meet the requirement for the Quarterly Review assessment, the assessment must be completed within 92 days of completion of the prior comprehensive assessment and have an assessment reference date that falls within the Medicare 90-day assessment window, days 80 through 89 (plus grace days, if needed) of the Part A stay.''

In the third column, in the first full paragraph, in line 19 of that paragraph, in the sentence beginning, ''These include * * *,'' the phrase ''0 or 1 to 2 or 3'' is corrected to read ''0 to 1 or 2 to 3.''

In the third column, in the first full paragraph, in line 23, in the sentence

beginning ''As a complement * * *,'' the phrase ''comprehensive assessment'' is corrected to read ''full assessment.''

In the third column, in the first full paragraph, in line 32, in the sentence beginning ''For those rare instances * * *,'' the phrase ''a comprehensive assessment'' is corrected to read ''an assessment.''

Page 26267

In the first column, in line 7, the word ''comprehensive'' is removed.

In the first column, in line 9, the word ''deemed'' is replaced with ''automatically.''

In the first column, in the first full paragraph, in the first sentence, in line 2, after the word ''assessment,'' the clause ''whichever is chosen to be used as the Initial Admission Assessment'' is added.

In the first column, in the first full paragraph, the second sentence is corrected to read as follows: ''As noted above, RAPs also must be completed as part of any Significant Change in Status assessments.''

In the first column, in the second full paragraph, in the first sentence, in line 3, the words ''be completed'' are replaced with the phrase ''have an assessment reference date.''

In the first column, in the third full paragraph, in the first sentence, in line 3, the words ''day 8'' are replaced with the clause ''the first assessment has been done.''

Page 26267, Table 2.D

In the third column titled ''Assessment reference date,'' in the first line, the phrase ''Days 1–8*'' is replaced with ''Days 1–5*.''

In the first footnote ''*'' for the table, the phrase ''day 8'' is replaced with ''day 5.''

The second footnote ''**'' for the table is corrected to read as follows: ''**RAPs follow Federal rules.''

Page 26268

In the first column, in the second full paragraph, in lines 3 to 10, the first sentence after the heading designated ''a.'' is corrected to read as follows: ''For a Medicare patient in a Part A covered stay, admitted in the 30 days before the SNF became subject to PPS, facility staff may choose to use the most recent full MDS assessment (within the past 30 days) for RUG–III classification.''

In the first column, in the second full paragraph, in lines 16 to 18, the last sentence is corrected, and a new sentence is added after it to read as follows: ''The next assessment will be the required Medicare 14-day assessment. This assessment must have an assessment reference date that is 11 to 14 days after the day the facility became subject to SNF PPS.''

In the third column, in line 5, the word ''completed'' is replaced with ''included.''

In the third column, in lines 9 to 10, the phrase ''admission assessment'' is replaced with ''Initial Admission Assessment.''

In the third column, in line 16, the word ''and'' is removed.

In the third column, in the second full paragraph, in lines 4 to 13, the second sentence is corrected, the third and fourth sentences are removed, and a new sentence is added after the corrected second sentence to read as follows: ''For this reason, when using the 90-day assessment as the required quarterly assessment, it must be completed accordingly. When the 90-day assessment is not also the quarterly assessment, a 5-day grace period is available for setting the assessment reference date for this assessment, as for the 30-day and 60-day assessments.''

Page 26275, Table 2.H

In the column labeled ''Labor-related'' for the RUGS–III category ''RMB,'' in line 11, the amount presented contained a typographical error. The amount is corrected to read ''$185.78''.

Page 26284

In the first column, in the second full paragraph, in line 24, the phrase ''visits and'' is added before the phrase ''order changes.''

In the first column, in the second full paragraph, in line 25, the phrase ''7 days'' is corrected to read ''14 days.''

Page 26301

In the first column, in lines 21 and 22, the reference to ''diagnostic tests (§ 410.32(e))'' is corrected to read ''diagnostic tests (§ 410.32(d)).''

Corrections to Regulatory Text

§ 410.32 [Corrected]

In the third column on page 26307, in the last line, and carrying over into the first column on page 26308, in the first line, in amendatory instruction number 4 for § 410.32 (Diagnostic X-ray tests, diagnostic laboratory tests, and other diagnostic tests: Conditions), the reference to ''paragraph (e)'' is corrected to read ''paragraph (d)'' and the reference to ''paragraph (e)(7)'' is corrected to read ''paragraph (d)(7).''

Also in the first column on page 26308, in the section heading to § 410.32, the word ''texts'' is corrected to read ''tests''; and the paragraph designation ''(e)'' before the heading ''Diagnostic laboratory tests'' is corrected to read ''(d).''

§ 413.333 [Corrected]

In the second column on page 26309, in the definition of ''Resident classification system'' that appears in § 413.333 (Definitions), the phrase ''as set out in the annual publication'' is corrected to read ''as set forth in the annual publication.''

§ 424.40 [Corrected]

In the second column on page 26311, in amendatory statement number 3 for § 424.20 (Requirements for posthospital SNF care), ''paragraph (a)'' is corrected to read ''paragraph (a)(1).''

§ 424.32 [Corrected]

In the second column, in § 424.32 (Basic requirements for all claims), revised paragraph (a)(2) is corrected to read as follows:

* * * * *

(2) A claim for physician services, clinical psychologist services, or clinical social worker services must include appropriate diagnostic coding for those services using ICD–9–CM, and a claim for physician services furnished to an SNF resident under § 411.15(p)(2) of this chapter must also include the SNF's Medicare provider number.

* * * * *

§ 483.20 [Corrected]

In the third column on page 26311, amendatory instruction number 2 and the amendment to § 483.20 are removed and a new amendatory instruction number 2 and amendment to § 483.20 are added in their place to read as follows:

Subpart B—Requirements for Long Term Care Facilities

2. In § 483.20, the introductory text to paragraph (b)(2) is revised to read as follows:

§ 483.20 Resident assessment.

* * * * *

(b) *Comprehensive assessments.* * * *

(2) *When required.* Subject to the timeframes prescribed in § 413.343(b) of this chapter, a facility must conduct a comprehensive assessment of a resident as follows:

* * * * *

(Authority: Section 1888 of the Social Security Act (42 U.S.C. 1395yy))

(Catalog of Federal Domestic Assistance Program No. 93.773, Medicare—Hospital Insurance; and Program No. 93.774, Medicare—Supplementary Medical Insurance Program)

Dated: September 29, 1998.

Neil J. Stillman,

Deputy Assistant Secretary for Information Resources Management.

[FR Doc. 98–26596 Filed 9–30–98; 4:28 pm]

BILLING CODE 4120–01–P

FEDERAL MARITIME COMMISSION

46 CFR Part 503

[Docket No. 98–11]

Availability of Records to the Public—Electronic Freedom of Information Act

AGENCY: Federal Maritime Commission.

ACTION: Final rule.

SUMMARY: The Federal Maritime Commission revises its regulations on public access to Commission records, materials, and information in order to clarify existing rules, provide information concerning the electronic availability of information and records, and to incorporate the requirements of the Electronic Freedom of Information Act Amendments of 1996.

DATES: This rule is effective November 4, 1998.

FOR FURTHER INFORMATION CONTACT: Joseph C. Polking, Secretary, Federal Maritime Commission, 800 North Capitol St., NW, Room 1046, Washington, DC 20573–0001, (202) 523–5725, E-mail: secretary@fmc.gov

SUPPLEMENTARY INFORMATION: On July 22, 1998, the Federal Maritime Commission published a proposed rule to revise its regulations on public access to Commission records, materials, and information. 63 FR 39263–39267, July 22, 1998. The proposed rule clarified existing regulations, provided information concerning the electronic availability of information and records, and incorporated the requirements of the Electronic Freedom of Information Act Amendments of 1996 (''EFOIA''), Pub. L. 104–231, 110 Stat. 3408. Interested parties were given the opportunity to submit comments on the proposed rule. The Commission received one comment jointly from two nonprofit groups claiming to have experience as requesters of Freedom of Information Act (FOIA) material and as counsel or assistant to requesters.

The comment addressed proposed section 503.24(b)(5)(iv), which reflects provisions in EFOIA requiring that previously requested records created on or after November 1, 1996, that are subject to subsequent, multiple FOIA requests be made available in agency electronic reading rooms. 5 U.S.C. 552(a)(2)(D). The proposed rule provided that ''[r]ecords created by the Commission since November 1, 1996,'' and subject to subsequent requests would be available through the Electronic Reading Room. The comment takes exception to the language ''by the Commission,'' and argues that EFOIA requires that repeatedly requested, previously released records be made electronically available whether or not they were created by an agency.

The Department of Justice (DOJ) issued government-wide guidance advising agencies that the requirement of electronic reading room availability was applicable only to agency created records. *FOIA Update,* Winter 1997, at 4–5. Moreover, DOJ dismissed an identical comment when issuing its own implementing rules. 63 FR 29591, 29592, June 1, 1998. DOJ explained that by limiting the electronic reading room contents to ''records created on or after November 1, 1996,'' EFOIA recognizes the practical limitations on electronic reading rooms. Presumably, according to DOJ, agencies will have their own materials dating from November 1, 1996 in an electronic form and can readily make those available through electronic communications. However, those records not created by the agency, but instead obtained by the agency, are not as likely to be readily available in electronic form. Thus, DOJ explained, only those records created by the agency are required to be available via the electronic reading room. *Id.* See *United States Dep't of Justice* v. *Tax Analysts,* 492 U.S. 136,144 (recognizing that agencies ''either create or obtain'' records subject to FOIA), cited in *FOIA Update,* Winter 1997, at 4–5. The Commission shares DOJ's view, and disagrees with the commenter's interpretation of this provision of EFOIA.

Moreover, at this time the Commission does not have sufficient computer equipment to transform paper documents submitted by the public into an electronic form that could then be made available through the electronic reading room on the Commission web page. However, the Commission is cognizant of the need to enhance public access to information through electronic means. The Commission has found that making documents and information accessible via the electronic reading room is of a benefit to both the public and the agency. Both economy and efficiency are served by providing this type of access. Accordingly, the Commission plans to eventually upgrade its computer resources to allow for ''scanning'' of documents into a form appropriate for the web page.

Thus, while not mandated by law, the Commission hopes eventually to make materials in this category available via the electronic reading room, to the extent it is reasonable and practical to do so.

This rule is not a significant regulatory action as defined by Executive Order 12866, Regulatory Planning and Review, and therefore, is not subject to review by the Office of Information and Regulatory Affairs, in the Office of Management and Budget.

This rule concerns internal administrative procedures for making information available to the public, and, accordingly, the Chairman certifies that this rule will not have a significant economic impact on a substantial number of small entities.

The rule contains no additional information collection or record keeping requirements. Therefore, the requirements of the Paperwork Reduction Act, 44 U.S.C. 3501 *et seq.* do not apply.

List of Subjects in 46 CFR part 503

Classified information, Freedom of Information, Privacy, Sunshine Act. For the reasons set out in the preamble, the Commission amends 46 CFR part 503 as follows:

PART 503—PUBLIC INFORMATION

1. The authority citation for part 503 is revised to read as follows:

Authority: 5 U.S.C. 552, 552a, 552b, 553; 31 U.S.C. 9701; E.O. 12958 of April 20, 1995 (60 FR 19825), sections 5.2(a) and (b).

2. Revise subpart C to read as follows:

Subpart C—Records, Information and Materials Generally Available to the Public Without Resort to Freedom of Information Act Procedures

Sec.
503.21 Mandatory public records.
503.22 Records available at the Office of the Secretary.
503.23 Records available upon written request.
503.24 Information available via the internet.

Subpart C—Records, Information and Materials Generally Available to the Public Without Resort to Freedom of Information Act Procedures

§ 503.21 Mandatory public records.

(a) The Commission, as required by the Freedom of Information Act, 5 U.S.C. 552, shall make the following materials available for public inspection and copying:

(1) Final opinions (including concurring and dissenting opinions) and all orders made in the adjudication of cases.

(2) Those statements of policy and interpretations which have been adopted by the Commission.

(3) Administrative staff manuals and instructions to staff that affect any member of the public.

(4) Copies of all records, regardless of form or format, which have been released to any person pursuant to a Freedom of Information Act request, and which the Secretary determines have become or are likely to become the subject of subsequent requests for substantially the same records, and a general index of such records.

(b) To prevent unwarranted invasion of personal privacy, the Secretary may delete identifying details when it makes available or publishes an opinion, statement of policy, interpretation, staff manual, instruction, or copies of records referred to in paragraph (a)(4) of this section. In each case, the justification for the deletion shall be explained fully in writing, and the extent of such deletion shall be indicated on that portion of the record which is made available or published, unless including that indication would harm an interest protected by an exemption in § 503.33 under which the deletion is made. If technically feasible, the extent of the deletion shall be indicated at the place in the record where the deletion was made.

(c) The Commission maintains and makes available for public inspection and copying a current index providing identifying information for the public as to any matter which is issued, adopted, or promulgated, and which is required by paragraph (a) of this section to be made available or published.

(1) The index shall be available at the Office of the Secretary, Federal Maritime Commission, Washington, DC 20573. Publication of such indices has been determined by the Commission to be unnecessary and impracticable. The indices shall, nonetheless, be provided to any member of the public at a cost not in excess of the direct cost of duplication of any such index upon request therefor.

(2) No final order, opinion, statement of policy, interpretation, or staff manual or instruction that affects any member of the public will be relied upon, used, or cited as precedent by the Commission against any private party unless:

(i) It has been indexed and either made available or published as provided by this subpart; or

(ii) That private party shall have actual and timely notice of the terms thereof.

(d) Duplication of records may be subject to fees as prescribed in subpart E of this part.

§ 503.22 Records available at the Office of the Secretary

(a) The following records will be made available for inspection and copying at the Office of the Secretary, Federal Maritime Commission, 800 North Capitol St., NW, Washington, DC 20573, without the requirement of a written request. Access to requested records may be delayed if they have been sent to archives.

(1) Proposed and final rules and regulations of the Commission including general substantive rules, statements of policy and interpretations, and rules of practice and procedure.

(2) Reports of decisions (including concurring and dissenting opinions), orders and notices in all formal proceedings.

(3) Official docket files in all formal proceedings including, but not limited to, orders, notices, pertinent correspondence, transcripts, exhibits, and briefs, except for materials which are the subject of a protective order. Copies of transcripts may only be available from the reporting company contracted by the Commission. Contact the Office of the Secretary for the name and address of this company.

(4) News releases.

(5) Approved summary minutes of Commission actions showing final votes, except for minutes of closed Commission meetings which are not available until the Commission publicly announces the results of such deliberations.

(6) Annual reports of the Commission.

(b) Certain fees may be assessed for duplication of records made available by this section as prescribed in subpart E of this part and in Part 514 of this chapter.

§ 503.23 Records available upon written request.

(a) The following Commission records are generally available for inspection and copying, without resort to Freedom of Information Act procedures, upon request in writing addressed to the Office of the Secretary, Federal Maritime Commission, Washington, DC 20573:

(1) Agreements filed and in effect pursuant to sections 5 and 6 of the Shipping Act of 1984.

(2) Agreements filed under section 5 of the Shipping Act of 1984 which have been noticed in the **Federal Register**.

(3) Tariffs filed under the provisions of the Shipping Act of 1984, and terminal tariffs filed pursuant to part 514 of this chapter, under the procedures set forth in §§ 514.21(d) or 514.8(k)(2).

(4) List of certifications of financial responsibility pertaining to Pub. L. 89–777.

(5) List of licensed ocean freight forwarders.

(b) Certain fees may be assessed for duplication of records made available by this section as prescribed in subpart E of this part and in part 514 of this chapter.

§ 503.24 Information available via the internet.

(a) The Commission maintains an internet web site. The Commission home page may be found at http://www.fmc.gov .

(b) The following general information, records, and resources are accessible through the home page:

(1) General descriptions of the functions, bureaus, and offices of the Commission, phone numbers and e-mail addresses for Commission officials, as well as locations of Area Representatives;

(2) Information about filing complaints;

(3) Commonly used forms;

(4) A public information handbook describing the types of information available from the Commission and how to access such information;

(5) A Freedom of Information Act Electronic Reading Room which contains:

(i) Copies of final decisions in adjudicatory proceedings issued since November 1, 1996;

(ii) Recently issued final rules and pending proposed rules;

(iii) Access to statements of policy and interpretations as published in 46 CFR 571; and

(iv) Records created by the Commission since November 1, 1996, and made available under § 503.21, paragraph (a)(4).

(6) Commission regulations as codified in Title 46 of the Code of Federal Regulations;

(7) News releases issued by the Commission;

(8) Statements and remarks from the Chairman and Commissioners;

(9) A connection to the Government Information Locator Service maintained by the Government Printing Office, which identifies Commission databases; and

(10) Privacy Act information.

(c) Comments or questions regarding the home page should be addressed via e-mail to webmaster@fmc.gov.

3. Revise subpart D to read as follows:

Subpart D—Requests for records under the Freedom of Information Act

Sec.
503.31 Records available upon written request under the Freedom of Information Act.
503.32 Procedures for responding to requests made under the Freedom of Information Act.
503.33 Exceptions to availability of records.
503.34 Annual report of public information request activity.

Subpart D—Requests for Records Under the Freedom of Information

§ 503.31 Records available upon written request under the Freedom of Information Act.

(a) A member of the public may request permission to inspect, copy or be provided with any Commission records not described in subpart C of this part. Such a request must:

(1) Reasonably describe the record or records sought;

(2) Be submitted in writing to the Secretary, Federal Maritime Commission, Washington, DC 20573; and

(3) Be clearly marked on the exterior with the letters ''FOIA'.

(b) The Secretary shall evaluate each request in conjunction with the official having responsibility for the subject matter area and the General Counsel, and the Secretary shall determine whether or not to grant the request in accordance with the provisions of this subpart.

(c) In making any record available to a person under this subpart, the Secretary shall provide the record in any form or format requested by the person if the record is readily reproducible by the Secretary in that form or format.

(d) Certain fees may be assessed for processing of requests under this subpart as prescribed in subpart E of this part.

§ 503.32 Procedures for responding to requests made under the Freedom of Information Act.

(a) *Determination to grant or deny request.* Upon request by any member of the public for documents, made in accordance with the rules of this part, the Commission's Secretary or his or her delegate in his or her absence, shall determine whether or not such request shall be granted.

(1) Such determination shall be made by the Secretary within twenty (20) days (excluding Saturdays, Sundays and legal public holidays) after receipt of such request, except as provided in paragraph (c) of this section.

(2) Upon granting a request the Secretary shall promptly make records available to the requestor. Upon denial of such a request the Secretary shall promptly notify the requestor of the determination, explain the reason for denial, give an estimate of the volume of matter denied, set forth the names and titles or positions of each person responsible for the denial of the request, and notify the party of its right to appeal that determination to the Chairman.

(3)(i) Any party whose request for documents or other information pursuant to this part has been denied in whole or in part by the Secretary may appeal such determination. Any such appeal must:

(A) Be addressed to: Chairman, Federal Maritime Commission, Washington, D.C. 20573–0001; and

(B) Be filed not later than ten (10) working days following receipt of notification of denial or receipt of a part of the records requested.

(ii) The Chairman or the Chairman's specific delegate in his or her absence, shall make a determination with respect to that appeal within twenty (20) days (excepting Saturdays, Sundays and legal public holidays) after receipt of such appeal, except as provided in paragraph (b) of this section.

(iii) If, on appeal, the denial is upheld, either in whole or in part, the Chairman shall so notify the party submitting the appeal and shall notify such person of the provisions of 5 U.S.C. 552(a)(4) regarding judicial review of such determination upholding the denial. Notification shall also include the statement that the determination is that of the Chairman of the Federal Maritime Commission and the name of the Chairman.

(b) *Extension of time limits.* (1) In unusual circumstances, as defined in paragraph (b)(2) of this section, the time limits prescribed with respect to initial actions in response to a FOIA request or actions on appeal may be extended by written notice from the Secretary of the Commission to the person making such request, setting forth the reasons for such extension and the date on which a determination is expected to be dispatched. No such notice shall specify a date that would result in an extension for more than ten (10) working days, except as provided in paragraph (b)(3) of this section.

(2) As used in this paragraph, unusual circumstances means, but only to the extent reasonably necessary to the proper processing of the particular request:

(i) The need to search for and collect the requested records from field facilities or other establishments that are separate from the office processing the request;

(ii) 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

(iii) The need for consultation, which shall be conducted with all practicable speed, with another agency having a substantial interest in the determination of the request or among two or more components of the agency having substantial subject matter interest therein.

(3) If the time limit is extended as prescribed under this section, and the request cannot be processed within the extended time limit, the Secretary shall notify the requestor, and either provide the requestor with an opportunity to limit the scope of the request so that it may be processed within the time limit, or provide the requestor an opportunity to arrange with the Secretary an alternative time frame for processing the request or a modified request.

(c) *Aggregation of requests.* Certain requests by the same requestor, or by a group of requestors acting in concert, may be aggregated:

(1) Upon the Secretary's reasonable belief that such requests actually constitute a single request, which if not aggregated would satisfy the unusual circumstances specified in paragraph (b)(2) of this section; and

(2) If the requests involve clearly related matters.

(d) *Multitrack processing of requests.* The Secretary may provide for multitrack processing of requests based on the amount of time or work involved in processing requests.

(e) *Expedited processing of requests.* (1)The Secretary will provide for expedited processing of requests for records when:

(i) The person requesting the records can demonstrate a compelling need; or

(ii) In other cases, in the Secretary's discretion.

(2) The term *compelling need* means:

(i) A failure to obtain requested records on an expedited basis under this paragraph could reasonably be expected to pose an imminent threat to the life or physical safety of an individual; or

(ii) With respect to a request made by a person primarily engaged in disseminating information, urgency to inform the public concerning actual or alleged Federal Government activity.

(3) A demonstration of compelling need by a person making a request for expedited processing must be made in the form of a statement describing the circumstances and certified by such person to be true and correct to the best of such person's knowledge and belief.

(4) The Secretary shall determine whether to provide expedited processing, and provide notice of the determination to the person making the request, within ten (10) working days after the date of the request.

(5) Appeal of the determination not to provide expedited processing should be sought in accordance with the provisions of paragraph (a)(3)(i) of section 503.32, and will be considered expeditiously.

(6) Any request granted expedited processing shall be processed as soon as practicable.

§ 503.33 Exceptions to availability of records.

(a) Except as provided in paragraph (b) of this section, the following records may be withheld from disclosure:

(1) Records specifically authorized under criteria established by an Executive order to be kept secret in the interest of national defense or foreign policy and which are in fact properly classified pursuant to such Executive order. Records to which this provision applies shall be deemed by the Commission to have been properly classified. This exception may apply to records in the custody of the Commission which have been transmitted to the Commission by another agency which has designated the record as nonpublic under an Executive order.

(2) Records related solely to the internal personnel rules and practices of the Commission.

(3) Records specifically exempted from disclosure by statute, provided that such statute:

(i) Requires that the matter be withheld from the public in such a manner as to leave no discretion on the issue, or

(ii) Establishes particular criteria for withholding or refers to particular types of matters to be withheld.

(4) Trade secrets and commercial financial information obtained from a person and privileged or confidential.

(5) Inter-agency or intra-agency memoranda or letters which would not be available by law to a party other than an agency in litigation with the Commission.

(6) Personnel and medical files and similar files, the disclosure of which would constitute a clearly unwarranted invasion of personal privacy.

(7) Records or information compiled for law enforcement purposes, but only to the extent that the production of such law enforcement records or information:

(i) Could reasonably be expected to interfere with enforcement proceedings;

(ii) Would deprive a person of a right to a fair trial or an impartial adjudication;

(iii) Could reasonably be expected to constitute an unwarranted invasion of personal privacy;

(iv) Could reasonably be expected to disclose the identity of a confidential source, including a State, local, or foreign agency or authority or any private institution which furnished information on a confidential basis, and, in the case of a record or information compiled by a criminal law enforcement authority in the course of a criminal investigation, or by an agency conducting a lawful national security intelligence investigation, information furnished by a confidential source;

(v) Would disclose techniques and procedures for law enforcement investigations or prosecutions, or would disclose guidelines for law enforcement investigations or prosecutions if such disclosure could reasonably be expected to risk circumvention of the law; or

(vi) Could reasonably be expected to endanger the life or physical safety of any individual.

(b) Nothing in this section authorizes withholding of information or limiting the availability of records to the public except as specifically stated in this part, nor shall this part be authority to withhold information from Congress.

(c) Any reasonably segregable portion of a record shall be provided to any person requesting such record after deletion of the portions which are exempt under this part. The amount of information deleted shall be indicated on the released portion of the record, unless including that indication would harm an interest protected by the exemption in this section under which the deletion is made. If technically feasible, the amount of the information deleted shall be indicated at the place in the record where such deletion is made.

(d) Whenever a request is made which involves access to records described in paragraph (a)(7)(i) of this section and the investigation or proceeding involves a possible violation of criminal law, and there is reason to believe that the subject of the investigation or proceeding is not aware of its pendency, and disclosure of the existence of the records could reasonably be expected to interfere with enforcement proceedings, the Commission may, during only such time as that circumstance continues, treat the records as not subject to the requirements of 5 U.S.C. 552 and this subpart.

§ 503.34 Annual report of public information request activity.

(a) On or before February 1 of each year, the Commission shall submit to the Attorney General of the United States, as required by the Attorney General, a report which shall cover the preceeding fiscal year and which shall include:

(1) The number of determinations made not to comply with requests for records made to the Commission under this Subpart and the reasons for each such determination;

(2)(i) The number of appeals made by persons under § 503.32, the result of such appeals, and the reason for the action upon each appeal that results in a denial of information; and

(ii) A complete list of all statutes relied upon to authorize withholding of information under § 503.33(a)(3) , a description of whether a court has upheld the Commission's decision to withhold information under each such statute, and a concise description of the scope of any information withheld;

(3) The number of requests for records pending before the Commission as of September 30 of the preceding year, and the median number of days that such requests had been pending as of that date;

(4) The number of requests for records received by the Commission and the number of requests which the Commission processed;

(5) The median number of days taken to process different types of requests;

(6) The total amount of fees collected for processing requests; and

(7) The number of full-time staff devoted to processing requests for records under this section, and total amount expended for processing such requests.

(b) Each such report shall be made available to the public at the Office of the Secretary, Federal Maritime Commission, Washington, D.C. 20573 and on the Commission's web site (www.fmc.gov).

By the Commission.

Joseph C. Polking,

Secretary.

[FR Doc. 98–26569 Filed 10–2–98; 8:45 am]

BILLING CODE 6730–01–P

FEDERAL COMMUNICATIONS COMMISSION

47 CFR Part 80

[DA 98–1935]

New Orleans Vessel Traffic Services (VTS)

AGENCY: Federal Communications Commission.

ACTION: Final rule.

SUMMARY: The Commission is re-designing the New Orleans, Louisiana VTS to the United States Coast Guard (Coast Guard) designated radio protection areas for mandatory VTS. This action is in response to a request from the Coast Guard. The re-designation of New Orleans, Louisiana as a VTS area will allow the Coast Guard to manage vessel traffic in a more efficient manner.

EFFECTIVE DATE: November 4, 1998.

FOR FURTHER INFORMATION CONTACT: James Shaffer, (202) 418–0680, Wireless Telecommunications Bureau.

SUPPLEMENTARY INFORMATION: This is a summary of the Commission's *Order*, DA 98–1935, adopted September 22, 1998, and released September 22, 1998. The full text of this *Order* is available for inspection and copying during normal business hours in the FCC Reference Center, Room 239, 1919 M Street, NW, Washington, DC. The complete text may be purchased from the Commission's copy contractor, International Transcription Service, Inc., 1231 20th Street, Washington, DC 20036, telephone (202) 857–3800.

Summary of Order

1. By this Order, pursuant to delegated authority, we modify § 80.838(a) of the Commission's Rules to reinstate New Orleans, Louisiana, to the list of the United States Coast Guard (Coast Guard) designated radio protection areas for mandatory Vessel Traffic Services (VTS) systems and to re-establish marine VHF Channels 11 (156.550 MHz), 12 (156.600 MHz), and 14 (156.700 MHz) as the VTS frequencies for New Orleans. These amendments will allow the Coast Guard to manage vessel traffic in the New Orleans area more efficiently thereby increasing navigational safety in this busy port.

2. *Background.* The Coast Guard uses VTS systems as an advisory communications service to coordinate vessel movement and prevent collisions in large, busy port areas. Vessels report, by voice, information related to position, navigation and conditions affecting navigation to the Coast Guard, which tracks the vessels' movements. VTS systems use VHF marine channels dedicated to their operations in Coast Guard-designated VTS areas. The Coast Guard requires that certain large ships, tow and tug boats, dredges, and floating platforms participate in VTS systems.

3. The Commission amended its rules in 1975, at the Coast Guard's request, to make frequencies in certain designated areas available exclusively for VTS communications. Since then, the Commission has added a number of VTS protection areas. Currently, § 80.383 of the Commission's Rules lists the following areas as Coast Guard designated VTS areas: Seattle; New York, New Orleans; Houston; Prince William Sound; Berwick Bay; Sault Ste. Marie; and San Francisco. Frequencies allotted for VTS communications are available outside of VTS designated areas for assignment for other purposes on a noninterference basis.

4. On May 1, 1996, the Commission adopted a Report and Order, 61 FR 26465 (May 28, 1996), in WT Docket No. 95–132 in which the Commission delegated authority to the Wireless Telecommunications Bureau (WTB) to designate radio protection areas for mandatory VTS and establish marine channels as VTS frequencies for these areas.

5. On July 30, 1988, the Coast Guard discontinued VTS operations in the New Orleans designated area due to budgetary constraints. As a result, the Commission noted that the VTS frequencies in the New Orleans VTS area would be available for use as permitted by § 80.373(f) of the Commission's Rules and that licensed operations in the area would be authorized on a provisional basis, conditioned on the continuation of the Coast Guard policy. It further noted that if the Coast Guard re-established the VTS system the Commission could require operations on these frequencies to cease or choose not to renew the conditional licenses. By letter dated February 11, 1998, the Coast Guard has requested that the Commission re-instate the designation of a New Orleans VTS area under § 80.383 of the Commission's Rules.

6. *Discussion.* We believe that reinstating New Orleans as a VTS area will allow the Coast Guard to manage vessel traffic in that area more efficiently and will help protect the marine environment by preventing vessel collisions and groundings. Therefore, at the Coast Guard's request, we are adding New Orleans (marine Channels 11, 12 and 14) to the Commission's list of designated radio protection areas for VTS systems specified in § 80.383. The radio protection area for New Orleans will be reinstated as the rectangle between North latitudes 27 degrees and 30 minutes and 31 degrees and 30 minutes and West longitudes 87 degrees and 30 minutes and 93 degrees. As a result, we are amending our rules to re-establish New Orleans as a Coast Guard-designated radio protection area for mandatory VTS communications and to establish marine VHF Channels 11 (156.550 MHz), 12 (156.600 MHz), and 14 (156.700 MHz) as the VTS frequencies for New Orleans.

7. We will permit private coast stations currently authorized to operate on marine Channels 11, 12 and 14 within the New Orleans VTS area to continue operation until the end of their current license term on a noninterference basis. The WTB staff will assist affected licensees in finding suitable alternative channels. No fee will be charged for affected stations that apply for modification for an alternative channel before their next license renewals.

8. Accordingly, it is ordered, that pursuant to the authority contained in sections 4(i) and 303(r) of the Communications Act of 1934, as amended, 47 U.S.C. §§ 154(i) and 303(r), and § 0.331 of the Commission's Rules, 47 CFR 0.331, Part 80 of the Commission's rules is amended as set forth and becomes effective November 4, 1998.

Federal Communications Commission.

Daniel B. Phythyon,

Chief, Wireless Telecommunications Bureau.

List of Subjects in 47 CFR Part 80

Communications equipment, Marine safety.

Rules Changes

Title 47 of the Code of Federal Regulations, Part 80, is amended as follows:

PART 80—STATIONS IN THE MARITIME SERVICES

1. The authority citation for part 80 continues to read as follows:

Authority: Secs. 4, 303, 48 Stat. 1066, 1082, as amended; 47 U.S.C. 154, 303, unless otherwise noted. Interpret or apply 48 Stat. 1064–1068, 1081–1105, as amended; 47 U.S.C. 151–155, 301–609; 3 UST 3450, 3 UST 4726, 12 UST 2377.

2. Section 80.383 is amended by revising the table in paragraph (a) to remove footnote 1 and redesignate footnotes 2 and 3 as 1 and 2 , to read as follows:

§ 80.383 Vessel Traffic Services (VTS) system frequencies.

* * * * *

(a) Assigned frequencies:

VESSEL TRAFFIC CONTROL FREQUENCIES

Carrier frequencies (MHz)	Geographic areas
* * *	* *
156.550	New York, New Orleans,[2] Houston, Prince William. Sound,[2] Berwick Bay.
156.600	New York, New Orleans,[2] Houston, San Francisco,[2] Sault Ste. Marie.[2]
156.700	New York, New Orleans,[2] Seattle, San Francisco.[1]

[1] Private coast station licenses for the use of this frequency will not be renewed beyond November 1, 1997. Continued use until expiration must be on a noninterference basis to Coast Guard VTS communications.

[2] Private coast station licenses for the use of this frequency in this area will expire at the end of the current license term or five years after the adopted date of the final rule, whichever comes first. Continued use until expiration must be on a noninterference basis to Coast Guard VTS communications.

* * * * *

[FR Doc. 98–26524 Filed 10–2–98; 8:45 am]

BILLING CODE 6712–01–P

DEPARTMENT OF COMMERCE

National Oceanic and Atmospheric Administration

50 CFR Parts 600 and 660

[Docket No. 971229312–7312–01; I.D. 092898D]

Fisheries off West Coast States and in the Western Pacific; Pacific Coast Groundfish Fishery; Trip Limit Changes

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

ACTION: Fishing restrictions; request for comments.

SUMMARY: NMFS announces changes to the trip limits in the Pacific Coast groundfish limited entry fishery for widow rockfish, the *Sebastes* complex, canary rockfish, Dover sole, longspine thornyheads, shortspine thornyheads, trawl-caught sablefish, and sablefish caught with nontrawl gear. NMFS announces changes to the trip limits in the Pacific Coast groundfish open access fishery for sablefish. NMFS also announces closures of open access fisheries: For all rockfish north of Cape Blanco, including all *Sebastes* complex species (which includes yellowtail rockfish and black rockfish); for canary rockfish coastwide; and for widow rockfish coastwide. These actions, which are authorized by the Pacific Coast Groundfish Fishery Management Plan (FMP), are intended to keep landings within the 1998 harvest guidelines and allocations for these species. In addition to these inseason trip limit changes and closures, NMFS updates the general definitions and provisions of the 1998 annual specifications to reflect regulatory amendments made in 1998.

DATES: Effective 0001 hours local time (l.t.) October 1, 1998; except effective at 0001 hours l.t. October 16, 1998, for changes to limited entry trip limits in Section IV. B. for limited entry trawl vessels in the ''B'' platoon. These changes remain in effect, unless modified, superseded, or rescinded, until the effective date of the 1999 annual specifications and management measures for the Pacific Coast groundfish fishery, which will be published in the **Federal Register**. Comments will be accepted through October 20, 1998.

ADDRESSES: Submit comments to William Stelle, Jr., Administrator, Northwest Region (Regional Administrator), NMFS, 7600 Sand Point Way NE., Bldg. 1, Seattle WA 98115–0070; or William Hogarth, Administrator, Southwest Region, NMFS, 501 West Ocean Blvd., Suite 4200, Long Beach, CA 90802–4213.

FOR FURTHER INFORMATION CONTACT: Katherine King or Yvonne deReynier, Northwest Region, NMFS, 206–526–6140; or James Morgan, Southwest Region, NMFS, 526–980–4000.

SUPPLEMENTARY INFORMATION: The following changes to current management measures were recommended by the Pacific Fishery Management Council (Council) at its September 14–18, 1998, meeting in Sacramento, CA, in consultation with the States of Washington, Oregon, and California.

Limited Entry Fishery

Widow rockfish. Currently widow rockfish are managed under a cumulative limit of 15,000 lb (6,804 kg) per vessel, per month. The best available information at the September Council meeting indicated that the limited entry fishery would not be able to harvest its 4276 mt allocation by the end of the year if the monthly cumulative limit is not increased. To allow the fishery full access to its widow rockfish allocation, the Council recommended that the current monthly cumulative trip limit of 15,000 lb (6,804 kg) be increased to 19,000 lb (8,618 kg).

Sebastes complex. The *Sebastes* complex means all rockfish managed by the FMP except Pacific ocean perch, widow rockfish, shortbelly rockfish, and shortspine and longspine thornyheads.

Currently the *Sebastes* complex is managed with a cumulative trip limit of 20,000 lb (9,072 kg) coastwide, per vessel, per month. Within that monthly cumulative trip limit for the *Sebastes* complex, no more than 6,500 lb (2,948 kg) may be yellowtail rockfish taken and retained north of Cape Mendocino; no more than 1,000 lb (454 kg) may be bocaccio taken and retained south of Cape Mendocino; and no more than 7,500 lb (3,402 kg) may be canary rockfish coastwide.

The best available information at the September Council meeting indicated that the 4,677 mt limited entry allocation for the *Sebastes* complex in the Eureka-Monterey-Conception area would be reached by October 22, 1998, if the rate of landings is not curtailed. Therefore, the Council recommended that the current monthly cumulative trip limit of 20,000 lb (9,072 kg) be reduced to 15,000 lb (6,804 kg) south of Cape Mendocino. The monthly cumulative limit north of Cape Mendocino would

remain at 20,000 lb (9,072 kg), which means that *Sebastes* limits north and south of Cape Mendocino would again be different, as they were in the months of January through June of this year. A vessel fishing for groundfish in an area with more restrictive trip limits is subject to those more restrictive limits for the duration of the applicable trip limit period.

The Council also recommended a change to the trip limit for canary rockfish, which is part of the *Sebastes* complex. The best available information at the September Council meeting indicated that the 953 mt limited entry allocation for canary rockfish would be reached by October 1, 1998. The Council expected that, ven if all landings of canary rockfish were prohibited from October 1, 1998, through the end of the year, fishers would still have to discard at least 500 lb (227 kg) per month of incidentally caught canary rockfish. Because incidentally caught canary rockfish are dead when brought to the surface, requiring fishers to discard incidentally caught fish would not reduce fishing mortality. For this reason, the Council decided to exceed the 1998 limited entry allocation for canary rockfish by a small amount, by allowing a small monthly trip limit of 500 lb (227 kg) effective October 1, 1998, so that fishers would not have to discard all of their incidentally caught canary rockfish. The Council expects that this 500 lb (227 kg) monthly trip limit is low enough to discourage fishers from targeting canary rockfish.

DTS complex. ''DTS complex'' means Dover sole, longspine thornyheads, shortspine thornyheads, and trawl-caught sablefish.

Currently, the DTS complex is managed under monthly cumulative trip limits: For Dover sole, 11,000 lb (4,990 kg); for longspine thornyheads, 6,000 lb (2,722 kg); for shortspine thornyheads, 2,500 lb (1,134 kg); and for trawl-caught sablefish, 3,000 lb (1,361 kg).

The best available information at the September Council meeting indicated that, within the DTS complex, the limited entry fishery would not be able to harvest its allocations for Dover sole (8,955 mt), longspine thornyheads (3,733 mt), and trawl-caught sablefish (2,282 mt) by the end of the year if the monthly cumulative limits for those species are not increased. The best available information at the September Council meeting also indicated that, within the DTS complex, the limited entry allocation of 1,193 mt for shortspine thornyheads would be reached by November 27, 1998, if the rate of landings for this species is not curtailed. The Council recommended the following trip limit changes for the DTS complex: The monthly cumulative trip limit for Dover sole of 11,000 lb (4,990 kg) would be increased to 18,000 lb (8,165 kg); the monthly cumulative triplimit for longspine thornyheads of 6,000 lb (2,722 kg) would be increased to 7,500 lb (3,402 kg); the monthly cumulative trip limit for shortspine thornyheads of 2,500 lb (1,134 kg) would be reduced to 1,500 lb (680 kg); the monthly cumulative trip limit for trawl-caught sablefish of 3,000 lb (1,361 kg) would be increased to 5,000 lb (2,268 kg).

Nontrawl sablefish north of 36°00' N. lat. The limited entry, nontrawl or ''fixed'' gear sablefish fishery north of 36°00' N. lat. is managed with a primary season consisting of two openings (regular and mop-up), during which the majority of the limited entry, fixed gear sablefish allocation is taken for the year. Outside the regular and mop-up seasons, there is a small daily trip limit fishery to allow fixed gear vessels to make incidental sablefish landings throughout the year. Currently, the limited entry, fixed gear sablefish fishery north of 36°00' N. lat. is managed with a 300–lb (136–kg) daily trip limit, and a cumulative limit of 1,800 lb (816 kg) per 2-month period (excluding any harvest in the regular or mop-up seasons).

The best available information at the September Council meeting indicated that the limited entry, nontrawl fishery for sablefish would not achieve its 1,652 mt allocation by the end of the year if the fishery were to continue at its current two-month cumulative limit of 1,800 lb (816 kg). For this reason, the Council recommended increasing the cumulative trip limit for the September through October period to 2,700 lb (1,225 kg), effective October 1, 1998. Fishers may not land the additional 900 lb (408 kg) over the initial September through October cumulative limit of 1,800 lb (816 kg) until after October 1, 1998 (October 16, 1998, for vessels in the ''B'' platoon).

The Council's final 1998 meeting will be in November, at which time the Council may wish to make further inseason adjustments to the limited entry, fixed gear sablefish cumulative limit. To allow for inseason action after its November meeting, the Council recommended removing the 2-month cumulative limit provision for limited entry fixed gear sablefish north of 36°00' N. lat. after October 31, 1998. Therefore, limited entry, fixed gear sablefish landings north of 36°00' N. lat. in the months of November and December will be managed under separate, 1-month cumulative limits. Beginning November 1, 1998, sablefish landed in the limited entry, fixed gear fishery north of 36°00' N. lat. will be managed under a cumulative limit of 1,500 lb (680 kg) per month. The daily trip limit of 300 lb (136 kg) will not change.

Open Access Fishery

Widow rockfish. Currently, the open access fishery for widow rockfish is managed under a cumulative trip limit of 3,000 lb (1,361 kg) per vessel, per month. This limit was reduced from 15,000 lb (6,804 kg) on July 1, following the Council's June meeting, at which time the best available information indicated that the open access allocation of 158 mt would be reached some time between August and November 1998. At the September Council meeting, the best available information indicated that the open access allocation for widow rockfish had been reached on July 29. Therefore, at its September meeting, the Council recommended prohibiting all open access landings of widow rockfish coastwide at the beginning of the next cumulative trip limit period, 3 October 1, 1998. This prohibition applies to all open access gears, including exempted trawl fisheries.

Sebastes complex. Currently, the open access fishery for *Sebastes* complex species is managed with a cumulative limit of 33,000 lb (14,969 kg) coastwide per vessel, per month. Within the *Sebastes* complex, there are also individual cumulative trip or per trip limits for yellowtail rockfish, bocaccio, canary rockfish, and black rockfish. The best available information at the September Council meeting indicated that the 651 mt open access allocation for the *Sebastes* complex in the Vancouver-Columbia area (north of Cape Blanco, OR, 42°50' N. lat.) was reached on September 8, 1998. Therefore, the Council recommended prohibiting all open access landings of *Sebastes* complex species north of Cape Blanco after September 30, 1998. This prohibition applies to all open access gears, including exempted trawl fisheries. South of Cape Blanco and north of Cape Mendocino, open access trip limits for the *Sebastes* complex are unchanged.

Within the *Sebastes* complex, yellowtail rockfish has been managed with a cumulative limit of 6,500 lb (2,928 kg) per vessel, per month north of Cape Mendocino. The best available information at the September Council meeting indicated that the 299 mt open access allocation for yellowtail rockfish in the Vancouver-Columbia area was reached on August 10, 1998. The Council recommended prohibiting all

open access landings of yellowtail rockfish north of Cape Blanco after September 30, 1998. This prohibition applies to all open access gears, including exempted trawl fisheries. South of Cape Blanco and north of Cape Mendocino, open access trip limits for yellowtail rockfish are unchanged.

Also within the *Sebastes* complex, the open access monthly trip limit for canary rockfish at the beginning of 1998 was 7,500 lb (3,402 kg). At the June Council meeting, the Council noted that open access landings of canary rockfish were proceeding at an unusually rapid rate, and recommended curtailing those landings by setting a 200–lb (91–kg) monthly cumulative trip limit in place on July 1, 1998. The best available information at the September Council meeting indicated that the trip limit reduction had been made too late, and the open access fishery had achieved its 77 mt allocation for canary rockfish on July 4, 1998. As a result, the Council recommended prohibiting all open access landings of canary rockfish coastwide at the beginning of the next cumulative trip limit period, October 1, 1998. This prohibition applies to all open access gears, including exempted trawl fisheries.

Other rockfish. In making the above recommendations on rockfish closures, the Council acknowledged that open access fisheries could not continue to fish for other rockfish species (Pacific ocean perch and thornyheads in the exempted trawl fishery) north of Cape Blanco without resulting in unacceptable levels of incidental harvest and discard of the species the Council was trying to protect. The Council, therefore, recommended that all open access rockfish fisheries be closed north of Cape Blanco.

DTS complex. ''DTS complex'' means Dover sole, longspine thornyheads, shortspine thornyheads, and trawl-caught sablefish. Currently, the open access monthly cumulative limit for Dover sole is 11,000 lb (4,990 kg). Currently, thornyheads may not be landed north of Point Conception by open access fishers, except that fishers participating in the pink shrimp trawl fishery may land up to 100 lb (45 kg) of thornyheads per trip. Open access sablefish landings by exempted trawl, which are currently under a monthly cumulative limit of 3,000 lb (1,361 kg), are managed separately from open access sablefish landings by other gears. Open access limits on Dover sole and exempted trawl-caught sablefish have been set equal to limited entry cumulative monthly limits on those species. Therefore, on October 1, 1998, the Dover sole cumulative monthly limit of 11,000 lb (4,990 kg) will increase to 18,000 lb (8,165 kg), and the monthly cumulative trip limit for trawl-caught sablefish of 3,000 lb (1,361 kg) will increase to 5,000 lb (2,268 kg).

Sablefish, except exempted trawl. Currently the open access sablefish fishery north of 36°00' N. lat. is managed with a 300–lb (136–kg) daily trip limit and a cumulative limit of 1,800 lb (816 kg) per 2-month period. The best available information at the September Council meeting indicated that the open access fishery for sablefish would not achieve its 278 mt allocation by the end of the year if the fishery were to continue at its current two-month cumulative limit of 1,800 lb (816 kg). For this reason, the Council recommended increasing the cumulative trip limit for the September through October period to 2,700 lb (1,225 kg), effective October 1, 1998. Fishers may not land the additional 900 lb (408 kg) over the initial September through October cumulative limit of 1,800 lb (816 kg) until after October 1, 1998 (October 16, 1998, for vessels in the ''B'' platoon). This limit matches the limited entry, nontrawl gear limit for sablefish and applies to all open access gears, except exempted trawl fisheries.

The Council's final 1998 meeting will be in November, at which time the Council may wish to make further inseason adjustments to the open access sablefish cumulative limit. To allow inseason action after its November meeting, the Council recommended removing the 2-month cumulative limit provision for sablefish landed by open access fishers north of 36°00' N. lat. after October 31, 1998. Therefore, open access landings of sablefish north of 36°00' N. lat. in the months of November and December will be managed under separate, 1-month cumulative limits. Beginning November 1, 1998, sablefish landed in the open access fishery north of 36°00' N. lat. will be managed under a cumulative limit of 1,500 lb (680 kg) per month. The daily trip limit of 300 lb (136 kg) will not change. This limit matches the limited entry, nontrawl gear limit for sablefish and applies to all open access gears, except exempted trawl fisheries.

Additional Changes to Annual Specifications

With this document, NMFS updates portions of the general definitions and provisions of the 1998 annual specifications and management measures (63 FR 419, January 6, 1998). These are minor housekeeping changes that update the definitions and provisions to reflect changes in codified groundfish regulations (50 CFR part 660) made since the initial publication of the 1998 annual specifications and management measures.

NMFS Action

For the reasons stated above, NMFS concurs with the Council's recommendations and announces the following changes to the 1998 annual management measures (63 FR 419, January 6, 1998, as further amended at 63 FR 24970, May 6, 1998; 63 FR 36612, July 7, 1998; and 63 FR 45966, August 28, 1998).

1. In Section IV., under *A. General Definitions and Provisions*, paragraphs (1)(c)(i), (1)(c)(ii), and (13) are revised, (16)(c), (d), (e), and (f) are renumbered respectively as, (16)(d), (e), (f), and (g), and a new (16)(c) is added to read as follows:

A. General Definitions and Provisions

* * * * *

(1) * * *

(c) * * *

(i) *Limited entry fishery*. On September 1, 1998, all limited entry periods became monthly cumulative limit periods, except for the fixed gear sablefish limited entry and open access fixed gear sablefish fisheries. These monthly cumulative limit periods are considered the ''major'' cumulative limit periods for purposes of restrictions to the frequency of limited entry permit transfers codified at 50 CFR 660.333(c)(1).

(ii) *Open access fishery*. Unless otherwise specified (as for sablefish north of 36° N. lat. and lingcod), cumulative trip limits in the open access fishery apply to 1-month periods.

* * * * *

(13) 50 CFR 660.306 (h), effective July 27, 1998, makes it unlawful for any person to ''fail to sort, prior to the first weighing after off loading, those groundfish species or species groups for which there is a trip limit, size limit, quota, or harvest guideline, if the vessel fished or landed in an area during a time when such trip limit, size limit, harvest guideline, or quota applied.'' This provision applies to both the limited entry and open access fisheries.

* * * * *

(16) * * *

(c) Cape Blanco, OR—42°50' N. lat.

* * * * *

2. In Section IV., under *B. Limited Entry Fishery*, paragraphs (1), (2)(b), (4)(c)(i), and (4)(d)(ii)(A) are revised to read as follows:

B. Limited Entry Fishery

(1) *Widow Rockfish* (commonly called brownies). The cumulative trip limit for widow rockfish is 19,000 lb (8,618 kg) per vessel, per month.

(2) * * *

(b) *Cumulative trip limits*. The monthly cumulative trip limit for the *Sebastes* complex is 20,000 lb (9,072 kg) per vessel north of Cape Mendocino, and 15,000 lb (6,804 kg) per vessel south of Cape Mendocino. Within the cumulative trip limit for the *Sebastes* complex: no more than 6,500 lb (2,948 kg) cumulative per month may be yellowtail rockfish taken and retained north of Cape Mendocino; no more than 1,000 lb (454 kg) cumulative per month may be bocaccio taken and retained south of Cape Mendocino, and; no more than 500 lb (227 kg) cumulative per month may be canary rockfish coastwide.

* * * * *

(4) * * *

(c) * * *

(i) The monthly cumulative trip limits for species in the Dover sole, thornyhead, and trawl-caught sablefish complex are: for Dover sole, 18,000 lb (8,165 kg); for longspine thornyheads, 7,500 lb (3,402 kg); for shortspine thornyheads, 1,500 lb (680 kg); for trawl-caught sablefish, 5,000 lb (2,268 kg).

* * * * *

(d) * * *

(ii) * * *

(A) The daily trip limit for sablefish taken and retained with nontrawl gear north of 36°00' N. lat. is 300 lb (136 kg), which counts toward a cumulative trip limit of 2,700 lb (1,225 kg) during the September 1, 1998 through October 31, 1998 period. Beginning November 1, 1998, the 300 lb daily trip limit for sablefish taken and retained with nontrawl gear north of 36°00' N. lat. counts toward a cumulative trip limit of 1,500 lb (680 kg) per month.

* * * * *

3. In Section IV., under *C. Trip Limits in the Open Access Fishery*, paragraphs (1)(a)(i), (1)(a)(ii), (1)(b)(i), (1)(c), (1)(d), (1)(e), (1)(e)(i), (1)(e)(ii)(A), (1)(e)(iii), (1)(e)(iv), (2)(a)(i), (2)(b), (4), (5), and (6) are revised to read as follows:

C. Trip Limits in the Open Access Fishery

* * * * *

(1) * * *

(a) * * *

(i) *North of Cape Blanco*. Rockfish may not be taken and retained, possessed or landed by any open access gear, including exempted trawl gear, north of Cape Blanco.

(ii) *South of Cape Blanco*. South of Cape Blanco the trip limit for rockfish taken with hook-and-line or pot gear is 10,000 lb (4,536 kg) per vessel per fishing trip. Rockfish taken under this trip limit count toward cumulative trip limits.

(b) * * *

(i) *North of Pt. Conception*. Thornyheads (shortspine and longspine) may not be taken and retained, possessed, or landed north of Pt. Conception, except for a daily trip limit of 100 lb (45 kg) that applies to vessels engaged in fishing for pink shrimp south of Cape Blanco.

* * * * *

(c) *Widow rockfish*. Widow rockfish may not be taken and retained, possessed, or landed by any open access gear, including exempted trawl gear, coastwide.

(d) *POP*. North of Cape Blanco, POP may not be taken and retained, possessed, or landed by any open access gear, including exempted trawl gear. South of Cape Blanco, the monthly cumulative limit for POP is 4,000 lb (1,814 kg).

(e) *Sebastes complex*. North of Cape Blanco, *Sebastes* complex species may not be taken and retained, possessed, or landed by any open access gear, including exempted trawl gear. The monthly cumulative limit south of Cape Blanco for the *Sebastes* complex is 33,000 lb (14,969 kg). The individual trip limits for species in the *Sebastes* complex in paragraph C.(1) are counted toward monthly limits for the *Sebastes* complex or rockfish, as applicable, and also apply to exempted trawl gear, unless otherwise specified.

(i) *Yellowtail rockfish*. North of Cape Blanco, yellowtail rockfish may not be taken and retained, possessed, or landed by any open access gear, including exempted trawl gear. South of Cape Blanco and north of Cape Mendocino, the monthly cumulative limit for yellowtail rockfish is 6,500 lb (2,948 kg).

(ii) * * *

(A) *All open access gear except setnets or trammel nets*. For all open access gear except setnets or trammel nets, bocaccio may not be taken and retained, possessed or landed north of Cape Blanco. South of Cape Mendocino, the monthly cumulative limit for bocaccio is 1,000 lb (454 kg), of which no more than 500 lb (227 kg) per trip may be taken and retained with hook-and-line or pot gear.

* * * * *

(iii) *Canary rockfish*. Canary rockfish may not be taken and retained, possessed or landed by any open access gear, including exempted trawl gear, coastwide.

(iv) *Black rockfish*. Black rockfish may not be taken and retained, possessed or landed by any open access gear, including exempted trawl gear, north of Cape Blanco.

(2) * * *

(a) * * *

(i) *North of 36°00' N. lat*. (A) North of 36°00' N. lat., the daily trip limit for sablefish is 300 lb (136 kg), which counts toward a cumulative trip limit of 2,700 lb (1,225 kg) during the September 1, 1998 through October 31, 1998 period. (B) Beginning November 1, the 300 lb (136 kg) daily trip limit for sablefish taken and retained with nontrawl gear north of 36°00' N. lat. counts toward a cumulative trip limit of 1,500 lb (680 kg) per month.

* * * * *

(b) *Exempted trawl gear*. The trawl-caught sablefish monthly limit of 5,000 lb (2,268 kg) applies to sablefish taken and retained with exempted trawl gear.

* * * * *

(4) *Dover sole*. The monthly trip limit for Dover sole is 18,000 lb (8,165 kg), and applies to all open access gear.

(5) *Groundfish taken by shrimp or prawn trawl*. The daily trip limits, which count toward the trip limit for groundfish, are: For sablefish coastwide, 300 lb (136 kg); and for thornyheads south of Point Conception, 50 lb (23 kg). Limits and closures in paragraphs IV.C(1), C(2)(b), (3), and (4) also apply.

* * * * *

(6) *Groundfish taken by California halibut or sea cucumber trawl*. The trip limit for a vessel participating in the California halibut fishery or in the sea cucumber fishery south of Point Arena, CA (38°57'30'' N. lat.) is 500 lb (227 kg) of groundfish per vessel per fishing trip. The daily trip limits, which count toward the trip limit for groundfish, are: For sablefish, 300 lb (136 kg); and for thornyheads south of Point Conception, 50 lb (23 kg). The limits and closures in paragraphs IV.C(1), C(2)(b), (3), and (4) are in effect where applicable south of Point Arena.

* * * * *

Classification

These actions are authorized by the regulations implementing the FMP. The determination to take these actions is based on the most recent data available. Because of the need for immediate action to implement these changes at the beginning of October 1998, and because the public had an opportunity to comment on the action at the September 1998 Council meeting, NMFS has determined that good cause exists for this document to be published without affording a prior opportunity for public comment or a 30-day delayed effectiveness period. These actions are taken under the authority of 50 CFR 660.323(b)(1) and are exempt from review under E.O. 12866.

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

Dated: September 30, 1998.

Bruce Morehead,

Acting Director, Office of Sustainable Fisheries, National Marine Fisheries Service.

[FR Doc. 98–26640 Filed 9–30–98; 4:15 pm]

BILLING CODE 3510–22–F

DEPARTMENT OF COMMERCE

National Oceanic and Atmospheric Administration

50 CFR Part 660

[Docket No. 980429110–8110–01; I.D. 091198B]

Fisheries Off West Coast States and in the Western Pacific; West Coast Salmon Fisheries; Ocean Recreational Salmon Fisheries; Closure and Reopening; Queets River, Washington, to Cape Falcon, Oregon

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

ACTION: Closures and reopenings; request for comments.

SUMMARY: NMFS announces the closure of the ocean recreational salmon fishery from Queets River to Leadbetter Point, Washington, effective at midnight, August 16, 1998, and the reopening of the ocean recreational salmon fisheries from Queets River, Washington, to Cape Falcon, Oregon, for one day on September 3, 1998. The area from 0 to 3 miles (4.8 km) off shore that was previously closed to fishing in the subarea from Queets River to Leadbetter Point, Washington, opened for this one-day fishery. These actions were necessary to conform to the 1998 management measures and are intended to ensure conservation of coho and chinook salmon as well as to maximize the harvest of coho and chinook salmon without exceeding the ocean share allocated to the recreational fishery in these subareas.

DATES: Closure effective 2400 hours local time (l.t.), August 16, 1998. Partial reopening and recision of closed area (Queets River to Leadbetter Point, Washington) effective 0001 hours l.t. until 2400 hours l.t., September 3, 1998. Comments will be accepted through October 19, 1998.

ADDRESSES: Comments may be mailed to William Stelle, Jr., Regional Administrator, Northwest Region, National Marine Fisheries Service, NOAA, 7600 Sand Point Way NE., Building 1, Seattle, WA 98115–0070. Information relevant to this document is available for public review during business hours at the office of the Regional Administrator, Northwest Region, NMFS.

FOR FURTHER INFORMATION CONTACT: William L. Robinson, 206–526–6140.

SUPPLEMENTARY INFORMATION: Regulations governing the ocean salmon fisheries at 50 CFR 660.409(a)(1) state that, when a quota for the commercial or the recreational fishery, or both, for any salmon species in any portion of the fishery management area is projected by the Regional Administrator to be reached on or by a certain date, NMFS will, by an inseason action issued under 50 CFR 660.411, close the commercial or recreational fishery, or both, for all salmon species in the portion of the fishery management area to which the quota applies as of the date the quota is projected to be reached.

In the 1998 management measures for ocean salmon fisheries (63 FR 24973, May 6, 1998), NMFS announced that the recreational fishery in the area from Queets River to Leadbetter Point opened for all salmon on August 3, 1998, through the earlier of September 24, 1998, or 7,400 coho salmon subarea quota, with an inseason management guideline of 2,350 chinook salmon, and Leadbetter Point to Cape Falcon opened for all salmon on August 3, 1998, through the earlier of September 24, 1998, or 7,000 coho salmon subarea quota, with an inseason management guideline of 1,050 chinook salmon.

On August 14, 1998, the best available information indicated that the catch and effort data and projections supported closure from Queets River to Leadbetter Point, Washington at midnight, August 16, 1998, in order to prevent the catch in the subarea from exceeding its quota. The estimated catch for the recreational fishery in this subarea through August 13, 1998, was 5,843 fish compared to the 7,400 coho salmon quota. The projected catch for August 14–16, 1998, was 1,000–1,200 fish. The projected catch was close enough to the quota that all parties agreed not to add another day of fishing to capture the 100–500 coho salmon remaining in the quota because the weekend fishing effort on August 16, 1998, could have been higher than expected and could have exceeded the 7,400 fish quota. As of August 17, 1998, the estimated catch for the recreational fishery in this subarea through August 16, 1998, was 6,675 fish, with 725 coho salmon remaining in the quota.

As of August 11, 1998, the estimated catch through the August 9, 1998, weekend fishing effort on August 16, 1998, closure for Leadbetter Point, Washington, to Cape Falcon, Oregon, was 6,109 fish compared to the 7,000 coho salmon quota, with 962 coho remaining (63 FR 46701, September 2, 1998).

On August 17, 1998, the two subarea fisheries from Queets River, Washington, to Cape Falcon, Oregon, were reevaluated. The best available information indicated that the catch and effort data and projections supported reopening of these two ocean recreational fisheries for one day on Thursday, September 3, 1998, in order to maximize harvest within the quotas. The decision was based on the following: The slightly higher estimates of coho salmon left in each subarea's quota than had been projected when the areas were closed, the proposed additional fishing date not being on the weekend, the fact that the buoy 10 fishery would be closed at that time, and the fact that coho salmon catch rates typically decrease and chinook salmon catch rates increase later in the season. There are more chinook salmon available in the season catch guidelines compared to what is remaining in the coho salmon quota. Based on the above information, NMFS has concluded that the chances of exceeding each subarea's quota is low. The area from 0 to 3 miles (4.8 km) off shore that was previously closed to fishing in the subarea from Queets River to Leadbetter Point, Washington, will be opened for this one-day fishery. This will also tend to increase the chinook salmon catch rate, because chinook salmon are typically found closer to shore than coho salmon.

Reopenings of the fishery are authorized by 50 CFR 660.409(a)(2), and recision of an area of closure is authorized by 50 CFR 660.409(b)(1)(v). The Regional Administrator consulted with representatives of the Pacific Fishery Management Council, the Washington Department of Fish and Wildlife, and the Oregon Department of Fish and Wildlife. The States of Washington and Oregon manage the recreational fisheries in state waters adjacent to this area of the exclusive economic zone in accordance with this Federal action. As provided by the inseason action procedures of 50 CFR 660.411, actual notice to fishermen of these actions was given prior to 2400 hours l.t., August 16, 1998, for the closure, and prior to 0001 hours l.t., September 3, 1998, for the reopenings by telephone hotline number 206–526–6667 and 800–662–9825 and by U.S. Coast Guard Notice to Mariners broadcasts on Channel 16 VHF-FM and 2182 kHz. Because of the need for immediate action to manage the fishery to achieve but not exceed the quota, NMFS has determined that good cause exists for this action to be issued

without affording a prior opportunity for public comment. This action does not apply to other fisheries that may be operating in other areas.

Classification

This action is authorized by 50 CFR 660.409 and 660.411 and is exempt from review under E.O. 12866.

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

Dated: September 29, 1998.

Bruce Morehead,

Acting Director, Office of Sustainable Fisheries, National Marine Fisheries Service.

[FR Doc. 98–26628 Filed 10–2–98; 8:45 am]

BILLING CODE 3510–22–F

DEPARTMENT OF COMMERCE

National Oceanic and Atmospheric Administration

50 CFR Part 679

[Docket No. 971208297–8054–02; I.D. 092998C]

Fisheries of the Exclusive Economic Zone Off Alaska; Shortraker/Rougheye Rockfish in the Eastern Regulatory Area of the Gulf of Alaska

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

ACTION: Closure.

SUMMARY: NMFS is prohibiting retention of shortraker/rougheye rockfish in the Eastern Regulatory Area of the Gulf of Alaska (GOA). NMFS is requiring that catch of shortraker/rougheye rockfish in this area be treated in the same manner as prohibited species and discarded at sea with a minimum of injury. This action is necessary because the amount of the 1998 total allowable catch (TAC) of shortraker/rougheye rockfish in this area has been reached.

DATES: Effective 1200 hrs, Alaska local time (A.l.t.), October 1, 1998, until 2400 hrs, A.l.t., December 31, 1998.

FOR FURTHER INFORMATION CONTACT: Mary Furuness, 907–586-7228.

SUPPLEMENTARY INFORMATION: NMFS manages the groundfish fishery in the GOA exclusive economic zone according to the Fishery Management Plan for the Groundfish Fishery of the Gulf of Alaska (FMP) prepared by the North Pacific Fishery Management Council under authority of the Magnuson-Stevens Fishery Conservation and Management Act. Regulations governing fishing by U.S. vessels in accordance with the FMP appear at subpart H of 50 CFR part 600 and CFR part 679.

In accordance with § 679.20(c)(3)(iii), the Final 1998 Harvest Specifications of Groundfish for the GOA (63 FR 12027, March 12, 1998) established the amount of the 1998 TAC of shortraker/rougheye rockfish in the Eastern Regulatory Area of the GOA as 460 metric tons.

In accordance with § 679.20(d)(2), the Administrator, Alaska Region, NMFS, has determined that the amount of the 1998 TAC for shortraker/rougheye rockfish in the Eastern Regulatory Area of the GOA has been reached. Therefore, NMFS is requiring that further catches of shortraker/rougheye rockfish in the Eastern Regulatory Area of the GOA be treated as prohibited species in accordance with § 679.21(b).

Classification

This action responds to the best available information recently obtained from the fishery. It must be implemented immediately to prevent overharvesting the amount of the 1998 TAC for shortraker/rougheye rockfish in the Eastern Regulatory Area of the GOA. A delay in the effective date is impracticable and contrary to the public interest. The fleet has taken the amount of the 1998 TAC for shortraker/rougheye rockfish in the Eastern Regulatory Area. Further delay would only result in overharvest. NMFS finds for good cause that the implementation of this action cannot be delayed for 30 days. Accordingly, under 5 U.S.C. 553(d), a delay in the effective date is hereby waived.

This action is required by § 679.20 and is exempt from review under E.O. 12866.

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

Dated: September 30, 1998.

Richard W. Surdi,

Acting Director, Office of Sustainable Fisheries, National Marine Fisheries Service.

[FR Doc. 98–26615 Filed 9–30–98; 3:13 pm]

BILLING CODE 3510–22–F

Proposed Rules

Federal Register
Vol. 63, No. 192
Monday, October 5, 1998

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

DEPARTMENT OF TRANSPORTATION

Federal Aviation Administration

14 CFR Part 71

[Airspace Docket No. 98–ANM–08]

Proposed Revision of Class E Airspace; Leadville, CO

AGENCY: Federal Aviation Administration (FAA), DOT.

ACTION: Notice of proposed rulemaking (NPRM).

SUMMARY: This proposal would amend the Class E airspace at Leadville, CO to provide additional controlled airspace to accommodate the development of a new Standard Instrument Approach Procedure (SIAP) utilizing the Global Positioning System (GPS) at the Lake County Airport. This new SIAP requires airspace extending upward from 700 feet above the surface in order to contain Instrument Flight Rules (IFR) procedures within controlled airspace.

DATES: Comments must be received on or before November 19, 1998.

ADDRESSES: Send comments on the proposal in triplicate to: Manager, Airspace Branch, ANM–5520, Federal Aviation Administration, Docket No. 98–ANM–08, 1601 Lind Avenue SW, Renton, Washington 98055–4056.

The official docket may be examined in the Office of the Assistant Chief Counsel for the Northwest Mountain Region at the same address.

An informal docket may also be examined during normal business hours in the office of the Manager, Air Traffic Division, Airspace Branch, at the address listed above.

FOR FURTHER INFORMATION CONTACT: Dennis Ripley, ANM–520.6, Federal Aviation Administration, Docket No. 98–ANM–09, 1601 Lind Avenue SW, Renton, Washington 98055–4056; telephone number: (425) 227–2527.

SUPPLEMENTARY INFORMATION:

Comments Invited

Interested parties are invited to participate in this proposed rulemaking by submitting such written data, views, or arguments, as they may desire. Comments that provide the factual basis supporting the views and suggestions presented are particularly helpful in developing reasoned regulatory decisions on the proposal. Comments are specifically invited on the overall regulatory, aeronautical, economic, environmental, and energy related aspects of the proposal. Communications should identify the airspace docket number and be submitted in triplicate to the address listed above. Commenters wishing the FAA to acknowledge receipt of their comments on this notice must submit with those comments a self-addressed, stamped postcard on which the following statement is made: ''Comments to Airspace Docket No. 98–ANM–08.'' The postcard will be date/time stamped and returned to the commenter. All communications received on or before the specified closing date for comments will be considered before taking action on the proposed rule. The proposal contained in this notice maybe changed in the light of comments received. All comments submitted will be available for examination at the address listed above both before and after the closing date for comments. A report summarizing each substantive public contact with FAA personnel concerned with this rulemaking will be filed in the docket.

Availability of NPRM's

Any person may obtain a copy of this NPRM by submitting a request to the Federal Aviation Administration, Airspace Branch, ANM–520, 1601 Lind Avenue SW, Renton, Washington 98055–4056. Communications must identify the notice number of this NPRM. Persons interested in being placed on a mailing list for future NPRM's should also request a copy of Advisory Circular No. 11–2A, which describes the application procedure.

The Proposal

The FAA is considering an amendment to Title 14 Code of Federal Regulations, part 71 (14 CFR part 71) to revise Class E airspace at Leadville, CO. This amendment would provide additional airspace necessary to fully encompass the GPS Runway 16 SIAP to the Lake County Airport, Leadville, CO. This amendment proposes to add a 700-foot Class E area encompassing the airspace around the Lake County Airport in order to accommodate the landing procedures for the SIAP. The holding pattern is required to meet necessary airspace criteria for aircraft transitioning between the terminal and en route environments. The FAA establishes Class E airspace extending upward from 700 feet AGL where necessary to contain aircraft transitioning between the terminal and en route environments. The intended effect of this proposal is designed to provide safe and efficient use of the navigable airspace and to promote safe flight operations under IFR at the Lake County Airport and between the terminal and en route transition stages.

The area would be depicted on aeronautical charts for pilot reference. The coordinates for this airspace docket are based on North American Datum 83. Class E airspace areas extending upward from 700 feet or more above the surface of the earth, are published in Paragraph 6005 of FAA Order 7400.9E dated September 10, 1998, and effective September 16, 1998, which is incorporated by reference in 14 CFR 71.1. The Class E airspace designation listed in this document would be published subsequently in the Order.

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

List of Subjects in 14 CFR Part 71

Airspace, Incorporation by reference, Navigation (air).

The Proposed Amendment

In consideration of the foregoing, the Federal Aviation Administration proposes to amend 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 14 CFR 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 the Federal Aviation Administration Order 7400.9F, Airspace Designations and Reporting Points, dated September 10, 1998, and effective September 16, 1998, is amended as follows:

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

* * * * *

ANM CO E5 Leadville, CO [Revised]

Lake County Airport, CO
(Lat. 39°13′13″N., long. 106°18′58″ W.)

That airspace extending upward from 700 feet above the surface bounded by a line beginning at lat. 39°33′00″ N., long. 106°30′00″ W.; to lat. 39°33′00″ N., long. 106°00′00″ W.; to lat. 38°51′00″ N., long. 106°00′00″ W.; to lat. 38°51′00″ N., long. 106°15′00″ W.; to lat. 39°09′00″ N., long. 106°30′00″ W.; to point of beginning.

* * * * *

Issued in Seattle, Washington, on September 14, 1998.

Glenn A. Adams III,

Assistant Manager, Air Traffic Division, Northwest Mountain Region.

[FR Doc. 98–26606 Filed 10–2–98; 8:45 am]

BILLING CODE 4910–13–M

DEPARTMENT OF TRANSPORTATION

Federal Aviation Administration

14 CFR Part 71

[Airspace Docket No. 98–AEA–33]

Proposed Establishment of Class E Airspace; Waynesburg, PA

AGENCY: Federal Aviation Administration (FAA), DOT.

ACTION: Notice of proposed rulemaking.

SUMMARY: This proposed rule would establish Class E airspace at Waynesburg, PA. The development of a new Standard Instrument Approach Procedure (SIAP), Helicopter Point In Space Approach based on the Global Positioning System (GPS), and serving the Greene County Airport, has made this proposal necessary. The intended effect of this proposal is to provide adequate controlled airspace for Instrument Flight Rules (IFR) helicopter operations to the airport. The area would be depicted on aeronautical charts for pilot reference.

DATES: Comments must be received on or before November 4, 1998.

ADDRESSES: Send comments on the proposed rule in triplicate to: Manager, Airspace Branch, AEA–520, Docket No. 98–AEA–33, F.A.A. Eastern Region, Federal Building # 111, John F. Kennedy Int'l Airport, Jamaica, NY 11430. The official docket may be examined in the Office of the Regional Counsel, AEA–7, F.A.A. Eastern Region, Federal Building #111, John F. Kennedy International Airport, Jamaica, New York 11430.

An informal docket may also be examined during normal business hours in the Airspace Branch, AEA–520, F.A.A. Eastern region, Federal building #111, John F. Kennedy International Airport, Jamaica, NY 11430.

FOR FURTHER INFORMATION CONTACT: Mr. Francis T. Jordan, Jr., Airspace Specialist, Airspace Branch AEA–520, F.A.A. Eastern Region, Federal Building #111, John F. Kennedy International Airport, Jamaica, New York 11430; telephone: (718) 553–4521.

SUPPLEMENTARY INFORMATION:

Comments Invited

Interested parties are invited to participate in this proposed rulemaking by submitting such written data, views, or arguments as they may desire. Comments that provide the factual basis supporting the views and suggestions presented are particularly helpful in developing reasoned regulatory decisions on the proposal. Comments are specifically invited on the overall regulatory, aeronautical, economic, environmental, and energy related aspects of the proposal. Communications should identify the airspace docket number and be submitted in triplicate to the address listed above. Commenters wishing the FAA to acknowledge receipt of their comments on this notice must submit with those comments a self-addressed, stamped postcard on which the following statement is made: ''Comments to Airspace docket No. 98–AEA–33''. The postcard will be date/time stamped and returned to the commenter.

All communications received before the specified closing date for comments will be considered before taking action on the proposed rule. The proposal contained in this notice may be changed in the light of comments received. All comments submitted will be available for examination in the Rules Docket both before and after the closing date for comments. A report summarizing each substantive public contact with the FAA personnel concerned with this rulemaking will be filed in the docket.

Availability of NPRMs

Any person may obtain a copy of the Notice of Proposed Rulemaking (NPRM) by submitting a request to the Office of the Regional Counsel, AEA–7, F.A.A. Eastern Region, Federal Building #111, John F. Kennedy International Airport, Jamaica, NY 11430. Communications must identify the notice number of this NPRM. Persons interested in being placed on a mailing list for future NPRM's should also request a copy of Advisory Circular No. 11–2A, which describes the application procedure.

The Proposal

The FAA is considering an amendment to Part 71 of the Federal Aviation Regulations (14 CFR part 71) to establish Class E airspace extending upward from 700 feet above the surface (AGL) at Waynesburg, PA. A GPS Point In Space Approach has been developed to serve helicopter operations to Greene County Airport. Additional controlled airspace extending upward from 700 feet above the surface (AGL) is needed to accommodate this approach and for IFR helicopter operations to the airport. The area would be depicted on appropriate aeronautical charts. Class E airspace designations for airspace extending upward from 700 feet above the surface are published in Paragraph 6005 of FAA Order 7400.9F, dated September 10, 1998, and effective September 16, 1998, which is incorporated by reference in 14 CFR 71.1. The Class E airspace designation listed in this document would be published subsequently in the Order.

The FAA has determined that this proposed regulation only involves an established body of technical regulations for which frequent and routine amendments are necessary to keep them operationally current. Therefore, this proposed regulation—(1) is not a ''significant regulatory action'' under Executive Order 12866; (2) is not a ''significant rule'' under DOT Regulatory Policies and Procedures (44 FR 11034; February 26, 1979); and (3) does not warrant preparation of a regulatory evaluation as the anticipated impact is so minimal. Since this is a routine matter that would only affect air

traffic procedures and air navigation, it is certified that this proposed rule would not have a significant economic impact on a substantial number of small entities under the criteria of the Regulatory Flexibility Act.

List of Subjects in 14 CFR Part 71

Airspace, Incorporation by reference, Navigation (air).

The Proposed Amendment

In consideration of the foregoing, The Federal Aviation Administration proposes to amend 14 CFR part 71 as follows:

PART 71—[AMENDED]

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; 14 CFR 11.69.

2. The incorporation by reference in 14 CFR 71.1 of the Federal Aviation Administration Order 7400.9F, dated September 4, 1998, and effective September 16, 1998, is proposed to be amended as follows:

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

* * * * *

AEA PA E5 Waynesburg, PA [New]

Greene County Airport, PA
Point In Space Coordinates
(Lat. 39°53′57″ N., long. 80°08′51″ W.)

That airspace extending upward from 700 feet above the surface within a 6-mile radius of the Point In Space serving the Greene County Airport, excluding that portion that coincides with the Morgantown, WV, Class E airspace area.

* * * * *

Issued in Jamaica, New York, on September 23, 1998.

Franklin D. Hatfield,

Manager, Air Traffic Division, Eastern Region.

[FR Doc. 98–26607 Filed 10–2–98; 8:45 am]

BILLING CODE 4910–13–M

DEPARTMENT OF TRANSPORTATION

Federal Aviation Administration

14 CFR Part 71

[Airspace Docket No. 98–AEA–34]

Proposed Amendment of Class E Airspace; Beaver Falls, PA

AGENCY: Federal Aviation Administration (FAA), DOT.

ACTION: Notice of proposed rulemaking.

SUMMARY: This proposed rule would amend Class E airspace at Beaver Falls, PA. The development of a new Standard Instrument Approach Procedure (SIAP), Helicopter Point In Space Approach based on the Global Positioning System (GPS), and serving the University of Pittsburgh Medical Center Heliport, Aliquippa, PA, has made this proposal necessary. The intended effect of this proposal is to provide adequate controlled airspace for Instrument Flight Rules (IFR) operations to the heliport. The area would be depicted on aeronautical charts for pilot reference.

DATES: Comments must be received on or before November 4, 1998.

ADDRESSES: Send comments on the proposed rule in triplicate to: Manager, Airspace Branch, AEA–520, Docket No. 98–AEA–34, F.A.A. Eastern Region, Federal Building #111, John F. Kennedy Int'l Airport, Jamaica, NY 11430. The official docket may be examined in the Office of the Regional Counsel, AEA–7, F.A.A. Eastern Region, Federal Building #111, John F. Kennedy International Airport, Jamaica, New York 11430.

An informal docket may also be examined during normal business hours in the Airspace Branch, AEA–520, F.A.A. Eastern Region, Federal Building #111, John F. Kennedy International Airport, Jamaica, NY 11430.

FOR FURTHER INFORMATION CONTACT: Mr. Francis T. Jordan, Jr., Airspace Specialist, Airspace Branch, AEA–520, F.A.A. Eastern Region, Federal Building #111, John F. Kennedy International Airport, Jamaica, New York 11430; telephone: (718) 553–4521.

SUPPLEMENTARY INFORMATION:

Comments Invited

Interested parties are invited to participate in this proposed rulemaking by submitting such written data, views, or arguments as they may desire. Comments that provide the factual basis supporting the views and suggestions presented are particularly helpful in developing reasoned regulatory decisions on the proposal. Comments are specifically invited on the overall regulatory, aeronautical, economic, environmental, and energy related aspects of the proposal. Communications should identify the airspace docket number and be submitted in triplicate to the address listed above. Commenters wishing the FAA to acknowledge receipt of their comments on this notice must submit with those comments a self-addressed, stamped postcard on which the following statement is made: ''Comments to Airspace Docket No. 98–AEA–34''. The postcard will be date/time stamped and returned to the commenter.

All communications received before the specified closing date for comments will be considered before taking action on the proposed rule. The proposal contained in this notice may be changed in the light of comments received. All comments submitted will be available for examination in the Rules Docket both before and after the closing date for comments. A report summarizing each substantive public contact with the FAA personnel concerned with this rulemaking will be filed in the docket.

Availability of NPRMs

Any person may obtain a copy of this Notice of Proposed Rulemaking (NPRM) by submitting a request to the Office of the Regional Counsel, AEA–7, F.A.A. Eastern Region, Federal Building # 111, John F. Kennedy International Airport, Jamaica, NY 11430. Communications must identify the notice number of this NPRM. Persons interested in being placed on a mailing list for future NPRM's should also request a copy of Advisory Circular No. 11–2A, which describes the application procedure.

The Proposal

The FAA is considering an amendment to Part 71 of the Federal Aviation Regulations (14 CFR part 71) to amend Class E airspace extending upward from 700 feet above the surface (AGL) at Beaver Falls, PA. A GPS Point In Space Approach has been developed for the University of Pittsburgh Medical Center Heliport, Aliquippa, PA. Additional controlled airspace extending upward from 700 feet above the surface (AGL) is needed to accommodate this approach and for IFR operations to the heliport. The area would be depicted on appropriate aeronautical charts.

Class E airspace designations for airspace extending upward from 700 feet above the surface are published in Paragraph 6005 of FAA Order 7400.9F, dated September 10, 1998, and effective September 16, 1998, which is incorporated by reference in 14 CFR 71.1. The Class E airspace designation listed in this document would be published subsequently in the Order.

The FAA has determined that this proposed regulation only involves an established body of technical regulations for which frequent and routine amendments are necessary to keep them operationally current. Therefore, this proposed regulation—(1) is not a ''significant regulatory action'' under Executive Order 12866; (2) is not a ''significant rule'' under DOT Regulatory Policies and Procedures (44 FR 11034; February 26, 1979); and (3) does not warrant preparation of a

regulatory evaluation as the anticipated impact is so minimal. Since this is a routine matter that would only affect air traffic procedures and air navigation, it is certified that this proposed rule would not have a significant economic impact on a substantial number of small entities under the criteria of the Regulatory Flexibility Act.

List of Subjects in 14 CFR Part 71

Airspace, Incorporation by reference, Navigation (air).

The Proposed Amendment

In consideration of the foregoing, the Federal Aviation Administration proposes to amend 14 CFR part 71 as follows:

PART 71—[AMENDED]

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 the Federal Aviation Administration Order 7400.9F, dated September 10, 1998, and effective September 16, 1998, is proposed to be amended as follows:

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

* * * * *

AEA PA E5 Beaver Falls, PA [Revised]

Beaver County Airport, Beaver Falls, PA
(Lat. 41°08′45″ N., long. 80°09′57″ W.)
Ellwood City VORTAC
(Lat. 40°49′31″ N., long. 80°12′42″ W.)
University of Pittsburgh Medical Center Heliport, Aliquippa, PA
Point In Space Coordinates
(Lat. 40°36′47′ N., long. 80°18′11″ W.)

That airspace extending upward from 700 feet above the surface within a 6.4-mile radius of Beaver County Airport and within 1.8 miles each side of the Ellwood City VORTAC 248° radial extending from the 6.4-mile radius to the VORTAC and within a 6-mile radius of the Point In Space serving the University of Pittsburgh Medical Center Heliport, excluding the portion that coincides with the East Liverpool, OH, Class E airspace area and the Pittsburgh, PA, Class E airspace area.

* * * * *

Issued in Jamaica, New York, on September 23, 1998.

Franklin D. Hatfield,

Manager, Air Traffic Division, Eastern Region.

[FR Doc. 98–26608 Filed 10–2–98; 8:45 am]

BILLING CODE 4910–13–M

DEPARTMENT OF TRANSPORTATION

Federal Aviation Administration

14 CFR Part 7

[Airspace Docket No. 98–AEA–31]

Proposed Amendment of Class E Airspace; Grove City, PA

AGENCY: Federal Aviation Administration (FAA), DOT.

ACTION: Notice of proposed rulemaking.

SUMMARY: This proposed rule would amend Class E airspace at Grove City, PA. The development of a new Standard Instrument Approach Procedure (SIAP), Helicopter Point In Space Approach based on the Global Positioning System (GPS), and serving the United Community Hospital Heliport has made this proposal necessary. The intended effect of this proposal is to provide adequate controlled airspace for Instrument Flight Rules (IFR) operations to the heliport. The area would be depicted on aeronautical charts for pilot reference.

DATES: Comments must be received on or before November 4, 1998.

ADDRESSES: Send comments on the proposed rule in triplicate to: Manager, Airspace Branch, AEA–520, Docket No. 98–AEA–31, F.A.A. Eastern Region, Federal Building #111, John F. Kennedy Int'l Airport, Jamaica, NY 11430. The official docket may be examined in the Office of the Regional Counsel, AEA–7, F.A.A. Eastern Region, Federal Building #111, John F. Kennedy International Airport, Jamaica, New York 11430.

An informal docket may also be examined during normal business hours in the Airspace Branch, AEA–520, F.A.A. Eastern Region, Federal Building #111, John F. Kennedy International Airport, Jamaica, NY 11430.

FOR FURTHER INFORMATION CONTACT: Mr. Francis T. Jordan, Jr., Airspace Specialist, Airspace Branch, AEA–520, F.A.A. Eastern Region, Federal Building #111, John F. Kennedy International Airport, Jamaica, New York 11430; telephone: (718) 553–4521.

SUPPLEMENTARY INFORMATION:

Comments Invited

Interested parties are invited to participate in this proposed rulemaking by submitting such written data, views, or arguments as they may desire. Comments that provide the factual basis supporting the views and suggestions presented are particularly helpful in developing reasoned regulatory decisions on the proposal. Comments are specifically invited on the overall regulatory, aeronautical, economic, environmental, and energy related aspects of the proposal. Communications should identify the airspace docket number and be submitted in triplicate to the address listed above. Commenters wishing the FAA to acknowledge receipt of their comments on this notice must submit with those comments a self-addressed, stamped postcard on which the following statement is made: ''Comments to Airspace Docket No. 98–AEA–31''. The postcard will be date/time stamped and returned to the commenter.

All communications received before the specified closing date for comments will be considered before taking action on the proposed rule. The proposal contained in this notice may be changed in the light of comments received. All comments submitted will be available for examination in the Rules Docket both before and after the closing date for comments. A report summarizing each substantive public contact with the FAA personnel concerned with this rulemaking will be filed in the docket.

Availability of NPRMs

Any person may obtain a copy of this Notice of Proposed Rulemaking (NPRM) by submitting a request to the Office of the Regional Counsel, AEA–7, FAA Eastern Region, Federal Building #111, John F. Kennedy International Airport, Jamaica, NY 11430. Communications must identify the notice number of this NPRM. Persons interested in being placed on a mailing list for future NPRM's should also request a copy of Advisory Circular No. 11–2A, which describes the application procedure.

The Proposal

The FAA is considering an amendment to part 71 of the Federal Aviation Regulations (14 CFR Part 71) to amend Class E airspace extending upward from 700 feet above the surface (AGL) at Grove City, PA. A GPS Point In Space Approach has been developed for the United Community Hospital Heliport. Additional controlled airspace extending upward from 700 feet above the surface (AGL) is needed to accommodate this approach and for IFR operations to the heliport. The area would be depicted on appropriate aeronautical charts.

Class E airspace designations for airspace extending upward from 700 feet above the surface are published in Paragraph 6005 of FAA Order 7400.9F, dated September 10, 1998, and effective September 16, 1998, which is incorporated by reference in 14 CFR 71.1. The Class E airspace designation

listed in this document would be published subsequently in the Order.

The FAA has determined that this proposed regulation only involves an established body of technical regulations for which frequent and routine amendments are necessary to keep them operationally current. Therefore, this proposed regulation—(1) is not a ''significant regulatory action'' under Executive Order 12866; (2) is not a ''significant rule'' under DOT Regulatory Policies and Procedures (44 FR 11034; February 26, 1979); and (3) does not warrant preparation of a regulatory evaluation as the anticipated impact is so minimal. Since this is a routine matter that would only affect air traffic procedures and air navigation, it is certified that this proposed rule would not have a significant economic impact on a substantial number of small entities under the criteria of the Regulatory Flexibility Act.

List of Subjects in 14 CFR Part 71

Airspace, Incorporation by reference, Navigation (air).

The Proposed Amendment

In consideration of the foregoing, the Federal Aviation Administration proposes to amend 14 CFR part 71 as follows:

PART 71—[AMENDED]

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 the Federal Aviation Administration Order 7400.9F, dated September 10, 1998, and effective September 16, 1998, is proposed to be amended as follows:

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

* * * * *

AEA PA E5 Grove City, PA [Revised]

Gove City Airport, PA
(Lat 41°08′45″N., long. 80°09′57″W.)
United Community Hospital Heliport, PA
Point In Space Coordinates
(Lat.41°10′39″N., long 80°04′23″W.

That airspace extending upward from 700 feet above the surface within a 6.5-mile radius of Grove City Airport and within a 6-mile radius of the Point In Space serving United Community Hospital Heliport, excluding the portion that coincides with the New Castle Class E airspace area and the South New Castle Class E airspace area.

* * * * *

Issued in Jamaica, New York, on September 23, 1998.

Franklin D. Hatfield,

Manager, Air Traffic Division, Eastern Region.

[FR Doc. 98–26609 Filed 10–2–98; 8:45 am]

BILLING CODE 4910–13–M

DEPARTMENT OF TRANSPORTATION

Federal Aviation Administration

14 CFR Part 71

[Airspace Docket No. 98–AEA–32]

Proposed Establishment of Class E Airspace; Brookville, PA

AGENCY: Federal Aviation Administration (FAA), DOT.

ACTION: Notice of proposed rulemaking.

SUMMARY: This proposed rule would establish Class E airspace at Brookville, PA. The development of a new Standard Instrument Approach Procedure (SIAP), Helicopter Point In Space Approach based on the Global Positioning System (GPS), and serving the Brookville Hospital Heliport, has made this proposal necessary. The intended effect of this proposal is to provide adequate controlled airspace for Instrument Flight Rules (IFR) operations to the helipad. The area would be depicted on aeronautical charts for pilot reference.

DATES: Comments must be received on or before November 4, 1998.

ADDRESSES: Send comments on the proposed rule in triplicate to: Manager, Airspace Branch, AEA–520, Docket No. 98–AEA–32, F.A.A. Eastern Region, Federal Building #111, John F. Kennedy Int'l Airport, Jamaica, NY 11430. The official docket may be examined in the Office of the Regional Counsel, AEA–7, F.A.A. Eastern Region, Federal Building #111, John F. Kennedy International Airport, Jamaica, New York 11430.

An informal docket may also be examined during normal business hours in the Airspace Branch, AEA–520, F.A.A. Eastern Region, Federal Building #111, John F. Kennedy International Airport, Jamaica, NY 11430.

FOR FURTHER INFORMATION CONTACT: Mr. Francis T. Jordan, Jr., Airspace Specialist, Airspace Branch, AEA–520, F.A.A. Eastern Region, Federal Building #111, John F. Kennedy International Airport, Jamaica, NY 11430; telephone: (718) 553–4521.

SUPPLEMENTARY INFORMATION:

Comments Invited

Interested parties are invited to participate in this proposed rulemaking by submitting such written data, views, or arguments as they may desire. Comments that provide the factual basis supporting the views and suggestions presented are particularly helpful in developing reasoned regulatory decisions on the proposal. Comments are specifically invited on the overall regulatory, aeronautical, economic, environmental, and energy related aspects of the proposal. Communications should identify the airspace docket number and be submitted in triplicate to the address listed above. Commenters wishing the FAA to acknowledge receipt of their comments on this notice must submit with those comments a self-addressed, stamped postcard on which the following statement is made: ''Comments to Airspace Docket No. 98–AEA–32''. The postcard will be date/time stamped and returned to the commenter.

All communications received before the specified closing date for comments will be considered before taking action on the proposed rule. The proposal contained in this notice may be changed in the light of comments received. All comments submitted will be available for examination in the Rules Docket both before and after the closing date for comments. A report summarizing each substantive public contact with the FAA personnel concerned with this rulemaking will be filed in the docket.

Availability of NPRMs

Any person may obtain a copy of this Notice of Proposed Rulemaking (NPRM) by submitting a request to the Office of the Regional Counsel, AEA–7, F.A.A. Eastern Region, Federal Building #111, John F. Kennedy International Airport, Jamaica, NY 11430. Communications must identify the notice number of this NPRM. Persons interested in being placed on a mailing list for future NPRM's should also request a copy of Advisory Circular No. 11–2A, which describes the application procedure.

The Proposal

The FAA is considering an amendment to Part 71 of the Federal Aviation Regulations (14 CFR part 71) to establish Class E airspace extending upward from 700 feet above the surface (AGL) at Brookville, PA. A GPS Point In Space Approach has been developed to serve the Brookville Hospital Heliport. Additional controlled airspace extending upward from 700 feet above the surface (AGL) is needed to accommodate this approach and for IFR operations to the heliport. The area would be depicted on appropriate aeronautical charts. Class E airspace designations for airspace extending

upward from 700 feet above the surface are published in Paragraph 6005 of FAA Order 7400.9F, dated September 10, 1998, and effective September 16, 1998, which is incorporated by reference in 14 CFR 71.1. The Class E airspace designation listed in this document would be published subsequently in the Order.

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

List of Subjects in 14 CFR Part 71

Airspace, Incorporation by reference, Navigation (air).

The Proposed Amendment

In consideration of the foregoing, the Federal Aviation Administration proposes to amend 14 CFR part 71 as follows:

PART 71—[AMENDED]

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; 14 CFR 11.69.

§ 71.1 [Amended]

2. The incorporation by reference in 14 CFR 71.1 of the Federal Aviation Administration Order 7400.9F, dated September 10, 1998, and effective September 16, 1998, is proposed to be amended as follows:

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

* * * * *

AEA PA E5 Brookville, PA [New]

Brookville Hospital Heliport, PA
Point In Space Coordinates
(Lat. 41°09′21″N. long. 79°04′46″W.)

That airspace extending upward from 700 feet above the surface within a 6-mile radius of the Point In Space serving Brookville Hospital Heliport, excluding that portion that coincides with the Du Bois, PA, Class E airspace area.

* * * * *

Issued in Jamaica, New York, on September 23, 1998.

Franklin D. Hatfield,

Manager, Air Traffic Division, Eastern Region.

[FR Doc. 98–26610 Filed 10–2–98; 8:45 am]

BILLING CODE 4910–13–M

DEPARTMENT OF TRANSPORTATION

Federal Aviation Administration

14 CFR Part 71

[Airspace Docket No. 98–AEA–35]

Proposed Establishment of Class E Airspace; Logan, PA

AGENCY: Federal Aviation Administration (FAA), DOT.

ACTION: Notice of proposed rulemaking.

SUMMARY: This proposed rule would establish Class E airspace at Logan, PA. The development of a new Standard Instrument Approach Procedure (SIAP), Helicopter Point In Space Approach based on the Global Positioning System (GPS), and serving Altoona General Hospital Heliport, has made this proposal necessary. The intended effect of this proposal is to provide adequate controlled airspace for Instrument Flight Rules (IFR) operations to the heliport. The area would be depicted on aeronautical charts for pilot reference.

DATES: Comments must be received on or before November 4, 1998.

ADDRESSES: Send comments on the proposed rule in triplicate to: Manager, Airspace Branch, AEA–520, Docket No. 98–AEA–35, F.A.A. Eastern Region, Federal Building #111, John F. Kennedy Int'l Airport, Jamaica, NY 11430. The official docket may be examined in the Office of the Regional Counsel, AEA–7, F.A.A. Eastern Region, Federal Building #111, John F. Kennedy International Airport, Jamaica, New York 11430.

An informal docket may also be examined during normal business hours in the Airspace Branch, AEA–520, F.A.A. Eastern Region, Federal Building #111, John F. Kennedy International Airport, Jamaica, NY 11430.

FOR FURTHER INFORMATION CONTACT: Mr. Francis T. Jordan, Jr., Airspace Specialist, Airspace Branch, AEA–520, F.A.A. Eastern Region, Federal Building #111, John F. Kennedy International Airport, Jamaica, New York 11430; telephone: (718) 553–4521.

SUPPLEMENTARY INFORMATION:

Comments Invited

Interested parties are invited to participate in this proposed rulemaking by submitting such written data, views, or arguments as they may desire. Comments that provide the factual basis supporting the views and suggestions presented are particularly helpful in developing reasoned regulatory decisions on the proposal. Comments are specifically invited on the overall regulatory, aeronautical, economic, environmental, and energy related aspects of the proposal. Communications should identify the airspace docket number and be submitted in triplicate to the address listed above. Commenters wishing the FAA to acknowledge receipt of their comments on this notice must submit with those comments a self-addressed, stamped postcard on which the following statement is made: ''Comments to Airspace Docket No. 98–AEA–35''. The postcard will be date/time stamped and returned to the commenter.

All communications received before the specified closing date for comments will be considered before taking action on the proposed rule. The proposal contained in this notice may be changed in the light of comments received. All comments submitted will be available for examination in the Rules Docket both before and after the closing date for comments. A report summarizing substantive public contact with the FAA personnel concerned with this rulemaking will be filed in the docket.

Availability of NPRMs

Any person may obtain a copy of this Notice of Proposed Rulemaking (NPRM) by submitting a request of the Office of the Regional Counsel, AEA–7, F.A.A. Eastern Region, Federal Building #111, John F. Kennedy International Airport, Jamaica, NY 11430. Communications must identify the notice number of this NPRM. Persons interested in being placed on a mailing list for future NPRM's should also request a copy of Advisory Circular No. 11–2A, which describes the application procedure.

The Proposal

The FAA is considering an amendment to Part 71 of the Federal Aviation Regulations (14 CFR part 71) to establish Class E airspace extending upward from 700 feet above the surface (AGL) at Logan, PA. A GPS Point In Space Approach has been developed to serve the Altoona General Hospital Heliport. Additional controlled airspace extending upward from 700 feet above the surface (AGL) is needed to

accommodate this approach and for IFR operations to the heliport. The area would be depicted on appropriate aeronautical charts. Class E airspace designations for airspace extending upward from 700 feet above the surface are published in Paragraph 6005 of FAA Order 7400.9F, dated September 10, 1998, and effective September 16, 1998, which is incorporated by reference in 14 CFR 71.1. The Class E airspace designation listed in this document would be published subsequently in the Order.

The FAA has determined that this proposed regulation only involves an established body of technical regulations for which frequent and routine amendments are necessary to keep them operationally current. Therefore, this proposed regulation—(1) is not a ''significant regulatory action'' under Executive Order 12866; (2) is not a ''significant rule'' under DOT Regulatory Policies and Procedures (44 FR 11034; February 26, 1979); and (3) does not warrant preparation of a regulatory evaluation as the anticipated impact is so minimal. Since this is a routine matter that would only affect air traffic procedures and air navigation, it is certified that this proposed rule would not have a significant economic impact on a substantial number of small entities under the criteria of the Regulatory Flexibility Act.

List of Subjects in 14 CFR Part 71

Airspace, Incorporation by reference, Navigation (air).

The Proposed Amendment

In consideration of the foregoing, the Federal Aviation Administration proposes to amend 14 CFR part 71 as follows:

PART 71—[AMENDED]

1. The authority citation of 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; 14 CFR 11.69.

2. The incorporation by reference in 14 CFR 71.1 of the Federal Aviation Administration Order 7400.9F, dated September 10, 1998, and effective September 16, 1998, is proposed to be amended as follows:

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

* * * * *

AEA PA E5 Logan, PA [New]

Altoona General Hospital Heliport, PA
Point In Space Coordinates
(Lat. 40°31′52″ N., long. 78°22′58″ W.)

That airspace extending upward from 700 feet above the surface within a 6-mile radius of the Point In Space serving Altoona General Hospital Heliport, excluding that portion that coincides with the Altoona, PA Class E airspace area.

* * * * *

Issued in Jamaica, New York, on September 23, 1998.

Franklin D. Hatfield,

Manager, Air Traffic Division, Eastern Region.

[FR Doc. 98–26611 Filed 10–2–98; 8:45 am]

BILLING CODE 4910–13–M

DEPARTMENT OF TRANSPORTATION

Federal Aviation Administration

14 CFR Part 71

[Airspace Docket No. 98–ANM–11]

RIN 2120–AA66

Proposed Alteration of Federal Airways; CO

AGENCY: Federal Aviation Administration (FAA), DOT.

ACTION: Notice of proposed rulemaking (NPRM).

SUMMARY: This notice proposes to realign and extend seven Federal airways in the State of Colorado (CO). The FAA is proposing this action due to the activation of the Monarch Pass, CO, Very High Frequency Omnidirectional Range/Distance Measuring Equipment (VOR/DME) navigational aid. The FAA is proposing this action to enhance the safe and efficient management of air traffic operations into, out of, and through the State of Colorado.

DATES: Comments must be received on or before November 4, 1998.

ADDRESSES: Send comments on the proposal in triplicate to: Manager, Air Traffic Division, ANM–500, Docket No. 97–ANM–23, Federal Aviation Administration, 1601 Lind Avenue, Renton, WA 98055–4056.

The official docket may be examined in the Rules Docket, Office of the Chief Counsel, Room 916, 800 Independence Avenue, SW., Washington, DC, weekdays, except Federal holidays, between 8:30 a.m. and 5:00 p.m. An informal docket may also be examined during normal business hours at the office of the Regional Air Traffic Division, Federal Aviation Administration, 1601 Lind Avenue, Renton, WA, 98055–4056.

FOR FURTHER INFORMATION CONTACT: Ken McElroy, Airspace and Rules Division, ATA–400, Office of Air Traffic Airspace Management, Federal Aviation Administration, 800 Independence Avenue, SW., Washington, DC 20591; telephone: (202) 267–8783.

SUPPLEMENTARY INFORMATION:

Comments Invited

Interested parties are invited to participate in this proposed rulemaking by submitting such written data, views, or arguments as they may desire. Comments that provide the factual basis supporting the views and suggestions presented are particularly helpful in developing reasoned regulatory decisions on the proposal. Comments are specifically invited on the overall regulatory, aeronautical, economic, environmental, and energy-related aspects of the proposal. Communications should identify the airspace docket number and be submitted in triplicate to the address listed above. Commenters wishing the FAA to acknowledge receipt of their comments on this notice must submit with those comments a self-addressed, stamped postcard on which the following statement is made: ''Comments to Airspace Docket No. 98–ANM–11.'' The postcard will be date/time stamped and returned to the commenter. All communications received on or before the specified closing date for comments will be considered before taking action on the proposed rule. The proposal contained in this notice may be changed in light of comments received. All comments submitted will be available for examination in the Rules Docket both before and after the closing date for comments. A report summarizing each substantive public contact with FAA personnel concerned with this rulemaking will be filed in the docket.

Availability of NPRM's

Any person may obtain a copy of this NPRM by submitting a request to the Federal Aviation Administration, Office of Air Traffic Airspace Management, ATA–400, 800 Independence Avenue, SW., Washington, DC 20591, or by calling (202) 267–8783. Communications must identify the notice number of this NPRM. Persons interested in being placed on a mailing list for future NPRM's should call the FAA's Office of Rulemaking, (202) 267–9677, for a copy of Advisory Circular No. 11–2A, Notice of Proposed Rulemaking Distribution System, which describes the application procedure.

An electronic copy of this document may be downloaded, using a modem and suitable software, from the FAA regulations section of the Fedworld electronic bulletin board service (telephone: 703–321–3339) or the **Federal Register's** electronic bulletin

board service (telephone: 202–512–1661). Internet users may reach the **Federal Register's** web page at http://www.access.gpo.gov/su____docs for access to recently published rulemaking documents.

The Proposal

The FAA is proposing an amendment to part 71 of the Federal Aviation Regulations (14 CFR part 71) to modify seven Federal airways, V–26, V–95, V–148, V–244, V–272, V–356, and V–484, due to the activation of the Monarch Pass, CO, Very High Frequency Omnidirectional Range/Distance Measuring Equipment (VOR/DME) navigational aid.

Specifically, V–26 would be modified to provide a route from Black Forest, CO, via Monarch Pass, CO, to Blue Mesa, CO; V–95 would be modified to provide a route from Durango, CO, to Monarch Pass, CO, to Falcon, CO; V–148 would be modified to provide routing from Farmington, NM, to Durango CO, to Monarch Pass, CO, and Falcon, CO; V–244 would be modified to provide routing from Blue Mesa, CO to Monarch Pass, CO, to Pueblo, CO; V–272 would be modified to provide a route from Monarch Pass, CO, via Tobe, CO, to Dalhart, TX; V–356 would be modified to provide routing from Alamosa, CO, via Monarch Pass, CO, to Red Table, CO; and V–484 would be modified to change the Blue Mesa, CO, intersection by one degree.

This proposal would enhance air traffic procedures by providing air traffic controllers with added flexibility for routing air traffic into and through the State of Colorado.

Domestic VOR Federal airways are published in paragraph 6010(a) of FAA Order 7400.9F dated September 10, 1998, and effective September 16, 1998, which is incorporated by reference in 14 CFR 71.1. The domestic VOR Federal airways listed in this document would be published subsequently in the Order.

The FAA has determined that this regulation only involves an established body of technical regulations for which frequent and routine amendments are necessary to keep them operationally current. Therefore, this proposed action: (1) is not a ''significant regulatory action'' under Executive Order 12866; (2) is not a ''significant rule'' under DOT Regulatory Policies and Procedures (44 FR 11034; February 26, 1979); and (3) does not warrant preparation of a regulatory evaluation as the anticipated impact is so minimal. Since this is a routine matter that will only affect air traffic procedures and air navigation, it is certified that this rule, when promulgated, will not have a significant economic impact on a substantial number of small entities under the criteria of the Regulatory Flexibility Act.

List of Subjects in 14 CFR Part 71

Airspace, Incorporation by reference, Navigation (air).

The Proposed Amendment

In consideration of the foregoing, the Federal Aviation Administration proposes to amend 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 7400.9F, Airspace Designations and Reporting Points, dated September 10, 1998, and effective September 16, 1998, is amended as follows:

Paragraph 6010(a)—Domestic VOR Federal Airways

* * * * *

V–26 [Revised]

From Black Forest, CO; via Monarch Pass, CO; Blue Mesa, CO, via Montrose, CO; 13 miles, 112 MSL, 131 MSL; Grand Junction, CO; Meeker, CO; Cherokee, WY; Muddy Mountain, WY; 14 miles 12 AGL, 37 miles 75 MSL, 84 miles 90 MSL, 17 miles 12 AGL, Rapid City, SD; 43 miles, 35 MSL Philip, SD; Pierre, SD; Huron, SD; Redwood Falls, MN; Farmington, MN; Eau Claire, WI; Wausau, WI; Green Bay, WI; INT Green Bay 116° and White Cloud, MI, 302° radials; White Cloud; Lansing, MI; Salem, MI; Detroit, MI; INT Detroit 141° and DRYER, OH, 305° radials; DRYER. The airspace within Canada is excluded.

* * * * *

V–95 [Revised]

From Gila Bend, AZ, via INT Gila Bend 096° and Phoenix, AZ, 197° radials; Phoenix; 49 miles, 40 miles 95 MSL; Winslow, AZ; 66 miles, 39 miles 125 MSL; Farmington, NM; Durango, CO; Monarch Pass, CO; INT Monarch Pass 071° and Falcon, CO, 208° radials; to Falcon.

* * * * *

V–148 [Revised]

From Farmington, NM; Durango, CO; Monarch Pass, CO; INT Monarch Pass 041° and Falcon, CO; 231° radials; Falcon, CO; Thurman, CO; 65 MSL INT Thurman 067° and Hayes Center, NE, 246° radials; Hayes Center; North Platte, NE; O'Neill, NE; Sioux Falls, SD; Redwood Falls, MN; Gopher, MN; Hayward, WI; Ironwood, MI; to Houghton, MI.

* * * * *

V–244 [Revised]

From Oakland, CA, INT Oakland 077° and Manteca, CA, 267° radials; Manteca; 76 miles 12 AGL, 27 miles 145 MSL, 59 miles 12 AGL, Coaldale, NV; Tonopah, NV; 40 miles 115 MSL Wilson Creek, NV; 28 miles 115 MSL, Milford, UT, Hanksville, UT; 63 miles, 13 miles 140 MSL, 36 miles 115 MSL, Montrose, CO; Blue Mesa, CO; Monarch Pass, CO; INT Monarch Pass 100° and Pueblo, CO, 274° radials; Pueblo, CO; 18 miles, 48 miles, 60 MSL, Lamar, CO; 20 miles, 116 miles 65 MSL, Hays, KS; Salina, KS. The airspace within R–2531A and R–2531B is excluded.

* * * * *

V–272 [Revised]

From Monarch Pass, CO; via Tobe, CO; Dalhart, TX, via Borger, TX; Sayre, OK; Will Rogers, OK; INT Will Rogers 113° and McAlester, OK, 286° radials; McAlester; to Fort Smith, AR.

* * * * *

V–356 [Revised]

From Alamosa, CO; via Monarch Pass, CO; Red Table, CO, via INT Red Table 058° and Mile High, CO, 265° radials; to Mile High.

* * * * *

V–484 [Revised]

From Hailey, ID, NDB; INT Twin Falls, ID, 007° and Burley, ID, 323° radials; Twin Falls, 49 miles, 34 miles 114 MSL, Salt Lake City, UT; 25 miles, 31 miles, 125 MSL, Myton, UT; 14 miles, 79 MSL, 33 miles, 100 MSL, Grand Junction, CO; Blue Mesa, CO; INT Blue Mesa 110° and Alamosa, CO, 341° radials; Alamosa.

* * * * *

Issued in Washington, DC, on September 29, 1998.

Reginald C. Matthews,

Acting Program Director for Air Traffic Airspace Management.

[FR Doc. 98–26601 Filed 10–2–98; 8:45 am]

BILLING CODE 4910–13–P

DEPARTMENT OF THE TREASURY

17 CFR Part 405

RIN 1505–AA74

Office of the Assistant Secretary for Financial Markets; Government Securities Act Regulations: Reports and Audit

AGENCY: Office of the Assistant Secretary for Financial Markets, Treasury.

ACTION: Proposed rule.

SUMMARY: The Department of the Treasury (''Department'' or ''Treasury'')

is publishing for comment a proposed amendment to the reporting requirements in § 405.2 of the regulations issued under the Government Securities Act of 1986 (''GSA''), as amended.[1] 17 CFR 405.2 of the GSA regulations requires entities registered with the Securities and Exchange Commission (''SEC'') as specialized government securities brokers dealers (''registered government securities brokers and dealers'') under section 15C(a)(2) of the Securities Exchange Act of 1934 (the ''Exchange Act'')[2] to comply with the requirements of section 240.17a–5 of the Exchange Act (SEC Rule 17a–5). On July 13, 1998, the SEC issued an amendment to SEC Rule 17a–5 that requires general purpose broker-dealers to file two reports regarding their year 2000 (''Y2K'') readiness. This proposed amendment by the Department parallels the SEC's final Y2K reporting rules.

DATES: Comments must be received on or before November 4, 1998.

ADDRESSES: Hardcopy comments should be sent to: Government Securities Regulations Staff, Bureau of the Public Debt, 999 E Street N.W., Room 515, Washington, D.C. 20239–0001. Comments may also be sent via the Internet to the Government Securities Regulations Staff at govsecreg@bpd.treas.gov. When sending comments via the Internet, please use an ASCII file format and provide your full name and mailing address. Comments received will be available for public inspection and downloading from the Internet and for public inspection and copying at the Treasury Department Library, Room 5030, Main Treasury Building, 1500 Pennsylvania Avenue, N.W., Washington, D.C. 20220.

This proposed amendment has also been made available for downloading from Public Debt's web site at the following address: www.publicdebt.treas.gov.

FOR FURTHER INFORMATION CONTACT: Kerry Lanham (Acting Director) or Chuck Adreatta (Government Securities Specialist), Bureau of the Public Debt, Government Securities Regulations Staff, (202) 219–3632.

SUPPLEMENTARY INFORMATION:

I. Background

On March 12, 1998, the SEC published for comment proposed temporary amendments to Rule 17a–5 that would require certain broker-dealers to file two reports regarding their year 2000 readiness.[3] Each report is to be filed with the SEC and the appropriate designated examining authority.

In developing its proposed amendment, the SEC identified six stages involved in preparing for the year 2000: (1) awareness of potential Y2K problems; (2) assessment of what steps the broker-dealer must take to avoid Y2K problems; (3) implementation of the steps needed to avoid Y2K problems; (4) internal testing of software designed to avoid Y2K problems; (5) integrated or industry-wide testing of software designed to avoid Y2K problems (including testing with other broker-dealers, other financial institutions, and customers); and (6) implementation of tested software that will avoid Y2K problems.[4] The reports require broker-dealers to address these six stages of preparation.

For purposes of its amendment, the SEC identified ''year 2000 problems'' basically as problems arising from: (1) computer software incorrectly reading the date ''01/01/00'' as being the year 1900 or another incorrect year; (2) computer software incorrectly identifying a date in the year 1999 or any year thereafter; (3) computer software failing to detect that the year 2000 is a leap year; or (4) any other computer software error that is directly or indirectly caused by (1), (2), or (3). A failure by the securities industry to prevent or minimize these types of errors could endanger the nation's capital markets and place at risk the assets of millions of investors.

The reports will enable the SEC to monitor the steps broker-dealers are taking to manage and avoid Y2K problems. The reports will also: (1) enable the SEC staff to report to Congress in 1998 and 1999 regarding the industry's preparedness; (2) supplement the SEC's examination module for year 2000 issues; (3) help the SEC coordinate self-regulatory organizations on industry-wide testing, implementation, and contingency planning; and (4) help increase broker-dealer awareness that they should be taking specific steps now to prepare for the year 2000.[5]

The SEC received 35 comment letters in response to its proposed amendments. The majority of the commenters generally supported the SEC's proposals. However, the majority of the commenters objected to: (1) the ''attestation'' requirement, a provision that would have required each broker-dealer to have an independent certified accountant attest to specific assertions included in the second Y2K report; and (2) the $100,000 minimum net capital threshold that would have triggered the Y2K reporting requirement. Some other commenters objected to the SEC's proposed plan to make Y2K reports and the accountant's attestation publicly available.

Based on the comments received, the SEC made certain changes in the final rule, which was published on July 13, 1998.[6] The primary changes pertained to the attestation requirement and the net capital reporting threshold. One commenter noted that the required attestation would be difficult for independent public accountants to provide because of the absence of established, consistent criteria to measure readiness. As a result, the SEC announced in its final rule that it is deferring a decision on the attestation requirement (the SEC issued a companion release to solicit comments on this issue, including commentary on the feasibility and desirability of an ''agreed-upon procedures'' engagement instead of an ''attestation'' engagement).[7]

The proposed rule would have required broker-dealers with at least $100,000 in net capital to submit Y2K reports. Several commenters contended that this threshold excludes 72 percent of all registered broker-dealers from the Y2K reporting requirement. The commenters argued that the failure of a large number of these firms to adequately prepare for Y2K could have adverse systemic results on the world's financial markets. As a result, the SEC created a two-tiered net capital threshold. Broker-dealers with at least $5,000 in minimum net capital must file only Part I of the report. Those with at least $100,000 in minimum net capital must file Part II.

II. Analysis

The Department agrees with the SEC that broker-dealers should be taking steps to avoid Y2K problems because accurate output from computer programs is vital to a broker-dealer's recordkeeping and operations. To underscore the importance that it places on this issue, the Department, along with the Federal Reserve Bank of New York and the Bond Market Association, presented a conference on year 2000 testing for the U.S. Treasury securities market on June 17, 1998, in New York

[1] 15 U.S.C. 78*o*–5.

[2] 15 U.S.C. 78*o*–5(a)(2).

[3] Securities Exchange Act Release No. 34–39724 (March 5, 1998), 63 FR 12056 (March 12, 1998).

[4] Id. at 12057.

[5] Id.

[6] Securities Exchange Act Release No. 34–40162, (July 2, 1998) 63 FR 37668 (July 13, 1998).

[7] Securities Exchange Act Release No. 34–40164, (July 2, 1998) 63 FR 37709 (July 13, 1998).

City. The Department also agrees that the required reports will heighten broker-dealer awareness and help regulators monitor the steps these firms are taking to manage and address Y2K problems.

Treasury's proposed Y2K rules incorporate the SEC's final rules at § 240.17a–5(e)(5), with minor modifications. The same two reports (Form BD–Y2K Parts I and II) required under the SEC's rules would be required under the Treasury's rules. These reports would be required to be submitted to the SEC and the broker-dealer's designated examining authority (''DEA'').

Part I is a check-the-box report that would be required from all registered government securities broker-dealers. It would be filed by December 31, 1998, and would reflect the status of a firm's Y2K efforts as of November 15, 1998. Based on field testing of Part I of the form, the SEC estimates that on average a broker-dealer would spend approximately two hours completing it.

Part II would be required of every registered government securities broker or dealer that was required to maintain minimum liquid capital pursuant to § 402.2(b)(1) or (b)(2) as of November 15, 1998. Section 402.2(b)(1), which applies to broker-dealers that carry customer accounts and hold funds or securities for those accounts, requires that liquid capital after deducting for total haircuts be at least $250,000. Section 402.2(b)(2) requires liquid capital after haircuts of at least $100,000 for broker-dealers that carry customer accounts but do not generally hold customer funds or securities. Like Part I, Part II of the form would be filed by December 31, 1998, and would reflect the status of a firms' Y2K readiness as of November 15, 1998. Registered government securities brokers or dealers who are not required to file Part II by December 31, 1998, but who become subject to § 402.2(b)(1) or (b)(2) at any time between November 16, 1998 and March 15, 1999 would also be required to submit Part II by April 30, 1999, to reflect the firm's Y2K status as of March 15, 1999. The SEC estimates that on average a broker-dealer will spend 35 hours completing Part II of Form BD–Y2K, which requires a narrative discussion of its efforts to address Y2K problems.

The Department reserves the right to require that Y2K reports be submitted again sometime during 1999. This determination would be based on the responses received on the Y2K reports. To assist the Department in making this determination, the Department will request that a copy of the report be provided directly to the Department in addition to being filed as required with the SEC and the broker-dealer's DEA.

The Department's provisions will exempt any registered government securities broker or dealer if it has an affiliated registered broker or dealer that files reports under the SEC's Y2K reporting rules, and that affiliate's reports encompass Y2K issues that include the registered government securities broker-dealer's transactions in, and holdings of, government securities.

Because the reports required under this rule will be received and reviewed by the SEC, the SEC will make the reports available in whatever way it deems to be appropriate. In its final rule, the SEC states that the reports required under its rule will be made available to the public. We expect that the reports required under this proposed rule would be made available to the public by the SEC as well.

Copies of Form BD–Y2K are available in the SEC's Public Reference Room located at 450 Fifth Street, NW, Washington, D.C. 20549, or copies can be obtained from the SEC's Internet web site at the following address: www.sec.gov.

III. Notice Regarding Current Books and Records Requirements

Section 404.2 of the GSA regulations requires registered government securities broker-dealers, with certain modifications, to comply with SEC Rule 17a–3. This SEC rule requires registered broker-dealers to make and keep current certain books and records relating to the broker-dealer's business.[8] In the preambles to its proposed and final rules, the SEC warned that a broker-dealer with computer systems that have Y2K problems may be deemed not to have accurate and current records and in violation of Rule 17a–3.[9] The Department reiterates this advisory. The SEC also reminded broker-dealers that its Rule 17a–11 [10] requires every broker-dealer to promptly notify the SEC of its failure to make and keep current books and records.[11] The Department reminds registered government securities broker-dealers that they have this same requirement under § 405.3 of the GSA regulations.

The Department would expect that an independent public accountant's required ''material inadequacies'' letter would include a discussion of Y2K issues if any potential problems in this regard were to be found.

[8] 17 CFR 240.17a–3.

[9] 63 FR 12056, 12059 (March 12, 1998) and 63 FR 37668 (July 13, 1998).

[10] 17 CFR 240.17a–11.

[11] See *supra* note 8.

IV. Special Analyses

This proposed rule amendment does not meet the criteria for a ''significant regulatory action'' pursuant to Executive Order 12866. The Administrative Procedure Act (''APA'') (5 U.S.C. 553) generally requires that prior notice and opportunity for comment be afforded before the adoption of rules by federal agencies.

In addition, pursuant to the Regulatory Flexibility Act,[12] it is hereby certified that the proposed regulations, if adopted, will not have a significant economic impact on a substantial number of small entities. There are currently about 20 active registered government securities broker-dealers, only two of which would be considered ''small'' under the SEC's definition of ''small entity.'' [13] Accordingly, the number of small entities that would be required to complete Form BD–Y2K is not significant. As a result, a regulatory flexibility analysis is not required.

Although the proposed amendment to section 405.2 contains ''collection of information'' requirements within the meaning of the Paperwork Reduction Act of 1995,[14] the Department has determined that no submissions of the requirements to the Office of Management and Budget (''OMB'') are necessary. The collection of information under this proposed amendment would consist solely of the completion of Form BD–Y2K. This collection of information has already been reviewed and approved by OMB and was assigned control number 3235–0511.

List of Subjects in 17 CFR Part 405

Brokers, Government securities, Reporting and recordkeeping requirements.

For the reasons set out in the preamble, it is proposed to amend 17 CFR Part 405 as follows:

PART 405—REPORTS AND AUDIT

1. The authority citation for Part 405 continues to read as follows:

Authority: 15 U.S.C. 78*o*–5(b)(1)(B), (b)(1)(C), (b)(2), (b)(4).

2. Section 405.2 is amended by redesignating paragraphs (a)(11) and (a)(12) as paragraphs (a)(14) and (a)(15), respectively, and adding new paragraphs (a)(11) through (a)(13) as follows:

[12] 5 U.S.C. 601, *et seq.*

[13] 63 FR 37688, 37672 (July 13, 1998).

[14] 44 U.S.C. 3501 *et seq.*

§ 405.2 Reports to be made by registered government securities brokers and dealers.

(a) * * *

(11) Section 240.17a–5(e)(5)(ii) is modified to read as follows:

''(ii) No later than December 31, 1998, every registered government securities broker or dealer shall file Part I of Form BD–Y2K (§ 249.618 of this title) prepared as of November 15, 1998.''.

(12) Section 240.17a–5(e)(5)(iii) is modified to read as follows:

''(iii)(A) No later than December 31, 1998, every registered government securities broker or dealer required to maintain minimum liquid capital pursuant to § 402.2(b)(1) or (b)(2) of this title as of November 15, 1998, shall file Part II of Form BD–Y2K (§ 249.618 of this title). Part II of Form BD–Y2K shall address each topic in § 240.17a–5(e)(5)(iv) of this title as of November 15, 1998.

''(B) No later than April 30, 1999, every registered government securities broker or dealer that was not required to file Part II of Form BD–Y2K under paragraph (e)(12)(iii)(A) of this section but was required to maintain minimum liquid capital pursuant to § 402.2(b)(1) or (b)(2) of this title at any time between November 16, 1998, and March 15, 1999, shall file Part II of Form BD–Y2K. Part II of Form BD–Y2K shall address each topic in § 240.17a–5(e)(5)(iv) as of March 15, 1999.

''(C) Any registered government securities broker or dealer that has an affiliated registered broker or dealer that files Form BD–Y2K subject to 17 CFR 240.17a–5(e)(5) will be exempted from paragraphs (e)(11) and (12) of this section, *provided* the affiliate's reports encompass the registered government securities broker's or dealer's transactions in, and holding of, government securities.''

(13) References to Form BD–Y2K mean Form BD–Y2K in § 249.618 of this title.

Dated: September 16, 1998.

Gary Gensler,

Assistant Secretary for Financial Markets.

Note. Form BD–Y2K does not appear in the *Code of Federal Regulations.* Form BD–Y2K is attached as Appendix A to this document as follows:

BILLING CODE 4810–39–M

Appendix A

Broker/Dealer-Year 2000 Report

FORM BD-Y2K

OMB APPROVAL	
OMB Number:	3235-0511
Expires:	December 31, 1999
Estimated average burden hours per response:	2

Cover Page

Submit Report To: (original plus 2 copies to the SEC; one copy to DEA)

United States Securities and Exchange Commission

Mail Stop A-2
450 5th Street, N.W. Washington, DC 20549

REPORT FOR:
- ☐ August 31,1998
- ☐ April 30, 1998

/ /
MM DD YYYY
REPORT FILING DATE

Reporting Entity

Name of Broker/Dealer: _____

SEC File No: 8- | | | | | |

CRD File No: | | | | | |

Address of Principal Place of Business (Do Not Use P.O. Box No.):

_____
Street Address

_____
City State Zip

Contact Person Responsible for Filling Out This Form (Please provide your business address and phone number):

Name: _____

Title: _____

Phone: _____

Address: _____

City _____ State _____ Zip _____

Signature _____

Title _____

Attention: Intentional misstatements or omissions of fact constitutes Federal Criminal Violations. (See 18 U.S.C. 1001 and 15 U.S.C. 78ff (a))

SEC 2435 (6-98)

GENERAL INSTRUCTIONS

These instructions are considered an integral part of Form BD-Y2K.

Form BD-Y2K is divided into two parts. As discussed below, Part I applies to each broker or dealer with a minimum net capital requirement of $5,000 or greater. Part II applies to only those brokers or dealers with a minimum net capital requirement of $100,000 or greater.

An original and two copies of each Form BD-Y2K must be filed with the Commission's principal office at mail stop A-2, 450 5th Street, N.W., Washington, D.C. 20549, and one copy of each Form BD-Y2K must be filed with the designated examining authority of the broker or dealer.

The original Form BD-Y2K that is required to be filed with the Securities and Exchange Commission ("Commission") must be manually signed. If the broker or dealer is a sole proprietorship, the signature shall be made by the proprietor; if a partnership, by a general partner; or if a corporation, by the Chief Executive Officer, or if not available, by any person authorized to act on behalf of the broker or dealer.

For the purposes of this Form BD-Y2K, the term "Year 2000 Problem" includes any erroneous result caused by computer software (i) incorrectly reading the date "01/01/00" or any year thereafter; (ii) incorrectly identifying a date in the year 1999 or any year thereafter; (iii) failing to detect that the Year 2000 is a leap year; and (iv) any other computer error that is directly or indirectly related to the problems set forth in (i), (ii), or (iii) above.

PART I

Pursuant to section 240.17a-5(e)(5)(ii)(A), no later than August 31, 1998, every broker or dealer required to maintain minimum net capital of $5,000 or greater as of July 15, 1998, pursuant to section 240.15c3-1(a)(2) shall file Part I of Form BD-Y2K prepared as of July 15, 1998, and no later than April 30, 1999, every broker or dealer required to maintain minimum net capital of $5,000 or greater as of March 15, 1999, pursuant to section 240.15c3-1(a)(2) shall file Part I of Form BD-Y2K prepared as of March 15, 1999.

Pursuant to section 240.17a-5(e)(5)(ii)(B), every broker or dealer that registers pursuant to section 15 of the Act between July 16, 1998 and December 31, 1998 or between March 16, 1999 and October 1, 1999, and that is required to maintain net capital pursuant to § 240.15c3-1(a)(2) of $5,000 or greater, shall file Part I of Form BD-Y2K no later than 30 days after its registration becomes effective. Part I of Form BD-Y2K shall be prepared as of the date its registration became effective.

Please do not write explanatory notes next to the questions on the Form.

PART II

Pursuant to section 240.17a-5(e)(5)(iii), no later than August 31, 1998, every broker or dealer with a minimum net capital requirement pursuant to section 240.15c3-1(a)(2) of $100,000 or greater as of July 15, 1998, shall file Part II of Form BD-Y2K prepared as of July 15, 1998.
Pursuant to section 240.17a-5(e)(5)(iii), no later than April 30, 1999, every broker or dealer with a minimum net capital requirement pursuant to section 240.15c3-1(a)(2) of $100,000 or greater as of March 15, 1999, and every broker or dealer required to file Part II of Form BD-Y2K as of July 15, 1998 shall file Part II of Form BD-Y2K prepared as of March 15, 1999.

Pursuant to section 240.17a-5(e)(5)(iii), every broker or dealer that registers pursuant to section 15 of the Act between July 15, 1998 and December 31, 1998 or between March 16, 1999 and October 1, 1999, and that is required to maintain net capital pursuant to § 240.15c3-1(a)(2) of $100,000 or greater, shall file Part II of Form BD-Y2K no later than 30 days after registration becomes effective. Part II of Form BD-Y2K shall address each topic in paragraphs (e)(5)(iv) of this section as of the effective date of its registration.

A broker or dealer required to complete Part II of the Form must also complete Part I. Each question should be answered in narrative form, even if your answer covers the same topics included in Part I of this Form.

PAPERWORK REDUCTION ACT DISCLOSURE

Form BD-Y2K requires a broker or dealer to file with the Commission and with its designated examining authority information concerning the broker's or dealer's efforts to address Year 2000 Problems. The Form is designed to (i) increase broker-dealer awareness that they should be taking specific steps now to prepare for the Year 2000; (ii) facilitate coordination with self regulatory organizations on industry wide testing, implementation, and contingency planning; (iii) supplement the Commission's examination module for Year 2000 issues; and (iv) provide information regarding the securities industry's preparedness for the Year 2000.

It is estimated that a broker or dealer will spend approximately 2 hours completing Part I of Form BD-Y2K and will spend approximately 35 hours completing Part II of Form BD-Y2K. Any member of the public may direct to the Commission any comments concerning the accuracy of this burden estimate and any suggestions for reducing this burden.

No assurance of confidentiality is given by the Commission with respect to the responses made in the Form BD-Y2K. This filing will be available to the public.

This collection of information has been reviewed by the Office of Management and Budget (OMB) in accordance with the clearance requirements of 44 U.S.C. § 3507. This collection of information has been assigned Control Number 3235-0511 by OMB.

An agency may not conduct or sponsor, and a person is not required to respond to, a collection of information unless it displays a currently valid number. Section 17(a) of the Securities Exchange Act of 1934 authorized the Commission to collect the information on this Form from registrants. See 15 U.S.C. § 78q.

PART I

Firm Name _____

Firm Address _____

CITY STATE ZIP

SEC File No. 8- | | | | | |

Firm CRD No. | | | | | |

REPORT FOR:

- ❑ August 31,1998
- ❑ April 30, 1998

MM / DD / YYYY

REPORT FILING DATE

1. Year 2000 compliance plan

(a) Do you have a plan for Year 2000 compliance to address whether your computer systems will operate correctly after December 31, 1999?

- ❒ Yes
- ❒ No

(b) If not, are you:

- ❒ Developing a written plan? It is expected to be completed by: MM / DD / YYYY
- ❒ Not developing a written plan because you do not plan to be conducting business after January 1, 2000?

  Plan to be out of business by: MM / DD / YYYY

- ❒ Other (Please specify) _____

If you do not have a plan, go to question 2.

(c) Does the plan address external interfaces with third party computer systems that communicate with your systems?

- ❒ Yes
- ❒ No

(d) Is your Year 2000 compliance plan in writing?

- ❒ Yes
- ❒ No

Please do not write explanatory notes on this Form.

SEC 2435 (6-98)

BROKER/DEALER NAME: _____

SEC File No. 8- | | | | | |

Firm CRD No. | | | | | |

(e) Who has approved the plan? (Check all that apply)

- ❒ No approval
- ❒ Board of Directors
- ❒ Corporate officers
- ❒ Executive management
- ❒ Head of Information Technology
- ❒ Employees

(f) Has the plan been discussed with your outside auditors?

- ❒ Yes
- ❒ No

(g) What is the scope of coverage of the plan? (Check all that apply)

- ❒ All systems
- ❒ Mission critical systems
- ❒ Physical facilities
- ❒ Communications systems

(h) Which of your facilities does the plan cover? (Check all that apply)

- ❒ Our primary facility
- ❒ Certain U.S. facilities
- ❒ All U.S. facilities
- ❒ Certain facilities worldwide
- ❒ All facilities worldwide
- ❒ We have no international facilities

(i) Are your activities for non-U.S. clients covered by the plan?

- ❒ Yes
- ❒ No
- ❒ Not Applicable

Please do not write explanatory notes on this Form.

SEC 2435 (6-98)

BROKER/DEALER NAME: _____ **SEC File No.** 8- | | | | | | **Firm CRD No.** | | | | | |

2. Funding for Year 2000 compliance

(a) Please indicate the month your fiscal year begins:

/ MM /

(b) Has specific funding been allocated for fiscal year 1998, fiscal year 1999, or fiscal year 2000 for your Year 2000 compliance plan?

(i) 1998
- ❒ Yes
- ❒ No

(ii) 1999
- ❒ Yes
- ❒ No

(iii) 2000
- ❒ Yes
- ❒ No

If funding has not been allocated for fiscal year 1999 or fiscal year 2000, mark "no." If you marked "no" for 1998, 1999, and 2000 go to question 3.

(c) What is your specific 1998 fiscal year budget allocation for Year 2000 compliance (including operating and capital expenditures)?

- ❒ Less than $1,000
- ❒ $1,001 - $10,000
- ❒ $10,001 - $50,000
- ❒ $50,001 - $100,000
- ❒ $100,001 - $500,000
- ❒ $500,001 - $1 million
- ❒ $1 million - $2 million
- ❒ $2 million - $5 million
- ❒ $5 million - $10 million
- ❒ $10 million - $20 million
- ❒ $20 million - $50 million
- ❒ $50 million - $100 million
- ❒ Over $100 million

Please do not write explanatory notes on this Form.

SEC 2435 (6-98)

BROKER/DEALER NAME: _____

SEC File No. 8- | | | | | |

Firm CRD No. | | | | | |

(d) What items are contained in your 1998 budget for Year 2000 compliance?
(Check all that apply)

- ❒ Assessment of the problem
- ❒ Correction of systems
- ❒ Replacement of systems
- ❒ Internal testing
- ❒ Point-to-point testing (including testing with broker-dealers, custodians, transfer agents, clearing agencies, other service providers, etc.)
- ❒ Training
- ❒ SIA industry wide testing
- ❒ Implementation of contingency plans

If you marked "no" for fiscal year 1999 and fiscal year 2000 in question 2(b), go to question 3.

(e) What is your specific 1999 fiscal year budget allocation for Year 2000 compliance (including operating and capital expenditures)?

- ❒ Less than $1,000
- ❒ $1,001 - $10,000
- ❒ $10,001 - $50,000
- ❒ $50,001 - $100,000
- ❒ $100,001 - $500,000
- ❒ $500,001 - $1 million
- ❒ $1 million - $2 million
- ❒ $2 million - $5 million
- ❒ $5 million - $10 million
- ❒ $10 million - $20 million
- ❒ $20 million - $50 million
- ❒ $50 million - $100 million
- ❒ Over $100 million

Please do not write explanatory notes on this Form.

SEC 2435 (6-98)

BROKER/DEALER NAME: _____

SEC File No. 8- | | | | | |

Firm CRD No. | | | | | |

(f) What items are contained in your 1999 budget for Year 2000 compliance?
(Check all that apply)

- ❒ Assessment of the problem
- ❒ Correction of systems
- ❒ Replacement of systems
- ❒ Internal testing
- ❒ Point-to-point testing (including testing with broker-dealers, custodians, transfer agents, clearing agencies, other service providers, etc.)
- ❒ Training
- ❒ SIA industry wide testing
- ❒ Implementation of contingency plans

If you marked "no" for fiscal year 2000 in question 2(b), go to question 3.

(g) What is your specific 2000 fiscal year budget allocation for Year 2000 compliance (including operating and capital expenditures)?

- ❒ Less than $1,000
- ❒ $1,001 - $10,000
- ❒ $10,001 - $50,000
- ❒ $50,001 - $100,000
- ❒ $100,001 - $500,000
- ❒ $500,001 - $1 million
- ❒ $1 million - $2 million
- ❒ $2 million - $5 million
- ❒ $5 million - $10 million
- ❒ $10 million - $20 million
- ❒ $20 million - $50 million
- ❒ $50 million - $100 million
- ❒ Over $100 million

Please do not write explanatory notes on this Form.

SEC 2435 (6-98)

BROKER/DEALER NAME: _____

SEC File No. 8- | | | | | |

Firm CRD No. | | | | | |

(h) What items are contained in your 2000 budget for Year 2000 compliance?
(Check all that apply)

- ❒ Assessment of the problem
- ❒ Correction of systems
- ❒ Replacement of systems
- ❒ Internal testing
- ❒ Point-to-point testing (including testing with broker-dealers, custodians, transfer agents, clearing agencies, other service providers, etc.)
- ❒ Training
- ❒ SIA industry wide testing
- ❒ Implementation of contingency plans

(3) Persons responsible for Year 2000

(a) Has one or more individuals been designated as responsible for your Year 2000 compliance?

- ❒ Yes
- ❒ No

(b) If yes, please provide the following information on the person primarily responsible:

_____
Name

_____
Title

_____
Business Name

_____
Street Address

_____
City State Zip

Please do not write explanatory notes on this Form.

SEC 2435 (6-98)

BROKER/DEALER NAME: _____ **SEC File No.** 8- | | | | | |

Firm CRD No. | | | | | |

4. Staffing for Year 2000

(a) Is this a full-time project for at least one individual (including both employees and consultants)?

- ❒ Yes
- ❒ No

(b) If yes, how many individuals are working full time on Year 2000 compliance?

- ❒ 1
- ❒ 2-5
- ❒ 6-10
- ❒ 11-20
- ❒ 21-50
- ❒ 51-100
- ❒ 101-200
- ❒ over 200

(c) Have you hired third parties to assist you on Year 2000 issues?

- ❒ Yes
- ❒ No

(d) If yes, what function(s) are the third parties performing?
(Check all that apply)

- ❒ Assessment of the problem
- ❒ Correction of systems
- ❒ Replacement of systems
- ❒ Internal testing
- ❒ Training
- ❒ Vendor assessment
- ❒ Point-to-point testing (including testing with broker-dealers, custodians, transfer agents, clearing agencies, other service providers, etc.)
- ❒ SIA industry wide testing
- ❒ Other (Please specify): _____

_____

Please do not write explanatory notes on this Form.

SEC 2435 (6-98)

BROKER/DEALER NAME: _____

SEC File No. 8- | | | | | |

Firm CRD No. | | | | | |

(e) If you have not completed staffing your Year 2000 project, are you?

- ❒ Defining resources. This will be completed by: MM / DD / YYYY
- ❒ Unable to find sufficient staffing resources.
- ❒ Handling the staffing as part of your ongoing business operations.

5. Inventory of systems

(a) Have you inventoried all systems?

- ❒ Yes
- ❒ No

(b) What is the nature of the computer systems you utilize? (Check all that apply)

- ❒ Off the shelf
- ❒ Vendor provided
- ❒ In house developed (custom made)
- ❒ Other (Please specify): _____

(c) Have you identified your mission critical systems?

- ❒ Yes
- ❒ No

(d) If no, this will be completed by: MM / DD / YYYY

(e) Have you determined which of your mission critical systems are not currently Year 2000 compliant?

- ❒ Yes
- ❒ No

Please do not write explanatory notes on this Form.

SEC 2435 (6-98)

BROKER/DEALER NAME: _____

SEC File No. 8- | | | | | |

Firm CRD No. | | | | | |

6. Awareness of the problem

(a) What steps have you taken to enhance **awareness** of potential Year 2000 Problems? (Check all that apply)

- ❒ None to date
- ❒ Designated individuals for Year 2000 compliance
- ❒ Presentations to the Board
- ❒ Presentations to management
- ❒ Presentations to employees
- ❒ Contacted third parties
- ❒ Other (Please specify): _____

7. Progress on preparing mission critical systems for the Year 2000

What is your progress on the following stages of preparation for the Year 2000?

(a) **Assessment** of steps you will take to address Year 2000 Problems with your mission critical systems (including preparing an inventory of computer systems affected by the Year 2000):

- ❒ 0% complete
- ❒ 1-25%
- ❒ 26-50%
- ❒ 51-75%
- ❒ 76-99%
- ❒ complete

If not completed, assessment expected to be completed by: MM / DD / YYYY

Please do not write explanatory notes on this Form.

SEC 2435 (6-98)

BROKER/DEALER NAME: _____

SEC File No. 8- | | | | |

Firm CRD No. | | | | |

(b) **Implementation** of steps you will take to address Year 2000 Problems with your mission critical systems:

- ❒ 0% complete
- ❒ 1-25%
- ❒ 26-50%
- ❒ 51-75%
- ❒ 76-99%
- ❒ complete

If not completed, implementation expected to be completed by: MM / DD / YYYY

(c) **Testing of your mission critical internal systems:**

- ❒ 0% complete
- ❒ 1-25%
- ❒ 26-50%
- ❒ 51-75%
- ❒ 76-99%
- ❒ complete

If not completed, testing expected to be completed by: MM / DD / YYYY

(d) Did your testing of internal systems result in material exceptions that remain unresolved as of this filing?

- ❒ Yes
- ❒ No

(e) Point-to-point testing of your mission critical systems (including testing with other broker-dealers, other financial institutions, customers, and vendors):

- ❒ 0% complete
- ❒ 1-25%
- ❒ 26-50%
- ❒ 51-75%
- ❒ 76-99%
- ❒ complete

If not completed, testing expected to be completed by: MM / DD / YYYY

Please do not write explanatory notes on this Form.

SEC 2435 (6-98)

BROKER/DEALER NAME: _____ **SEC File No.** 8- | | | | | | **Firm CRD No.** | | | | | |

(f) Did your point-to-point testing result in material exceptions that remain unresolved as of this filing?

- ❒ Yes
- ❒ No

(g) **Implementation** of tested software that addresses Year 2000 Problems with your mission critical systems:

- ❒ 0% complete
- ❒ 1-25%
- ❒ 26-50%
- ❒ 51-75%
- ❒ 76-99%
- ❒ complete

If not completed, implementation expected to be completed by: MM / DD / YYYY

8. Progress on preparing all other systems for the Year 2000

What is your progress on the following stages of preparation for the Year 2000?

(a) **Assessment** of steps you will take to address Year 2000 Problems with your non-critical systems (including preparing an inventory of computer systems affected by the Year 2000):

- ❒ 0% complete
- ❒ 1-25%
- ❒ 26-50%
- ❒ 51-75%
- ❒ 76-99%
- ❒ complete

If not completed, assessment expected to be completed by: MM / DD / YYYY

Please do not write explanatory notes on this Form.

SEC 2435 (6-98)

BROKER/DEALER NAME: _____ **SEC File No.** 8- | | | | | |

Firm CRD No. | | | | | |

(b) **Implementation** of steps you will take to address Year 2000 Problems with your non-critical systems:

- ❒ 0% complete
- ❒ 1-25%
- ❒ 26-50%
- ❒ 51-75%
- ❒ 76-99%
- ❒ complete

If not completed, implementation expected to be completed by: MM / DD / YYYY

(c) **Testing of your non-critical internal systems:**

- ❒ 0% complete
- ❒ 1-25%
- ❒ 26-50%
- ❒ 51-75%
- ❒ 76-99%
- ❒ complete

If not completed, testing expected to be completed by: MM / DD / YYYY

(d) Did your testing of internal systems result in material exceptions that remain unresolved as of this filing?

- ❒ Yes
- ❒ No

(e) **Point-to-point testing of your non-critical systems (including testing with other broker-dealers, other financial institutions, customers, and vendors):**

- ❒ 0% complete
- ❒ 1-25%
- ❒ 26-50%
- ❒ 51-75%
- ❒ 76-99%
- ❒ complete

If not completed, testing expected to be completed by: MM / DD / YYYY

Please do not write explanatory notes on this Form.

SEC 2435 (6-98)

BROKER/DEALER NAME: _____ **SEC File No.** 8- | | | | | | **Firm CRD No.** | | | | | |

(f) Did your point-to-point testing result in material exceptions that remain unresolved as of this filing?

- ❒ Yes
- ❒ No

(g) **Implementation** of tested software that address Year 2000 Problems with your non-critical systems:

- ❒ 0% complete
- ❒ 1-25%
- ❒ 26-50%
- ❒ 51-75%
- ❒ 76-99%
- ❒ complete

If not completed, implementation expected to be completed by: ___ / ___ / ____ (MM DD YYYY)

9. Contingency Plans

(a) Do you have a contingency plan for your systems if, after December 31, 1999, you have problems caused by Year 2000 Problems?

- ❒ Yes
- ❒ No

(b) If yes, is the contingency plan in writing?

- ❒ Yes
- ❒ No
- ❒ Not Applicable

(c) If not, what is your progress in preparing a contingency plan?

- ❒ 0% complete
- ❒ 1-25%
- ❒ 26-50%
- ❒ 51-75%
- ❒ 76-100%

Please do not write explanatory notes on this Form.

SEC 2435 (6-98)

BROKER/DEALER NAME: _____ **SEC File No.** 8- ____ **Firm CRD No.** ____

(d) What is the scope of coverage of the contingency plan?
(Check all that apply)

- ❒ No systems
- ❒ Mission critical systems
- ❒ Physical facilities
- ❒ Communication systems
- ❒ All systems

(e) Who has approved the contingency plan?
(Check all that apply)

- ❒ No approval
- ❒ Board of Directors
- ❒ Corporate officers
- ❒ Executive management
- ❒ Head of Information Technology
- ❒ Employees

10. Third parties (including clearing firms, vendors, service providers, counterparties, etc.) who provide mission critical systems

(a) Have you identified all third parties upon whom you rely for your mission critical systems?

- ❒ Yes
- ❒ No

(b) If yes, how many third parties do you rely upon for your mission critical systems?

_____
(numeric value)

(c) What percentage of third parties upon whom you rely for mission critical systems have you contacted regarding their readiness for the Year 2000?

- ❒ 0%
- ❒ 1-25%
- ❒ 26-50%
- ❒ 51-75%
- ❒ 76-99%
- ❒ all

If not all, contact expected to be completed by: ___ / ___ / ____ (MM DD YYYY)

Please do not write explanatory notes on this Form. SEC 2435 (6-98)

BROKER/DEALER NAME: _____ **SEC File No.** 8- | | | | | |

Firm CRD No. | | | | | |

(d) Has any third party upon whom you rely for mission critical systems declined or failed to provide you with assurances that it is taking the necessary steps to prepare for the Year 2000?

- ❒ Yes
- ❒ No
- ❒ Not Applicable

(e) If yes, how many third parties providing mission critical systems have not provided such assurances? _____
(numeric value)

(f) Does your contingency plan account for third parties whose systems may fail after December 31, 1999?

- ❒ Yes
- ❒ No
- ❒ We have no contingency plan

Please do not write explanatory notes on this Form. SEC 2435 (6-98)

PART II

Firm Name _____

Firm Address _____

CITY STATE ZIP

SEC File No. 8- | | | | | |

Firm CRD No. | | | | | |

REPORT FOR:

☐ August 31,1998

☐ April 30, 1998

/ /
MM DD YYYY
REPORT FILING DATE

Pursuant to Section 240.17a-5(e)(5)(iv), identify a specific person or persons that are available to discuss the contents of this report and please respond to each of the following questions in narrative form. Each question must be answered, even if your answer covers the same topics included in Part I of this Form.

(A) Has the broker's or dealer's board of directors (or similar body) approved and funded plans for preparing and testing its computer systems for Year 2000 Problems?

(B) Do the broker's or dealer's plans for preparing and testing its computer systems for Year 2000 Problems exist in writing and do the plans address all mission critical computer systems of the broker or dealer wherever located throughout the world?

(C) Has the broker or dealer assigned existing employees, hired new employees, or engaged third parties to provide assistance in addressing Year 2000 Problems? If so, provide a description of the work that these groups of individuals have performed as of the date of each report.

(D) What is the broker's or dealer's current progress on each stage of preparation for potential problems caused by Year 2000 Problems? These stages are:

(1) Awareness of potential Year 2000 Problems;

(2) Assessment of what steps the broker or dealer must take to address Year 2000 Problems;

(3) Implementation of the steps needed to address Year 2000 Problems;

(4) Internal testing of software designed to address Year 2000 Problems, including the number and a description of the material exceptions resulting from such testing that are unresolved as of the reporting date;

(5) Point-to-point or industry wide testing of software designed to address Year 2000 Problems (including testing with other brokers or dealers, other financial institutions, and customers), including the number and a description of the material exceptions resulting from such testing that are unresolved as of the reporting date; and

(6) Implementation of tested software that will address Year 2000 Problems.

SEC 2435 (6-98)

BROKER/DEALER NAME: _____

SEC File No. 8- | | | | | |

Firm CRD No. | | | | | |

(E) Does the broker or dealer have written contingency plans in the event, that after December 31, 1999, it has problems caused by Year 2000 Problems?

(F) What levels of management of the broker or dealer are responsible for addressing potential problems caused by Year 2000 Problems? Provide a description of the responsibilities for each level of management regarding the Year 2000 Problems.

(G) Provide any additional material information concerning the broker's or dealer's management of Year 2000 Problems that will help the Commission and the designated examining authorities assess the readiness of the broker or dealer for the Year 2000.

SEC 2435 (6-98)

[FR Doc. 98–26544 Filed 10–2–98; 8:45 am]
BILLING CODE 4810–39–C

ENVIRONMENTAL PROTECTION AGENCY

40 CFR Parts 52 and 81

[CT50–7201a; A–1–FRL–6168–8]

Approval and Promulgation of Air Quality Implementation Plans and Designations of Areas for Air Quality Planning Purposes; State of Connecticut; Approval of Maintenance Plan, Carbon Monoxide Redesignation Plan and Emissions Inventory for the New Haven-Meriden-Waterbury Area

AGENCY: Environmental Protection Agency (EPA).

ACTION: Proposed rule.

SUMMARY: EPA is approving a redesignation request and emissions inventory submitted by the State of Connecticut to redesignate the New Haven-Meriden-Waterbury area to attainment for carbon monoxide. Under the Clean Air Act amendments of 1990 (CAA), designations can be revised if sufficient data is available to warrant such revisions. This revision establishes the area as attainment for carbon monoxide and requires the state to implement their 10 year maintenance plan. In addition, EPA is approving the emissions inventory for carbon monoxide for the New Haven-Meriden-Waterbury area. In the **Federal Register**, EPA is approving the redesignation request as direct final rule without prior proposal because the Agency views this as a noncontroversial revision and anticipates no adverse comments. A detailed rationale for the approval is set forth in the direct final rule. If no adverse comments are received in response to that direct final rule, no further activity is contemplated in relation to this proposal. If EPA receives adverse comments, the direct final rule will be withdrawn in a timely manner and all public comments received will be addressed in a subsequent final rule based on this proposal. EPA will not institute a second comment period. Any parties interested in commenting on this rule should do so at this time.

DATES: Comments must be received on or before November 4, 1998.

ADDRESSES: Comments may be mailed to Susan Studlien, Deputy Director, Office of Ecosystem Protection (mail code CAA), U.S. Environmental Protection Agency, Region I, JFK Federal Bldg., Boston, MA 02203–2211. Copies of the State submittal and EPA's technical support document are available for public inspection during normal business hours, by appointment at the Office of Ecosytem Protection, U.S. Environmental Protection Agency, Region I, One Congress Street, 11th floor, Boston, MA and the Bureau of Air Management, Department of Environmental Protection, State Office Building, 79 Elm Street, Hartford, CT 06106–1630.

FOR FURTHER INFORMATION CONTACT: Jeffrey S. Butensky, Environmental Planner, Air Quality Planning Unit of the Office of Ecosystem Protection (mail code CAQ), U.S. Environmental Protection Agency, Region I, JFK Federal Bldg., Boston, MA 02203–2211, (617) 565–3583.

SUPPLEMENTARY INFORMATION: For additional information, see the direct final rule which is located in the appropriate Section of this **Federal Register**.

Authority: 42 U.S.C. 7401–7671q.

Dated: September 11, 1998.

John P. DeVillars,

Regional Administrator, Region I.

[FR Doc. 98–26454 Filed 10–2–98; 8:45 am]

BILLING CODE 6560–50–P

FEDERAL COMMUNICATIONS COMMISSION

47 CFR Parts 1, 22, and 101

[WT Docket No. 97–81; DA 98–1889]

Multiple Address Systems

AGENCY: Federal Communications Commission.

ACTION: Proposed rule; dismissal.

SUMMARY: On September 17, 1998, the Public Safety and Private Wireless Division adopted and released an Order dismissing all pending Multiple Address System (MAS) applications for use of the 932–932.5/941–941.5 MHz bands which were filed in anticipation of the Commission conducting a lottery to license competing applications. The Balanced Budget Act of 1997 terminated the Commission's authority to use lotteries to select among competing mutually exclusive applicants for initial license or construction permits. Applicants will have the opportunity to refile applications for MAS service under new service rules that are fully compliant with the Balanced Budget Act of 1997.

DATES: Effective September 17, 1998. All pending MAS applications for use of the 932–932.5/941–941.5 MHz bands (File Nos. A00001–A50772) were dismissed on September 17, 1998.

ADDRESSES: Federal Communications Commission, 1919 M St., NW., Room 222, Washington, DC 20554.

FOR FURTHER INFORMATION CONTACT: Ronald Quirk or Shellie Blakeney, Wireless Telecommunications Bureau, Public Safety & Private Wireless Division, Policy and Rules Branch, (202) 418–0680, or via E-mail to ''rquirk@fcc.gov'' or ''sblakene@fcc.gov.''

SUPPLEMENTARY INFORMATION:

1. The Commission announced by Public Notice that it would open five two-day filing windows in 1992 for license applications proposing to use channels in the 932/941 MHz MAS frequency band. The Commission announced that it would select licensees by lottery if mutually exclusive applications were received. In response to the series of filing windows, over 50,000 applications were submitted.

2. On August 10, 1993, Congress enacted the Omnibus Budget Reconciliation Act of 1993 (1993 Budget Act) which authorized the Commission to select licensees applying for initial license grants or authorizations from among competing applicants by competitive bidding for certain classes of radio licenses. As a result, the Commission commenced a proceeding to examine whether licenses for various radio services should be distributed by competitive bidding.

3. The 1993 Budget Act required that the Commission subject to competitive bidding, those licensees that would receive compensation in exchange for its services. *See* 47 U.S.C. 309(j)(2)(A) (1993). Hence, in its proceeding implementing the 1993 Budget Act, the Commission determined that the MAS applications should not be subject to competitive bidding because at that time, it was believed that the licenses would be primarily used for private internal communications and not involve subscriber-based services. Subsequently, upon review of the 50,000 applications filed, the Commission determined that its original assumptions regarding MAS may have become inaccurate because most applications reflected that the spectrum would be primarily used for subscriber-based services. As a result, in February 1997, the Commission released a *Notice of Proposed Rule Making (MAS Notice)*, 62 FR 11407 (March 12, 1997), which sought to streamline the MAS service rules, increase technical and operational flexibility for MAS licensees, license most MAS channels by geographic area and award mutually exclusive licenses by competitive bidding. The Commission also proposed to dismiss the pending MAS applications for the 932/941 MHz band without prejudice and to allow refiling under whatever

new licensing rules are ultimately adopted.

4. Subsequently, the 1997 Balanced Budget Act (1997 Budget Act) eliminated the Commission's authority to use lotteries (with an exception not relevant to the MAS context) for any license issued after July 1, 1997. The 1997 Budget Act also expanded the Commission's authority—and statutory mandate—to use competitive bidding to select licensees from among mutually exclusive applications for any initial license, with no exceptions for pending mutually exclusive applications. As a result of this Congressional mandate, the Commission was left without authority to process the pending mutually exclusive applications by random selection. Thus, the pending applications are dismissed without prejudice. Applicants will have the opportunity to refile applications for MAS service under new service rules that are fully compliant with the 1997 Balanced Budget Act.

5. Applicants can apply to the Office of Managing Director of the Federal Communications Commission for a refund of filing fees, pursuant to section 1.1113(a) of the Commission's rules. See 47 CFR 1.1113(a).

6. The full text of the Order is available for inspection and duplication during regular business hours in the Public Safety and Private Wireless Division of the Wireless Telecommunications Bureau, Federal Communications Commission, 2025 M Street, NW., Room 8010, Washington, DC 20554. Copies may also be obtained from International Transcription Service, Inc. (ITS), 1231 20th Street, NW., Washington, DC 20036, (202) 857–3800.

List of Subjects

47 CFR Part 1

Administrative practice and procedure, Communications common carriers, Radio.

47 CFR Part 22

Communications common carriers, Radio.

47 CFR Part 101

Radio.

Federal Communications Commission.

D'wana R. Terry,

Chief, Public Safety & Private Wireless Division, Wireless Telecommunications Bureau

[FR Doc. 98–26568 Filed 10–2–98; 8:45 am]

BILLING CODE 6712–01–P

Notices

Federal Register
Vol. 63, No. 192
Monday, October 5, 1998

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 COMMERCE

National Oceanic and Atmospheric Administration

[I.D. 082698C]

Caribbean Fishery Management Council; Public Meeting

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

ACTION: Notice of rescheduled public meeting.

SUMMARY: The Caribbean Fishery Management Council (Council) has rescheduled its 95th Council meeting.

DATES: The Council meeting will be held on October 6, 1998.

ADDRESSES: The meeting will be held at the Best Western Pierre Hotel, at the De Diego Avenue, San Juan, Puerto Rico.

FOR FURTHER INFORMATION CONTACT: Caribbean Fishery Management Council, 268 Munoz Rivera Avenue, Suite 1108, San Juan, Puerto Rico 00918–2577; telephone: (787) 766–5926; fax: (787) 766–6239.

SUPPLEMENTARY INFORMATION: The Council has rescheduled its 95th regular public meeting to discuss the Draft Essential Fish Habitat (EFH) Generic Amendment to the Fishery Management Plans (FMPs) of the U.S. Caribbean, and will take final action on these items. This meeting was previously scheduled for September 29, 1998 and was cancelled due to Hurricane Georges. This meeting was previously published in the **Federal Register** on September 4, 1998 (63 FR 47268).

The Council will meet on Tuesday, October 6, 1998, from 10:00 a.m. to 4:00 p.m. The meeting is open to the public, and will be conducted in English. Fishers and other interested persons are invited to attend and participate with oral and written statements regarding agenda issues.

Although other issues not contained in this agenda may come before this Council for discussion, in accordance with the Magnuson-Stevens Fishery Management Act, those issues may not be the subject of formal action during this memeting. Council action will be restricted to those issues specifically listed in this notice.

Special Accommodations

The meeting is physically accessible to people with disabilities. For more information or requests for sign language interpretation and/or other auxiliary aids, please contact Mr. Miguel A. Rolon at the Council (see **FOR FURTHER INFORMATION CONTACT**) at least 5 days prior to the meeting date.

Dated: October 1, 1998.

Richard W. Surdi,

Acting Director, Office of Sustainable Fisheries, National Marine Fisheries Service.

[FR Doc. 98–26752 Filed 10–1–98; 1:57 pm]

BILLING CODE 3510–22–F

DEPARTMENT OF COMMERCE

National Oceanic and Atmospheric Administration

[I.D. 093098A]

Pacific Fishery Management Council; Scheduled Teleconference

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

ACTION: Notice of scheduled teleconference.

SUMMARY: The Pacific Fishery Management Council's Budget Committee will hold a telephone conference call.

DATES: The conference call will be held on October 19, 1998 at 10:00 a.m. (Pacific Daylight Time).

ADDRESSES: The telephone conference will originate from the Council office, 2130 SW Fifth Avenue, Suite 224, Portland, OR 97201.

FOR FURTHER INFORMATION CONTACT: Lawrence D. Six, Executive Director; telephone: (503) 326–6352.

SUPPLEMENTARY INFORMATION: The purpose of the conference call is to adopt an initial budget request for the operation of the Council during calendar year 1999. At it's September 14–18, 1998 meeting, the Council instructed the Budget Committee to confer after the amount available to the Regional Fishery Management Councils was determined by Congress and NMFS. The initial amount available to the Pacific Council should be known in advance of the October 19, 1998 conference call.

Members of the public wishing to listen to this conference or desiring further information should contact Mr. Lawrence D. Six, Executive Director, Pacific Fishery Management Council, 2130 SW Fifth Avenue, Suite 224, Portland, OR 97201; telephone: (503) 326–6352.

Although other issues not contained in this agenda may come before the Council for discussion, in accordance with the Magnuson-Stevens Fishery Conservation and Management Act, those issues may not be the subject of formal action during this meeting. Action will be restricted to those issues specifically identified in the agenda listed in this notice.

The teleconference is physically accessible to people with disabilities. Requests for auxiliary aids should be directed to Mr. John Rhoton at (503) 326–6352 at least 5 days prior to the teleconference date.

Dated: September 30, 1998.

Richard W. Surdi,

Acting Director, Office of Sustainable Fisheries, National Marine Fisheries Service.

[FR Doc. 98–26626 Filed 10–2–98; 8:45 am]

BILLING CODE 3510–22–F

DEPARTMENT OF COMMERCE

National Oceanic and Atmospheric Administration

[I.D. 092198A]

Marine Mammals, Endangered or Threatened Species, Scientific Research Permit No. 587–001472–00

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

ACTION: Receipt of application.

SUMMARY: Notice is hereby given that Dr. Dan R. Salden, Box 1772, Southern Illinois University at Edwardsville, Edwardsville, IL 62026-1772, has applied in due form for a scientific research permit to take North Pacific humpback whales (*Megaptera*

novaeangliae), false killer whales (*Pseudorca crassidens*), killer whales (*Orcinus orca*), short-finned pilot whales (*Globicephala macrorhynchus*), bottlenose dolphins (*Tursiops truncatus*), spotted dolphins (*Stenella attenuata*), and spinner dolphins (*Stenella longirostris*) for purposes of scientific research.

DATES: Written of telefaxed comments must be received on or before November 4, 1998.

ADDRESSES: The application and related documents are available for review upon written request or by appointment in the following office(s):

Permits Division, Office of Protected Resources, NMFS, 1315 East-West Highway, Room 13130, Silver Spring, MD 20910 (301/713–2289);

Regional Administrator, Southwest Regional Office, 501 West Ocean Boulevard, Suite 4200, Long Beach, CA 90802–4213 (562/980–4001);

Regional Administrator, Alaska Regional Office, 709 W. 9th Street, Federal Building, room 461, P.O. Box 21668, Juneau, AK 99802 (907/586–7221); and

Protected Resources Program Manager, Pacific Islands Area Office, 2570 Dole Street, Room 106, Honolulu, HI 96822–2396 (808/973–2987).

Written comments or requests for a public hearing on this application should be mailed to the Chief, Permits and Documentation Division, F/PR1, Office of Protected Resources, NMFS, 1315 East-West Highway, Room 13705, Silver Spring, MD 20910. Those individuals requesting a hearing should set forth the specific reasons why a hearing on this particular request would be appropriate.

FOR FURTHER INFORMATION CONTACT: Jeannie Drevenak, 301/713–2289.

SUPPLEMENTARY INFORMATION: The subject permit is requested under the authority of the Marine Mammal Protection Act of 1972, as amended (MMPA; 16 U.S.C. 1361 *et seq.*), the Regulations Governing the Taking and Importing of Marine Mammals (50 CFR part 216), the Endangered Species Act of 1973, as amended (ESA; 16 U.S.C. 1531 et seq.) and the regulations governing the taking, importing, and exporting of endangered fish and wildlife (50 CFR part 222.23).

The applicant proposes to conduct photo-identification and behavioral observations, including sound recordings, of North Pacific humpback whales in Hawaii and Alaska waters over a five-year period. Photo-identification and observations of bottlenose dolphins, spinner dolphins, spotted dolphins, false killer whales, pilot whales, and killer whales would be conducted on an opportunistic basis. The research is a continuation of a long-term study of association patterns and directed communication behaviors of the North Pacific humpback whale.

In compliance with the National Environmental Policy Act of 1969 (42 U.S.C. 4321 *et seq.*), an initial determination has been made that the activity proposed is categorically excluded from the requirement to prepare an environmental assessment or environmental impact statement.

Concurrent with the publication of this notice in the **Federal Register**, NMFS is forwarding copies of this application to the Marine Mammal Commission and its Committee of Scientific Advisors.

Dated: September 29, 1998.

Ann D. Terbush,

Chief, Permits and Documentation Division, Office of Protected Resources, National Marine Fisheries Service.

[FR Doc. 98–26625 Filed 10–2–98; 8:45 am]

BILLING CODE 3510–22–F

DEPARTMENT OF COMMERCE

National Oceanic and Atmospheric Administration

[I.D. 090198A]

Recreational Fishing; Code of Angling Ethics

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

ACTION: Notice of proposed code of angling ethics.

SUMMARY: NMFS is seeking public comment on a proposed Code of Angling Ethics. The adoption of this Code of Angling Ethics would implement the public education strategy required under the NMFS-specific Recreational Fishery Resources Conservation Plan.

DATES: Comments must be received by November 19, 1998.

ADDRESSES: Comments on the proposed Code of Angling Ethics should be sent to Richard H. Schaefer; Office of Intergovernmental and Recreational Fisheries; 8484 Georgia Avenue, Suite 425; Silver Spring, Maryland 20910–3282.

FOR FURTHER INFORMATION CONTACT: Richard H. Schaefer, 301-427-2014.

SUPPLEMENTARY INFORMATION: On June 7, 1995, the President signed Executive Order 12962 (EO) - Recreational Fisheries. The EO recognized the social, cultural, and economic importance of recreational fishing to the nation and directed Federal agencies to ''improve the quantity, function, sustainable productivity, and distribution of U.S. aquatic resources for increased recreational fishing opportunities.'' Further, the EO established the National Recreational Fisheries Coordination Council (NRFCC) consisting of Secretarial designees from the Departments of Commerce, Interior, Agriculture, Defense, Energy, and Transportation, and the Environmental Protection Agency. The NRFCC was directed under the EO to produce a Recreational Fishery Resources Conservation Plan (National Plan). The National Plan, completed June 3, 1996, directed each Federal agency to develop an agency-specific implementation plan that identifies actions necessary to meet the goals and objectives of the National Plan. The NMFS-specific Recreational Fishery Resources Conservation Plan, unveiled December 31, 1996, dictates four Implementation Strategies as policy to achieve the goals of the National Plan. Implementation Strategy III, Public Education, states that NMFS will support, develop, and implement programs designed to enhance public awareness and understanding of marine conservation issues relevant to the well-being of marine recreational fishing. One output listed under this Implementation Strategy is ''NMFS will develop, promote and distribute a 'Code of Conduct for Recreational Fishing.'''

The following Code of Angling Ethics is proposed for adoption by NMFS:

THE CODE OF ANGLING ETHICS

1. Promotes, through education and practice, ethical behavior in the use of aquatic resources.

2. Values and respects the aquatic environment and all living things in it.

3. Avoids spilling, and never dumps, any pollutants, such as gasoline and oil, into the aquatic environment.

4. Disposes of all trash, including worn-out lines, leaders, and hooks, in appropriate containers, and helps to keep fishing sites litter-free.

5. Takes all precautionary measures necessary to prevent the spread of exotic plants and animals, including live baitfish, into non-native habitats.

6. Learns and obeys angling and boating regulations, and treats other anglers, boaters, and property owners with courtesy and respect.

7. Respects property rights, and never trespasses on private lands or waters.

8. Keeps no more fish than needed for consumption, and never wastefully discards fish that are retained.

9. Practices conservation by carefully handling and releasing alive all fish that

are unwanted or prohibited by regulation, as well as other animals that may become hooked or entangled accidentally.

10. Uses tackle and techniques which minimize harm to fish when engaging in ''catch and release'' angling.

Dated: September 29, 1998.

Bruce C. Moehead,

Acting Director, Office of Sustainable Fisheries, National Marine Fisheries Service.

[FR Doc. 98–26627 Filed 10–2–98; 8:45 am]

BILLING CODE 3510–22–F

DEPARTMENT OF DEFENSE

Office of the Secretary

Submission for OMB Review; Comment Request

ACTION: Notice.

The Department of Defense has submitted to OMB for clearance, the following proposal for collection of information under the provisions of the Paperwork Reduction Act (44 U.S.C. Chapter 35).

Title and OMB Number: Corps of Engineers Civil Works Questionnaires—Generic Clearance; OMB Number 0710–0001.

Type of Request: Reinstatement.

Number of Respondents: 112,400.

Responses per Respondent: 1.

Annual Responses: 112,400.

Average Burden Per Response: 6 minutes.

Annual Burden Hours: 10,817.

Needs and Uses: The Army Corps of Engineers uses public surveys for collecting primary data for planning, program evaluation, and basic research to improve formulation and design of resource projects and the management of their operations. Information is needed to formulate and evaluate alternative water resources development plans; to determine the effectiveness and evaluate the impacts of Corps projects; and in the case of flood damage mitigation, to obtain information on flood damages incurred, with or without a flood damage reduction project. Surveys of the public are also essential to the Corps recreation research and management program. Respondents are typically flood victims; other floodplain residents and business managers; shippers of waterborne commodities; waterway operators; local officials who work with the Corps of Engineers on planning and managing water resource projects and services; and, individual users of Corps recreation areas.

Affected Public: Individuals or Households; Business or Other For-Profit; Not-For-Profit Institutions; Farms; State, Local, or Tribal Government.

Frequency: On Occasion.

Respondent's Obligation: Voluntary.

OMB Desk Officer: Mr. James A. Laity.

Written comments and recommendations on the proposed information collection should be sent to Mr. Laity at the Office of Management and Budget, Desk Officer for U.S. Army, COE, Room 10202, New Executive Office Building, Washington, DC 20503.

DOD Clearance Officer: Mr. Robert Cushing.

Written requests for copies of the information collection proposal should be sent to Mr. Cushing, WHS/DIOR, 1215 Jefferson Davis Highway, Suite 1204, Arlington, VA 22202–4302.

Dated: September 29, 1998.

Patricia L. Toppings,

Alternate OSD Federal Register Liaison Officer, Department of Defense.

[FR Doc. 98–26506 Filed 10–2–98; 8:45 am]

BILLING CODE 5000–04–M

DEPARTMENT OF DEFENSE

Office of the Secretary

Submission for OMB Review; Comment Request

ACTION: Notice.

The Department of Defense has submitted to OMB for clearance, the following proposal for collection of information under the provisions of the Paperwork Reduction Act (44 U.S.C. Chapter 35).

Title and OMB Number: Tender of Service—Mobile Homes/Boats; OMB Number 0704–0056.

Type of Request: Reinstatement.

Number of Respondents: 23.

Responses per Respondent: 5.4 (average).

Annual Responses: 125.

Average Burden per Response: 1 hour 15 minutes.

Annual Burden Hours: 444.

Needs and Uses: The Carrier Qualification Program (CQP) is designed to protect the interest of the Government and to ensure that the Department of Defense deals with responsible carriers having the capability to provide quality and dependable service. This program became necessary because deregulation of the motor carrier industry brought an influx of new carriers into DoD's transportation market, many of which are unreliable or do not have the capability to provide consistent dependable transportation service. Since mobile homes/boats move at Government expense, data is needed to choose the best service at least cost. The information provided serves as a bid for contract to transport mobile homes/boats. The carrier must provide the information in order to become a DoD-approved carrier.

Affected Public: Business or Other For-Profit.

Frequency: On Occasion.

Respondent's Obligation: Required to Obtain or Retain Benefits.

OMB Desk Officer: Mr. Peter N. Weiss.

Written comments and recommendations on the proposed information collection should be sent to Mr. Weiss at the Office of Management and Budget, Desk Officer for DoD, Room 10236, New Executive Office Building, Washington, DC 20503.

DoD Clearance Officer: Mr. Robert Cushing.

Written requests for copies of the information collection proposal should be sent to Mr. Cushing, WHS/DIOR, 1215 Jefferson Davis Highway, Suite 1204, Arlington, VA 22202–4302.

Dated: September 29, 1998.

Patricia L. Toppings,

Alternate OSD Federal Register Liaison Officer, Department of Defense.

[FR Doc. 98–26507 Filed 10–2–98; 8:45 am]

BILLING CODE 5000–04–M

DEPARTMENT OF DEFENSE

Office of the Secretary

[Transmittal No. 98–38]

36(b)(1) Arms Sales Notification

AGENCY: Defense Security Assistance Agency, DOD.

ACTION: Notice.

SUMMARY: The Department of Defense is publishing the unclassified text of a section 36(b)(1) arms sales notification. This is published to fulfill the requirements of section 155 of Pub. L. 104–164 dated July 21, 1996.

FOR FURTHER INFORMATION CONTACT: Ms. J. Hurd, DSAA/COMPT/RM, (703) 604–6575.

The following is a copy of a letter to the Speaker of the House of Representatives, Transmittal 98–38, with attached transmittal, policy justification, sensitivity of technology, and Section 620C(b) of the Foreign Assistance Act of 1961.

Dated: September 29, 1998.

L.M. Bynum,

Alternate OSD Federal Register Liaison Officer, Department of Defense.

BILLING CODE 5000–04–M

DEFENSE SECURITY ASSISTANCE AGENCY

WASHINGTON, DC 20301-2800

22 SEP 1998

In reply refer to:
I-63599/98

Honorable Newt Gingrich
Speaker of the House of
Representatives
Washington, D.C. 20515-6501

Dear Mr. Speaker:

Pursuant to the reporting requirements of Section 36(b)(1) of the Arms Export Control Act, we are forwarding herewith Transmittal No. 98-38, concerning the Department of the Army's proposed Letter(s) of Offer and Acceptance (LOA) to Greece for defense articles and services estimated to cost $245 million. Soon after this letter is delivered to your office, we plan to notify the news media.

You will also find attached a certification as required by Section 620C(d) of the Foreign Assistance Act of 1961, as amended, that this action is consistent with Section 620C(b) of that statute.

Sincerely,

A.R. KELTZ
ACTING DIRECTOR

Attachments

Same ltr to: House Committee on International Relations
Senate Committee on Appropriations
Senate Committee on Foreign Relations
House Committee on National Security
Senate Committee on Armed Services
House Committee on Appropriations

Transmittal No. 98-38

Notice of Proposed Issuance of Letter of Offer
Pursuant to Section 36(b)(1)
of the Arms Export Control Act

(i) Prospective Purchaser: Greece

(ii) Total Estimated Value:

Major Defense Equipment*	$ 214 million
Other	$ 31 million
TOTAL	$ 245 million

(iii) Description of Articles or Services Offered: Eighteen Multiple Launch Rocket Systems (MLRS), 146 MLRS extended range rocket pods (six rockets per pod), 81 Army Tactical Missile System guided missiles and launching assemblies, 11 M577 command post carriers, 162 M26 rockets, 94 SINCGARS radio systems, 60 AN/PVS-7B night vision goggles, four M984A1 and 24 M985 heavy expanded mobility tactical trucks, forklifts, production verification testing, spare and repair parts, support vehicles, publications and technical documentation, personnel training and training equipment, support and test equipment, U.S. Government and contractor technical and logistics personnel services and other related elements of program support.

(iv) Military Department: Army (XIG, XIQ, and XIR)

(v) Sales Commission, Fee, etc., Paid, Offered, or Agreed to be Paid: None

(vi) Sensitivity of Technology Contained in the Defense Article or Defense Services Proposed to be Sold: See Annex attached.

(vii) Date Report Delivered to Congress: 22 SEP 1998

* as defined in Section 47(6) of the Arms Export Control Act.

POLICY JUSTIFICATION

Greece - Guided Missile Systems

The Government of Greece has requested a possible sale of 18 Multiple Launch Rocket Systems (MLRS), 146 MLRS extended range rocket pods (six rockets per pod), 81 Army Tactical Missile System (ATACMS) guided missiles and launching assemblies, 11 M577 command post carriers, 162 M26 rockets, 94 SINCGARS radio systems, 60 AN/PVS-7B night vision goggles, four M984A1 and 24 M985 heavy expanded mobility tactical trucks, forklifts, production verification testing, spare and repair parts, support vehicles, publications and technical documentation, personnel training and training equipment, support and test equipment, U.S. Government and contractor technical and logistics personnel services and other related elements of program support. The estimated cost is $245 million.

This proposed sale will contribute to the foreign policy and national security of the United States by improving the military capabilities of Greece and enhancing weapon system standardization and interoperability of this important NATO ally.

The proposed sale will provide the Hellenic Army with an area fire system for use against hostile artillery, air defense and maneuver elements. ATACMS mounts on the multiple launch rocket system (MLRS) launcher which Greece has previously purchased and, therefore, will have no difficulty absorbing these additional systems capabilities. The missiles will be provided to Greece in accordance with and subject to the limitations on use and transfer of the Arms Export Control Act, as embodied in the terms of sale. This sale will not adversely affect either the military balance in the region or U.S. efforts to encourage a negotiated settlement of the Cyprus question.

The proposed sale of this equipment and support will not affect the basic military balance in the region.

The prime contractor will be Lockheed Martin Vought Systems, Dallas, Texas. One or more proposed offset agreements may be related to this proposed sale.

Implementation of this proposed sale will require the assignment of several U.S. Government Quality Assurance Teams to Greece for 30 days to assist in the delivery and deployment of the systems. There will be a contractor representative for one year following initial deployment and may require additional representatives to participate in technical support periodically during the program.

There will be no adverse impact on U.S. defense readiness as a result of this proposed sale.

Transmittal No. 98-38

Notice of Proposed Issuance of Letter of Offer
Pursuant to Section 36(b)(1)
of the Arms Export Control Act

Annex
Item No. vi

(vi) Sensitivity of Technology:

1. The highest level of classified information required to be released for training, operation and maintenance of the MLRS is Confidential. The highest level which could be revealed through reverse engineering or testing of the end item is Secret. This information includes reports and test data, as well as performance and capability data.

2. The highest level of classified information required to be released for training, operation and maintenance of the Army Tactical Missile System (ATACMS) is Confidential. The highest level of classified information which could be revealed through reverse engineering or testing of the missile system is Secret. This information includes reports and test data, as well as performance and capability data.

3. Specific areas of ATACMS which are not classified but considered sensitive and contain critical technology include the application of low-radar-cross-section material to enhance system survivability, the armored and camouflaged ATACMS container which provides additional protection and reduces vulnerability, the Improved Stabilized Reference Package/Position Determining System (ISRP/PDS), the Payload Interface Module, the Improved Electronics Unit in the launcher and the missile's guidance, payload, propulsion, and control sections.

4. If a technologically advanced adversary were to obtain knowledge of the specific hardware and software elements, the information could be used to develop countermeasures or equivalent systems which might reduce weapon system effectiveness or be used in the development of a system with similar or advanced capabilities.

5. A determination has been made that the recipient country can provide substantially the same degree of protection for the sensitive technology being released as the U.S. Government. This sale is necessary in furtherance of the U.S. foreign policy and national security objectives outlined in the Policy Justification.

Certification Under Section 620C(d) Of The Foreign Assistance Act of 1961, As Amended

Pursuant to section 620C(d) of the Foreign Assistance Act of 1961, as amended (the Act), Executive Order 12163 (sec. 1-201(a)(13)) and the Secretary of State's memorandum of December 15, 1997, I hereby certify that the furnishing to Greece of 18 Multiple Launch Rocket Systems (MLRS), 146 MLRS extended range rocket pods, 81 modified Block I Army Tactical Missile System (ATACMS) guided missiles and related elements of logistics and program support, at an estimated cost of $245 million, is consistent with the principles contained in section 620C(b) of the Act.

This certification will be made part of the notification to the Congress under section 36(b) of the Arms Export Control Act regarding the proposed sale of the above-named articles and services, and is based on the justification accompanying said notification, of which said justification constitutes a full explanation.

John D. Holum
Acting Under Secretary
for Arms Control and
International Security
Affairs / Director, U.S. Arms
Control and Disarmament Agency

[FR Doc. 98–26513 Filed 10–2–98; 8:45 am]
BILLING CODE 5000–04–C

DEPARTMENT OF DEFENSE

Office of the Secretary

[Transmittal No. 98–45]

36(b)(1) Arms Sales Notification

AGENCY: Defense Security Assistance Agency, DOD.

ACTION: Notice.

SUMMARY: The Department of Defense is publishing the unclassified text of a section 36(b)(1) arms sales notification. This is published to fulfill the requirements of section 155 of Pub. L. 104–164 dated July 21, 1996.

FOR FURTHER INFORMATION CONTACT: Ms. J. Hurd, DSAA/COMPT/RM, (703) 604–6575.

The following is a copy of a letter to the Speaker of the House of Representatives, Transmittal 98–45, with attached transmittal and policy justification.

Dated: September 29, 1998.

L.M. Bynum,

Alternate OSD Federal Register Liaison Officer, Department of Defense.

BILLING CODE 5000–04–M

DEFENSE SECURITY ASSISTANCE AGENCY

WASHINGTON, DC 20301-2800

16 SEP 1998

In reply refer to:
I-68292/98

Honorable Newt Gingrich
Speaker of the House of
Representatives
Washington, D.C. 20515-6501

Dear Mr. Speaker:

Pursuant to the reporting requirements of Section 36(b)(1) of the Arms Export Control Act, we are forwarding herewith Transmittal No. 98-45 and under separate cover the classified annex thereto. This Transmittal concerns the Department of the Air Force's proposed Letter(s) of Offer and Acceptance (LOA) to United Arab Emirates for defense articles and services estimated to cost $2 billion. Soon after this letter is delivered to your office, we plan to notify the news media of the unclassified portion of this Transmittal.

This notification is transmitted in conjunction with a 36(c) notification of a commercial sale of 80 F-16 Block 60 aircraft, services and long term support.

Sincerely,

MICHAEL S. DAVISON, JR.
LIEUTENANT GENERAL, USA
DIRECTOR

Attachments

Separate Cover:
Classified Annex

Same ltr to: House Committee on International Relations
Senate Committee on Appropriations
Senate Committee on Foreign Relations
House Committee on National Security
Senate Committee on Armed Services
House Committee on Appropriations

Transmittal No. 98-45

Notice of Proposed Issuance of Letter of Offer
Pursuant to Section 36(b)(1)
of the Arms Export Control Act

(i) Prospective Purchaser: United Arab Emirates

(ii) Total Estimated Value:

Major Defense Equipment*	$ .900 billion
Other	$ 1.100 billion
TOTAL	$ 2.000 billion

(iii) Description of Articles or Services Offered:
Four hundred ninety-one AIM-120B Advanced Medium Range Air-to-Air Missiles (AMRAAM) and 12 AMRAAM training missiles; 267 AIM-9M 1/2 SIDEWINDER missiles and 80 SIDEWINDER training missiles; 163 AGM-88 High Speed Anti-Radiation Missiles (HARM) and four HARM training missiles; 1,163 AGM-65D/G MAVERICK missiles and 20 MAVERICK training missiles; 52 AGM-84 HARPOON missiles; 2,252 MK 82 and 1,231 MK 84 general purpose bombs; 1,700 MK 82 and 560 MK 84 air inflatable retard kits; 250 BLU-109 bombs; 605 GBU-10 and 462 GBU-12 PAVEWAY II laser guided bomb kits; 606 GBU-24 PAVEWAY III laser guided bomb kits; 1,820 CBU-87 combined effects munitions; 20 CBU-58 inert cluster bomb units; 44,312 BDU-33 training bombs; 44,148 MK 106 training bombs; 188,000 20mm and 161,650 20mm inert bullets; 115,000 self protection chaff; 55,000 self protection flares; logistics, technical and management services support; Government Furnished Equipment (gun system, Cartridge/Propellant Actuated Devices, delivery services); alternate mission equipment; personnel training (including support for U.S. operating location) and other related elements of logistics and program support.

(iv) Military Department: Air Force (SAA)

(v) Sales Commission, Fee, etc., Paid, Offered, or Agreed to be Paid: none

(vi) Sensitivity of Technology Contained in the Defense Article or Defense Services Proposed to be Sold:
See Annex under separate cover.

(vii) Date Report Delivered to Congress: 16 SEP 1998

* as defined in Section 47(6) of the Arms Export Control Act.

POLICY JUSTIFICATION

United Arab Emirates - Weapons, Munitions and Services

In support of a commercial sale of 80 F-16 Block 60 aircraft, the Government of United Arab Emirates (UAE) has requested a possible sale of 491 AIM-120B Advanced Medium Range Air-to-Air Missiles (AMRAAM) and 12 AMRAAM training missiles; 267 AIM-9M 1/2 SIDEWINDER missiles and 80 SIDEWINDER training missiles; 163 AGM-88 High Speed Anti-Radiation Missiles (HARM) and four HARM training missiles; 1,163 AGM-65D/G MAVERICK missiles and 20 MAVERICK training missiles; 52 AGM-84 HARPOON missiles; 2,252 MK 82 and 1,231 MK 84 general purpose bombs; 1,700 MK 82 and 560 MK 84 air inflatable retard kits; 250 BLU-109 bombs; 605 GBU-10 and 462 GBU-12 PAVEWAY II laser guided bomb kits; 606 GBU-24 PAVEWAY III laser guided bomb kits; 1,820 CBU-87 combined effects munitions; 20 CBU-58 inert cluster bomb units; 44,312 BDU-33 training bombs; 44,148 MK 106 training bombs; 188,000 20mm and 161,650 20mm inert bullets; 115,000 self protection chaff; 55,000 self protection flares; logistics, technical and management services support; Government Furnished Equipment (gun system, Cartridge/Propellant Actuated Devices, delivery services); alternate mission equipment; personnel training (including support for U.S. operating location) and other related elements of logistics and program support. The estimated cost is $2 billion.

This proposed sale, in support of a commercial purchase of 80 F-16, Block 60 aircraft, will contribute to the foreign policy and national security of the United States by helping to improve the security of a friendly country which has been and continues to be an important force for political stability and economic progress in the Middle East.

The proposed sale of the weapons and munitions will strengthen the UAE as a potential coalition partner, reducing the dependence on U.S. forces in the region while enhancing any coalition operations the U.S. undertake. The commercially-supplied fighters are intended to be used in a variety of roles: air superiority, air and maritime surveillance and regional air defense, and precision ground-attack. The UAE wants to pattern their newly expanding air force on the USAF model, and wants to be seamlessly included in any future coalition efforts with U.S. forces. UAE will have no difficulty absorbing these additional weapons.

The proposed sale of this equipment and support will not affect the basic military balance in the region.

The prime contractor will be Raytheon, Lexington, Massachusetts. One or more proposed offset agreements may be related to this proposed sale.

Training of initial pilot cadre will be provided by a unit of the Arizona Air National Guard in Tucson, Arizona, and then by a dedicated U.S. Air Force unit, using the UAE's own aircraft, pilots and contractor maintenance personnel. After a training base is established in the U.S., the number of U.S. Government personnel and contractor representatives required in-country to support the program will be determined in joint negotiations as the program proceeds through the development, production and equipment installation phases.

There will be no adverse impact on U.S. defense readiness as a result of this proposed sale.

[FR Doc. 98–26514 Filed 10–2–98; 8:45 am]

BILLING CODE 5000–04–C

DEPARTMENT OF DEFENSE

Office of the Secretary

[Transmittal No. 98–47]

36(b)(1) Arms Sales Notification

AGENCY: Defense Security Assistance Agency, DOD.

ACTION: Notice.

SUMMARY: The Department of Defense is publishing the unclassified text of a section 36(b)(1) arms sales notification. This is published to fulfill the requirements of section 155 of Pub. L. 104–164 dated July 21 1996.

FOR FURTHER INFORMATION CONTACT: Ms. J. Hurd, DSAA/COMPT/RM, (703) 604–6575

The following is a copy of a letter to the Speaker of the House of Representatives, Transmittal 98–47, with attached transmittal, policy justification, sensitivity of technology, and Section 620C(b) of the Foreign Assistance Act of 1961.

Dated: September 29, 1998.

L.M. Bynum,

Alternate OSD Federal Register Liaison Officer, Department of Defense.

BILLING CODE 5000–04–M

DEFENSE SECURITY ASSISTANCE AGENCY

WASHINGTON, DC 20301-2800

22 SEP 1998

In reply refer to:
I-68538/98

Honorable Newt Gingrich
Speaker of the House of
Representatives
Washington, D.C. 20515-6501

Dear Mr. Speaker:

Pursuant to the reporting requirements of Section 36(b)(1) of the Arms Export Control Act, we are forwarding herewith Transmittal No. 98-47, concerning the Department of the Air Force's proposed Letter(s) of Offer and Acceptance (LOA) to Greece for defense articles and services estimated to cost $61 million. Soon after this letter is delivered to your office, we plan to notify the news media.

You will also find attached a certification as required by Section 620C(d) of the Foreign Assistance Act of 1961, as amended, that this action is consistent with Section 620C(b) of that statute.

Sincerely,

A.R. KELTZ
ACTING DIRECTOR

Attachments

Same ltr to: House Committee on International Relations
Senate Committee on Appropriations
Senate Committee on Foreign Relations
House Committee on National Security
Senate Committee on Armed Services
House Committee on Appropriations

Transmittal No. 98-47

Notice of Proposed Issuance of Letter of Offer
Pursuant to Section 36(b)(1)
of the Arms Export Control Act (U)

(i) Prospective Purchaser: Greece

(ii) Total Estimated Value:

Major Defense Equipment*	$ 60 million
Other	$ 1 million
TOTAL	$ 61 million

(iii) Description of Articles or Services Offered:
Two hundred AGM-65G MAVERICK missiles, 200 GBU-24 A/B bombs kits (without warheads), missile launchers, containers, contractor technical services, personnel training and training equipment, spares and repair parts, support equipment, and other related elements of logistics support.

(iv) Military Department: Air Force (SBD, Amendment 7)

(v) Sales Commission, Fee, etc., Paid, Offered, or Agreed to be Paid: None

(vi) Sensitivity of Technology Contained in the Defense Article or Defense Services Proposed to be Sold:
See Annex attached.

(vii) Date Report Delivered to Congress: 22 SEP 1998

as defined in Section 47(6) of the Arms Export Control Act.

POLICY JUSTIFICATION

Greece - AGM-65G MAVERICK Missiles

The Government of Greece has requested a possible sale of 200 AGM-65G MAVERICK missiles, 200 GBU-24 A/B bombs kits (without warheads), missile launchers, containers, contractor technical services, personnel training and training equipment, spares and repair parts, support equipment, and other related elements of logistics support. The estimated cost is $61 million.

This proposed sale will contribute to the foreign policy and national security of the United States by improving the military capabilities of Greece and furthering NATO rationalization, standardization and interoperability.

Greece will use the missiles to enhance their defensive capability and the kits will be used on their BLU-109 bombs. The missiles will be provided in accordance with, and subject to, the limitation on use and transfer provided for under the Arms Export Control Act, as embodied in the terms of sale. This sale will not adversely affect either the military balance in the region or U.S. efforts to encourage a negotiated settlement of the Cyprus question. Greece, which already has MAVERICK missiles in its inventory, will have no difficulty absorbing these additional missiles.

The proposed sale of this equipment and support will not affect the basic military balance in the region.

The principal contractors will be Hughes Aircraft International Service Company, Tucson, Arizona; Raytheon Company, Bedford, Massachusetts; and Texas Instruments, Sherman, Texas. There are no offset agreements proposed to be entered into in connection with this potential sale.

Implementation of this proposed sale will not require the assignment of any additional U.S. Government personnel or contractor representatives to Greece.

There will be no adverse impact on U.S. defense readiness as a result of this proposed sale.

Transmittal No. 98-47

Notice of Proposed Issuance of Letter of Offer
Pursuant to Section 36(b)(1)
of the Arms Export Control Act

Annex
Item No. vi

(vi) Sensitivity of Technology:

1. The AGM-65G MAVERICK air-to-ground missile has an overall classification of Secret. The Secret aspects of the MAVERICK system are tactics, information revealing its vulnerability to countermeasures, and counter-countermeasures.

2. Sensitive technology is contained in the missile guidance unit and signal processing components. The infrared tracker, signal processing logic, and launch and leave capabilities represent an important technological advantage.

3. The GBU-24 Paveway III is a laser-guided bomb with improved guidance for medium and low altitude employment and terminal impact angle improvements with an overall classification of Secret. The Secret aspects of the Paveway III system are the hardware, penetration performance, tactics, information revealing its vulnerability to countermeasures, and counter-countermeasures.

4. Sensitive technology is contained in the missile guidance unit and signal processing components.

5. If a technologically advanced adversary were to obtain knowledge of the specific hardware and software elements, the information could be used to develop countermeasures which might reduce weapon system effectiveness or be used in the development of a system with similar or advanced capabilities.

6. A determination has been made that Greece can provide substantially the same degree of protection for the sensitive technology being released as the U.S. Government. This sale is necessary in furtherance of the U.S. foreign policy and national security objectives outlined in the Policy Justification.

Certification Under Section 620C(d) Of The Foreign Assistance Act of 1961, As Amended

Pursuant to section 620C(d) of the Foreign Assistance Act of 1961, as amended (the Act), Executive Order 12163 (sec. 1-201(a)(13)) and the Secretary of State's memorandum of December 15, 1997, I hereby certify that the furnishing to Greece of 200 AGM-65D MAVERICK missiles, 200 GBU-24 A/B Paveway III bomb kits (without warheads), missile launchers, containers, technical services, training, training equipment, spares, support equipment, and related logistics, at an estimated cost of $61 million, is consistent with the principles contained in section 620C(b) of the Act.

This certification will be made part of the notification to the Congress under section 36(b) of the Arms Export Control Act regarding the proposed sale of the above-named articles and services, and is based on the justification accompanying said notification, of which said justification constitutes a full explanation.

John D. Holum
Acting Under Secretary
for Arms Control and
International Security
Affairs / Director, U.S. Arms
Control and Disarmament Agency

[FR Doc. 98–26515 Filed 10–2–98; 8:45 am]
BILLING CODE 5000–04–C

DEPARTMENT OF DEFENSE

Office of the Secretary

[Transmittal No. 98–53]

36(b)(1) Arms Sales Notification

AGENCY: Defense Security Assistance Agency, DOD.

ACTION: Notice.

SUMMARY: The Department of Defense is publishing the unclassified text of a section 36(b)(1) arms sales notification. This is published to fulfilled the requirements of section 155 of Pub. L. 104–164 dated July 21, 1996.

FOR FURTHER INFORMATION CONTACT: Ms. J. Hurd, DSAA/COMPT/RM, (703) 604–6575.

The following is a copy of a letter of the Speaker of the House of Representatives, Transmittal 98–53, with attached transmittal, policy justification and sensitivity of technology.

Dated: September 29, 1998.

L.M. Bynum,

Alternate OSD Federal Register Liaison Officer, Department of Defense.

BILLING CODE 5000–04–M

DEFENSE SECURITY ASSISTANCE AGENCY

WASHINGTON, DC 20301-2800

16 SEP 1998

In reply refer to:
I-71667/98

Honorable Newt Gingrich
Speaker of the House of
Representatives
Washington, D.C. 20515-6501

Dear Mr. Speaker:

Pursuant to the reporting requirements of Section 36(b)(1) of the Arms Export Control Act, we are forwarding herewith Transmittal No. 98-53, concerning the Department of the Navy's proposed Letter(s) of Offer and Acceptance (LOA) to the Netherlands for defense articles and services estimated to cost $24 million. Soon after this letter is delivered to your office, we plan to notify the news media.

Sincerely,

MICHAEL S. DAVISON, JR.
LIEUTENANT GENERAL, USA
DIRECTOR

Attachments

Same ltr to: House Committee on International Relations
Senate Committee on Appropriations
Senate Committee on Foreign Relations
House Committee on National Security
Senate Committee on Armed Services
House Committee on Appropriations

Transmittal No. 98-53

Notice of Proposed Issuance of Letter of Offer Pursuant to Section 36(b)(1) of the Arms Export Control Act

(i) **Prospective Purchaser:** The Netherlands

(ii) **Total Estimated Value:**

Major Defense Equipment*	$ 21 million
Other	$ 3 million
TOTAL	$ 24 million

(iii) **Description of Articles or Services Offered:** Twenty-four SM-2 Block IIIA STANDARD missiles (16 tactical missiles with warheads and eight telemetry missiles), containers, canisters, spare and repair parts, supply support, engineering technical assistance, and other related elements of logistics support.

(iv) **Military Department:** Navy (AFN)

(v) **Sales Commission, Fee, etc., Paid, Offered, or Agreed to be Paid:** None

(vi) **Sensitivity of Technology Contained in the Defense Article or Defense Services Proposed to be Sold:** See Annex attached.

(vii) **Date Report Delivered to Congress:** 16 SEP 1998

* as defined in Section 47(6) of the Arms Export Control Act.

Transmittal No. 98-53

Notice of Proposed Issuance of Letter of Offer
Pursuant to Section 36(b)(1)
of the Arms Export Control Act

Annex
Item No. vi

(vi) Sensitivity of Technology:

1. The SM-2 Block IIIA STANDARD missile is a U.S. Navy surface launched guided missile and is classified Secret. It is operationally deployed on cruisers, destroyers, and frigates for use against air and surface threats (aircraft, missiles, and ships). The guidance system employs a continuous-wave radar link for homing on a target. Steering and roll commands from the adaptive auto-pilot system provide flight stability via four aft mounted control surfaces. Propulsion is provided by a solid propellant, dual thrust rocket motor which is an integral part of the missile airframe. The target detecting device is a complex fuze with dual radar systems to optimize warhead lethality against a spectrum of target sizes and speeds. The sale of the missiles will result in the transfer of sensitive technology to the Netherlands.

2. If a technologically advanced adversary were to obtain knowledge of the specific hardware and software elements, the information could be used to develop countermeasures or equivalent systems which might reduce weapon system effectiveness or be used in the development of a system with similar or advanced capabilities.

3. A determination has been made that the Netherlands can provide substantially the same degree of protection for the sensitive technology being released as the U.S. Government. This sale is necessary in furtherance of the U.S. foreign policy and national security objectives outlined in the Policy Justification.

[FR Doc. 98–26516 Filed 10–2–98; 8:45 am]
BILLING CODE 5000–04–C

DEPARTMENT OF DEFENSE

Office of the Secretary

[Transmittal No. 98–57]

36(b)(1) Arms Sales Notification

AGENCY: Defense Security Assistance Agency, DOD.

ACTION: Notice.

SUMMARY: The Department of Defense is publishing the unclassified text of a section 36(b)(1) arms sales notification. This is published to fulfill the requirements of section 155 of Pub. L. 104–164 dated July 21, 1996.

FOR FURTHER INFORMATION CONTACT: Ms. J. Hurd, DSAA/COMPT/RM, (703) 604–6575.

The following is a copy of a letter to the Speaker of the House of Representatives, Transmittal 98–57, with attached transmittal, policy justification and sensitivity of technology.

Dated: September 29, 1998.

L. M. Bynum,

Alternate OSD Federal Register Liaison Officer, Department of Defense.

BILLING CODE 5000–04–M

DEFENSE SECURITY ASSISTANCE AGENCY

WASHINGTON, DC 20301-2800

16 SEP 1998

In reply refer to:
I-71760/98

Honorable Newt Gingrich
Speaker of the House of
Representatives
Washington, D.C. 20515-6501

Dear Mr. Speaker:

Pursuant to the reporting requirements of Section 36(b)(1) of the Arms Export Control Act, we are forwarding herewith Transmittal No. 98-57, concerning the Department of the Navy's proposed Letter(s) of Offer and Acceptance (LOA) to Spain for defense articles and services estimated to cost $105 million. Soon after this letter is delivered to your office, we plan to notify the news media.

Sincerely,

MICHAEL S. DAVISON, JR.
LIEUTENANT GENERAL, USA
DIRECTOR

Attachments

Same ltr to: House Committee on International Relations
Senate Committee on Appropriations
Senate Committee on Foreign Relations
House Committee on National Security
Senate Committee on Armed Services
House Committee on Appropriations

Transmittal No. 98-57

Notice of Proposed Issuance of Letter of Offer Pursuant to Section 36(b)(1) of the Arms Export Control Act

(i) **Prospective Purchaser:** Spain

(ii) **Total Estimated Value:**

Major Defense Equipment*	$ 82 million
Other	$ 23 million
TOTAL	$ 105 million

(iii) **Description of Articles or Services Offered:** One hundred twelve SM-2 Block IIIA STANDARD missiles (80 tactical missiles with warheads and 32 telemetry missiles), containers, canisters, spare and repair parts, supply and follow-on support, engineering technical assistance, training, and other related elements of logistics support.

(iv) **Military Department:** Navy (AMB)

(v) **Sales Commission, Fee, etc., Paid, Offered, or Agreed to be Paid:** None

(vi) **Sensitivity of Technology Contained in the Defense Article or Defense Services Proposed to be Sold:** See Annex attached.

(vii) **Date Report Delivered to Congress:** 16 SEP 1998

POLICY JUSTIFICATION

Spain - SM-2 Block IIIA STANDARD Missiles

The Government of Spain has requested a possible sale of 112 SM-2 Block IIIA STANDARD missiles (80 tactical missiles with warheads and 32 telemetry missiles), containers, canisters, spare and repair parts, supply and follow-on support, engineering technical assistance, training, and other related elements of logistics support. The estimated cost is $105 million.

This proposed sale will contribute to the foreign policy and national security objectives of the United States by helping to improve the military capabilities of Spain and furthering standardization and interoperability.

Spain will install these missiles on their new AEGIS F100 Class ships and operate the ships in a manner similar to its current ship operations. Spain, which already has STANDARD missiles in its inventory, will have no difficulty absorbing these additional missiles.

The proposed sale of this equipment and support will not affect the basic military balance in the region.

The principal contractors will be Standard Missile Company, McLean, Virginia and Raytheon Missile Systems Company, Tucson, Arizona. One or more proposed offset agreement may be related to this proposed sale.

Implementation of this sale may require the assignment of U.S. Government personnel or contractor representatives in-country for up to two weeks for engineering technical assistance following delivery of the missiles.

There will be no adverse impact on U.S. defense readiness as a result of this proposed sale.

Transmittal No. 98-57

Notice of Proposed Issuance of Letter of Offer Pursuant to Section 36(b)(1) of the Arms Export Control Act

Annex
Item No. vi

(vi) **Sensitivity of Technology:**

1. The SM-2 Block IIIA STANDARD missile is a U.S. Navy surface launched guided missile and is classified Secret. It is operationally deployed on cruisers, destroyers, and frigates for use against air and surface threats (aircraft, missiles, and ships). The guidance system employs a continuous-wave radar link for homing on a target. Steering and roll commands from the adaptive auto-pilot system provide flight stability via four aft mounted control surfaces. Propulsion is provided by a solid propellant, dual thrust rocket motor which is an integral part of the missile airframe. The target detecting device is a complex fuze with dual radar systems to optimize warhead lethality against a spectrum of target sizes and speeds. The sale of the missiles will result in the transfer of sensitive technology to Spain.

2. If a technologically advanced adversary were to obtain knowledge of the specific hardware and software elements, the information could be used to develop countermeasures or equivalent systems which might reduce weapon system effectiveness or be used in the development of a system with similar or advanced capabilities.

3. A determination has been made that Spain can provide substantially the same degree of protection for the sensitive technology being released as the U.S. Government. This sale is necessary in furtherance of the U.S. foreign policy and national security objectives outlined in the Policy Justification.

[FR Doc. 98–26517 Filed 10–2–98; 8:45 am]
BILLING CODE 5000–04–C

DEPARTMENT OF DEFENSE

Office of the Secretary

[Transmittal No. 98–59]

36(b)(1) Arms Sales Notification

AGENCY: Defense Security Assistance Agency, DOD.

ACTION: Notice.

SUMMARY: The Department of Defense is publishing the unclassified text of a section 36(b)(1) arms sales notification. This is published to fulfill the requirements of section 155 of Pub. L. 104–164 dated July 21, 1996.

FOR FURTHER INFORMATION CONTACT:

Ms. J. Hurd, DSAA/COMPT/RM, (703) 604–6575.

The following is a copy of a letter to the Speaker of the House of Representatives, Transmittal 98–59, with attached transmittal and policy justification.

Dated: September 29, 1998.

L.M. Bynum,

Alternate OSD Federal Register Liaison Officer, Department of Defense.

BILLING CODE 5000–04–M

DEFENSE SECURITY ASSISTANCE AGENCY

WASHINGTON, DC 20301-2800

22 SEP 1998

In reply refer to:
I-72448/98

Honorable Newt Gingrich
Speaker of the House of
Representatives
Washington, D.C. 20515-6501

Dear Mr. Speaker:

Pursuant to the reporting requirements of Section 36(b)(1) of the Arms Export Control Act, we are forwarding herewith Transmittal No. 98-59 and under separate cover the classified annex thereto. This Transmittal concerns the Department of the Air Force's proposed Letter(s) of Offer and Acceptance (LOA) to Israel for defense articles and services estimated to cost $2.5 billion. Soon after this letter is delivered to your office, we plan to notify the news media of the unclassified portion of this Transmittal.

Sincerely,

A.R. KELTZ
ACTING DIRECTOR

Attachments

Separate Cover:
Classified Annex

Same ltr to: House Committee on International Relations
Senate Committee on Appropriations
Senate Committee on Foreign Relations
House Committee on National Security
Senate Committee on Armed Services
House Committee on Appropriations

Transmittal No. 98-59

Notice of Proposed Issuance of Letter of Offer
Pursuant to Section 36(b)(1)
of the Arms Export Control Act

(i) Prospective Purchaser: Israel

(ii) Total Estimated Value:

Major Defense Equipment*	$ 1.9 billion
Other	$ .6 billion
TOTAL	$ 2.5 billion

(iii) Description of Articles or Services Offered: Thirty F-15I aircraft; 30 AN/APG-70 or AN/APG-63(V)1 radar; and 30 each LANTIRN navigation and targeting pods. All aircraft will be configured with either the F100-PW-229 or F110-GE-129 engines by direct commercial sale; Night Vision Goggle compatible cockpits; conformal fuel tanks; and the capability to employ the AIM-120, AIM-7, AIM-9, and a wide variety of air-to-surface munitions. Associated support equipment, spares and repair parts, software development/integration, flight test instrumentation, publications and technical documentation, personnel training and training equipment, U.S. Government and contractor technical and logistics personnel services, and other related requirements to ensure full program supportability will also be provided.

(iv) Military Department: Air Force (SPG)

(v) Sales Commission, Fee, etc., Paid, Offered, or Agreed to be Paid: None

(vi) Sensitivity of Technology Contained in the Defense Article or Defense Services Proposed to be Sold: See Annex under separate cover.

(vii) Date Report Delivered to Congress: 22 SEP 1998

* as defined in Section 47(6) of the Arms Export Control Act.

POLICY JUSTIFICATION

Israel - F-15I Aircraft

The Government of Israel has requested the possible sale of 30 F-15I aircraft; 30 AN/APG-70 or AN/APG-63(V)1 radar; and 30 each LANTIRN navigation and targeting pods. All aircraft will be configured with either the F100-PW-229 or F110-GE-129 engines by direct commercial sale; Night Vision Goggle compatible cockpits; conformal fuel tanks; and the capability to employ the AIM-120, AIM-7, AIM-9, and a wide variety of air-to-surface munitions. Associated support equipment, software development/integration, spares and repair parts, flight test instrumentation, publications and technical documentation, personnel training and training equipment, U.S. Government and contractor technical and logistics personnel services, and other related requirements to ensure full program supportability will also be provided. The estimated cost is $2.5 billion.

This proposed sale will contribute to the foreign policy and national security of the United States by helping to improve the security of a friendly country which has been and continues to be an important force for political stability and economic progress in the Middle East.

Israel needs these aircraft to augment its present operational inventory and to enhance its air-to-air and air-to-ground self defense capability. The F-15I enhances Israel's ability to defend itself and supports U.S. regional objectives for Israel's national security and maintenance of Israel's qualitative edge. Israel, which already has F-15 aircraft in its inventory, will have no difficulty absorbing these additional aircraft.

The proposed sale of this equipment and support will not affect the basic military balance in the region.

The prime contractor will be Boeing Aerospace, St. Louis, Missouri. Under this sale, the contractor will incur offset obligations under an existing industrial cooperation agreement.

Implementation of this proposed sale will not require the assignment of any additional U.S. Government personnel to Israel. A number of U.S. contractor representatives, to be determined during program implementation, will be required in Israel to conduct Contractor Engineering Technical Services (CETS) for a three-year period after aircraft delivery.

There will be no adverse impact on U.S. defense readiness as a result of this proposed sale.

[FR Doc. 98–26518 Filed 10–2–98; 8:45 am]

BILLING CODE 5000–04–C

DEPARTMENT OF DEFENSE

Office of the Secretary

[Transmittal No. 98–60]

36(b)(1) Arms Sales Notification

AGENCY: Defense Security Assistance Agency, DOD.

ACTION: Notice.

SUMMARY: The Department of Defense is publishing the unclassified text of a section 36(b)(1) arms sales notification. This is published to fulfill the requirements of section 155 of Pub. L. 104–164 dated July 21, 1996.

FOR FURTHER INFORMATION CONTACT:

Ms. J. Hurd, DSAA/COMPT/RM, (703) 604–6575.

The following is a copy of a letter to the Speaker of the House of Representatives, Transmittal 98–60, with attached transmittal and policy justification.

Dated: September 29, 1998.

L.M. Bynum,

Alternate OSD Federal Register Liaison Officer, Department of Defense.

BILLING CODE 5000–04–M

DEFENSE SECURITY ASSISTANCE AGENCY

WASHINGTON, DC 20301-2800

22 SEP 1998

In reply refer to:
I-72451/98

Honorable Newt Gingrich
Speaker of the House of
Representatives
Washington, D.C. 20515-6501

Dear Mr. Speaker:

Pursuant to the reporting requirements of Section 36(b)(1) of the Arms Export Control Act, we are forwarding herewith Transmittal No. 98-60 and under separate cover the classified annex thereto. This Transmittal concerns the Department of the Air Force's proposed Letter(s) of Offer and Acceptance (LOA) to Israel for defense articles and services estimated to cost $2.5 billion. Soon after this letter is delivered to your office, we plan to notify the news media of the unclassified portion of this Transmittal.

Sincerely,

A.R. KELTZ
ACTING DIRECTOR

Attachments

Separate Cover:
Classified Annex

Same ltr to: House Committee on International Relations
Senate Committee on Appropriations
Senate Committee on Foreign Relations
House Committee on National Security
Senate Committee on Armed Services
House Committee on Appropriations

Transmittal No. 98-60

Notice of Proposed Issuance of Letter of Offer
Pursuant to Section 36(b)(1)
of the Arms Export Control Act

(i) Prospective Purchaser: Israel

(ii) Total Estimated Value:

Major Defense Equipment*	$ 1.9 billion
Other	$ .6 billion
TOTAL	$ 2.5 billion

(iii) Description of Articles or Services Offered:
Sixty F-16C/D Block 50/52 aircraft; 60 AN/APG-68(V)7 or AN/APG-68(V)X radar; and 30 each LANTIRN navigation and targeting pods. All aircraft will be configured with either the F100-PW-229 or F110-GE-129 engines by direct commercial sale; Night Vision Goggle compatible cockpits; conformal fuel tanks; and the capability to employ the AIM-120, AIM-9, and a wide variety of air-to-surface munitions. Associated support equipment, software development/integration, spares and repair parts, flight test instrumentation, publications and technical documentation, personnel training and training equipment, U.S. Government and contractor technical and logistics personnel services, and other related requirements to ensure full program supportability will also be provided.

(iv) Military Department: Air Force (SPF)

(v) Sales Commission, Fee, etc., Paid, Offered, or Agreed to be Paid: None

(vi) Sensitivity of Technology Contained in the Defense Article or Defense Services Proposed to be Sold:
See Annex under separate cover.

(vii) Date Report Delivered to Congress: 22 SEP 1998

* as defined in Section 47(6) of the Arms Export Control Act.

POLICY JUSTIFICATION

Israel - F-16C/D Aircraft

The Government of Israel has requested a possible sale of 60 F-16C/D Block 50/52 aircraft; 60 AN/APG-68(V)7 or AN/APG-68(V)X radar; and 30 each LANTIRN navigation and targeting pods. All aircraft will be configured with either the F100-PW-229 or F110-GE-129 engines by direct commercial sale; Night Vision Goggle compatible cockpits; conformal fuel tanks; and the capability to employ the AIM-120, AIM-9; and a wide variety of air-to-surface munitions. Associated support equipment, software development/integration, spares and repair parts, flight test instrumentation, publications and technical documentation, personnel training and training equipment, U.S. Government and contractor technical and logistics personnel services, and other related requirements to ensure full program supportability will also be provided. The estimated cost is $2.5 billion.

This proposed sale will contribute to the foreign policy and national security of the United States by helping to improve the security of a friendly country which has been and continues to be an important force for political stability and economic progress in the Middle East.

Israel needs these aircraft to augment its present operational inventory and to enhance its air-to-air and air-to-ground self defense capability. The F-16 enhances Israel's ability to defend itself and supports U.S. regional objectives for Israel's national security and maintenance of Israel's qualitative edge. Israel, which already has F-16 aircraft in its inventory, will have no difficulty absorbing these additional aircraft.

The proposed sale of this equipment and support will not affect the basic military balance in the region.

The prime contractor will be Lockheed Martin Corporation, Orlando, Florida. Under this sale, the contractor will incur offset obligations under an existing industrial cooperation agreement.

Implementation of this proposed sale will not require the assignment of any additional U.S. Government personnel to Israel. A number of U.S. contractor representatives, to be determined during program implementation, will be required in Israel to conduct Contractor Engineering Technical Services (CETS) for a three-year period after aircraft delivery.

There will be no adverse impact on U.S. defense readiness as a result of this proposed sale.

[FR Doc. 98–26519 Filed 10–2–98; 8:45 am]
BILLING CODE 5000–04–C

DEPARTMENT OF DEFENSE

Office of the Secretary

[Transmittal No. 98–61]

36(b)(1) Arms Sales Notification

AGENCY: Defense Security Assistance Agency, DOD.

ACTION: Notice.

SUMMARY: The Department of Defense is publishing the unclassified text of a section 36(b)(1) arms sales notification. This is published to fulfill the requirements of section 155 of Pub. L. 104–164 dated July 21, 1996.

FOR FURTHER INFORMATION CONTACT:

Ms. J. Hurd, DSAA/COMPT/RM, (703) 604–6575.

The following is a copy of a letter to the Speaker of the House of Representatives, Transmittal 98–60, with attached transmittal and policy justification.

Dated: September 29, 1998.

L.M. Bynum,

Alternate OSD Federal Register Liaison Officer, Department of Defense.

BILLING CODE 5000–04–M

DEFENSE SECURITY ASSISTANCE AGENCY

WASHINGTON, DC 20301-2800

18 SEP 1998

In reply refer to:
I-69991/98

Honorable Newt Gingrich
Speaker of the House of
Representatives
Washington, D.C. 20515-6501

Dear Mr. Speaker:

Pursuant to the reporting requirements of Section 36(b)(1) of the Arms Export Control Act, we are forwarding herewith Transmittal No. 98-61 and under separate cover the classified annex thereto. This Transmittal concerns the Department of the Air Force's proposed Letter(s) of Offer and Acceptance (LOA) to Egypt for defense articles and services estimated to cost $76 million. Soon after this letter is delivered to your office, we plan to notify the news media of the unclassified portion of this Transmittal.

Sincerely,

MICHAEL S. DAVISON, JR.
LIEUTENANT GENERAL, USA
DIRECTOR

Attachments

Separate Cover:
Classified Annex

Same ltr to: House Committee on International Relations
Senate Committee on Appropriations
Senate Committee on Foreign Relations
House Committee on National Security
Senate Committee on Armed Services
House Committee on Appropriations

Transmittal No. 98-61

Notice of Proposed Issuance of Letter of Offer
Pursuant to Section 36(b)(1)
of the Arms Export Control Act

(i) Prospective Purchaser: Egypt

(ii) Total Estimated Value:

Major Defense Equipment*	$ 59 million
Other	$ 17 million
TOTAL	$ 76 million

(iii) Description of Articles or Services Offered: Upgrade 40 ALQ-131 Block I to Block II pods; update existing 40 Block II pods to the same configuration as the upgrade from Block I to Block II; 40 ALQ-131 receiver processors; spare and repair parts; support equipment; publications and technical data; pilot and maintenance training; and other related elements of logistics support.

(iv) Military Department: Air Force (NFJ)

(v) Sales Commission, Fee, etc., Paid, Offered, or Agreed to be Paid: none

(vi) Sensitivity of Technology Contained in the Defense Article or Defense Services Proposed to be Sold: See Annex under separate cover.

(vii) Date Report Delivered to Congress: 18 SEP 1998

* as defined in Section 47(6) of the Arms Export Control Act.

POLICY JUSTIFICATION

Egypt - Upgrade of ALQ-131 Block I to Block II Pods

The Government of Egypt (GOE) has two configurations of the ALQ-131, Block I and Block II. The GOE has requested a possible upgrade of their 40 ALQ-131 Block I to Block II pods. In addition, they are requesting to update their existing Block II pods to the same configuration as the upgrade from Block I to Block II. The GOE has requested a possible sale of 40 ALQ-131 receiver processors, spare and repair parts, support equipment, publications and technical data, pilot and maintenance training, and other related elements of logistics support. The estimated cost is $76 million.

This proposed sale will contribute to the foreign policy and national security of the United States by helping to improve the security of a friendly country which has been and continues to be an important force for political stability and economic progress in the Middle East.

The proposed sale of the pod kits will upgrade the Egyptian Air Force's electronic countermeasure capability. Egypt, which already has ALQ-131 Block I and Block II pods in its inventory, will have no difficulty absorbing these additional pods.

The proposed sale of this equipment and support will not affect the basic military balance in the region.

The principal contractors will be Northrop-Grumman, Baltimore, Maryland and Lockheed Martin, Yonkers, New York. There are no offset agreements proposed to be entered into in connection with this potential sale.

Implementation of this proposed sale will require the assignment of five U.S. Government personnel for 30 days to provide pilot and maintenance training in-country.

There will be no adverse impact on U.S. defense readiness as a result of this proposed sale.

[FR Doc. 98–26520 Filed 10–2–98; 8:45 am]
BILLING CODE 5000–04–C

DEPARTMENT OF DEFENSE

Office of the Secretary

[Transmittal No. 98–62]

36(b)(1) Arms Sales Notification

AGENCY: Defense Security Assistance Agency, DOD.

ACTION: Notice.

SUMMARY: The Department of Defense is publishing the unclassified text of a section 36(b)(1) arms sales notification. This is published to fulfill the requirements of section 155 of Pub. L. 104–164 dated July 21, 1996.

FOR FURTHER INFORMATION CONTACT: Ms. J. Hurd, DSAA/COMPT/RM, (703) 604–6575.

The following is a copy of a letter to the Speaker of the House of Representatives, Transmittal 98–62, with attached transmittal and policy justification and sensitivity of technology.

Dated: September 29, 1998.

L.M. Bynum,

Alternate OSD Federal Register Liaison Officer, Department of Defense.

BILLING CODE 5000–04–M

DEFENSE SECURITY ASSISTANCE AGENCY

WASHINGTON, DC 20301-2800

16 SEP 1998

In reply refer to:
I-66729/98

Honorable Newt Gingrich
Speaker of the House of
Representatives
Washington, D.C. 20515-6501

Dear Mr. Speaker:

Pursuant to the reporting requirements of Section 36(b)(1) of the Arms Export Control Act, we are forwarding herewith Transmittal No. 98-62, concerning the Department of the Army's proposed Letter(s) of Offer and Acceptance (LOA) to Egypt for defense articles and services estimated to cost $203 million. Soon after this letter is delivered to your office, we plan to notify the news media.

Sincerely,

MICHAEL S. DAVISON, JR.
LIEUTENANT GENERAL, USA
DIRECTOR

Attachments

Same ltr to: House Committee on International Relations
Senate Committee on Appropriations
Senate Committee on Foreign Relations
House Committee on National Security
Senate Committee on Armed Services
House Committee on Appropriations

Transmittal No. 98-62

Notice of Proposed Issuance of Letter of Offer
Pursuant to Section 36(b)(1)
of the Arms Export Control Act

(i) Prospective Purchaser: Egypt

(ii) Total Estimated Value:

Major Defense Equipment*	$ 153 million
Other	$ 50 million
TOTAL	$ 203 million

(iii) Description of Articles or Services Offered: Upgrade of six CH-47C CHINOOK helicopters to the newer CH-47D configuration, spare and repair parts, support equipment, publications and technical data, communications equipment, maintenance, personnel training and training equipment, U.S. Government Quality Assurance Team, contractor representatives, contractor engineering and technical support services, preparation of aircraft for shipment, and other related elements of logistics support.

(iv) Military Department: Army (JBN)

(v) Sales Commission, Fee, etc., Paid, Offered, or Agreed to be Paid: none

(vi) Sensitivity of Technology Contained in the Defense Article or Defense Services Proposed to be Sold: See Annex attached.

(vii) Date Report Delivered to Congress: 16 SEP 1998

* as defined in Section 47(6) of the Arms Export Control Act.

POLICY JUSTIFICATION

Egypt - Upgrade of CH-47C to CH-47D CHINOOK Helicopters

The Government of Egypt has requested a possible upgrade of six CH-47C CHINOOK helicopters to the newer CH-47D configuration, spare and repair parts, support equipment, publications and technical data, communications equipment, maintenance, personnel training and training equipment, U.S. Government Quality Assurance Team, contractor representatives, contractor engineering and technical support services, preparation of aircraft for shipment, and other related elements of logistics support. The estimated cost is $203 million.

This proposed sale will contribute to the foreign policy and national security of the United States by helping to improve the security of a friendly country which has been and continues to be an important force for political stability and economic progress in the Middle East.

The Egyptian Armed Forces will use these helicopters for troop transport and logistics support. They may also be deployed in joint exercise with the United States such as Operation Bright Star.

The proposed sale of this equipment and support will not affect the basic military balance in the region.

The prime contractor will be Boeing Helicopter Company, Philadelphia, Pennsylvania. There are no offset agreements proposed to be entered into in connection with this potential sale.

Implementation of this proposed sale will require an U.S. contractor representative for one year in-country and four additional U.S. contractor representatives for one week when the aircraft arrives. Up to eight U.S. Government Quality Assurance personnel will be required for one week following delivery of the helicopters.

There will be no adverse impact on U.S. defense readiness as a result of this proposed sale.

Transmittal No. 98-62

Notice of Proposed Issuance of Letter of Offer
Pursuant to Section 36(b)(1)
of the Arms Export Control Act

Annex
Item No. vi

(vi) Sensitivity of Technology:

1. The CH-47 CHINOOK Helicopter includes the following classified or sensitive components:

a. Radar Warning Receiver AN/APR-39A(V)3 - provides warning of a radar directed air defense threat to permit appropriate countermeasures. It is programmed with threat data provided by the purchasing country. Hardware is classified Confidential. Technical manuals for the maintenance levels are classified Confidential. Reverse engineering is not a major concern.

b. Laser Detecting Set AN/AVR-2A - is a passive laser warning system which receives, processes and displays threat information result from other aircraft illuminators, laser range finders or laser guided weapons. Hardware is classified Confidential. Reverse engineering is not a major concern.

c. Missile Approach Detector AN/ALQ-156(V)1 - is an airborne radar system which provides infrared homing protection to the aircraft by detecting the approach of an anti-aircraft missile. Hardware is classified Confidential. Reverse engineering is not a major concern.

2. If a technologically advanced adversary were to obtain knowledge of the specific hardware in this sale, the information could be used to develop countermeasures which might reduce weapon system effectiveness or be used in the development of a system with similar or advanced capabilities.

3. A determination has been made that Egypt can provide substantially the same degree of protection for the sensitive technology being released as the U.S. Government. This sale is necessary in furtherance of the U.S. foreign policy and national security objectives outlined in the Policy Justification.

[FR Doc. 98–26521 Filed 10–2–98; 8:45 am]
BILLING CODE 5000–04–C

DEPARTMENT OF DEFENSE

Office of the Secretary

Group of Advisors to the National Security Education Board Meeting

AGENCY: Office of the Assistant Secretary of Defense, Threat and Reduction, DOD.

ACTION: Notice of meeting.

SUMMARY: Pursuant to Pub. L. 92–463, notice is hereby given of a forthcoming meeting of the Group of Advisors to the National Security Education Board. The purpose of the meeting is to review and make recommendations to the Board concerning requirements established by the David L. Boren National Security Education Act, Title VIII of Pub. L. 102–183, as amended.

DATES: October 30, 1998.

ADDRESSES: The Crystal City Marriott Hotel, 1999 Jefferson Davis Highway, Arlington, VA 22202.

FOR FURTHER INFORMATION CONTACT: Dr. Edmond J. Collier, Deputy Director, National Security Education Program, 1101 Wilson Boulevard, Suite 1210, Rossyln PO Box 20010, Arlington, VA 22209–2248; (703) 696–1991. Electronic mail address: collier@osd.pentagon.mil.

SUPPLEMENTARY INFORMATION: The Group of Advisors meeting is open to the public.

Dated: September 28, 1998.

L.M. Bynum,

Alternate OSD Federal Register Liaison Officer, Department of Defense.

[FR Doc. 98–26512 Filed 10–2–98; 8:45 am]

BILLING CODE 5000–04–M

DEPARTMENT OF DEFENSE

Office of the Secretary

Defense Science Board Task Force on National Imagery and Mapping Agency (NIMA)

ACTION: Notice of Advisory Committee meetings.

SUMMARY: The Defense Science Board Task Force on National Imagery and Mapping Agency (NIMA) will meet in closed session on October 22–23, 1998 at Space Imaging, Denver, Colorado; and on November 5–6, December 3–4, and December 17–18, 1998 at Strategic Analysis Inc. (SAI), Arlington, Virginia.

The mission of the Defense Science Board is to advise the Secretary of Defense through the Under Secretary of Defense for Acquisition and Technology on scientific and technical matters as they affect the perceived needs of the Department of Defense. At these meetings the Task Force will review the objectives and plans of the National Imagery and Mapping Agency (NIMA) to meet the needs of the national and military intelligence customers as they enter the 21st Century.

In accordance with section 10(d) of the Federal Advisory Committee Act, Pub. L. 92–463, as amended (5 U.S.C. App. II, (1994)), it has been determined that these DSB Task Force meetings concern matters listed in 5 U.S.C. 552b(c)(1) (1994), and that accordingly these meetings will be closed to the public.

Dated: September 28, 1998.

L.M. Bynum,

Alternate OSD Federal Register Liaison Officer, Department of Defense.

[FR Doc. 98–26509 Filed 10–2–98; 8:45 am]

BILLING CODE 5000–04–M

DEPARTMENT OF DEFENSE

Office of the Secretary

Defense Science Board Task Force on Globalization and Security

ACTION: Notice of Advisory Committee meetings.

SUMMARY: The Defense Science Board Task Force on Globalization and Security will meet in closed session on October 8 and 27, 1998 at Strategic Analysis Inc. (SAI), 4001 N. Fairfax Drive, Arlington, Virginia. In order for the Task Force to obtain time sensitive classified briefings, critical to the understanding of the issues, these meetings are scheduled on short notice.

The mission of the Defense Science Board is to advise the Secretary of Defense through the Under Secretary of Defense for Acquisition and Technology on scientific and technical matters as they affect the perceived needs of the Department of Defense. At these meetings the Task Force will develop advice to provide to the DepSecDef and USD(A&T) regarding transformations to the industrial base serving the DoD—assessing the significant benefits to the Department and the risks that our adversaries will be able to learn about our technology.

In accordance with section 10(d) of the Federal Advsisory Committee Act, Pub. L. 92–463, as amended (5 U.S.C. App. II, (1994)), it has been determined that these DSB Task Force meetings concern matters listed in 5 U.S.C. 552(c)(1) (1994), and that accordingly these meetings will be closed to the public.

Dated: September 28, 1998.

L.M. Bynum,

Alternate OSD Federal Register Liaison Officer, Department of Defense.

[FR Doc. 98–26510 Filed 10–2–98; 8:45 am]

BILLING CODE 5000–04–M

DEPARTMENT OF DEFENSE

Office of the Secretary

Defense Science Board Task Force on Defense Reform

ACTION: Notice of Advisory Committee meetings.

SUMMARY: The Defense Science Board Task Force on Defense Reform will meet in closed session on October 16, 1998 in the Pentagon, Arlington, Virginia.

The mission of the Defense Science Board is to advise the Secretary of Defense through the Under Secretary of Defense for Acquisition and Technology on scientific and technical matters as they affect the perceived needs of the Department of Defense. At this meeting the Task Force will undertake a broad review of the entire range of activities relating to the DoD-wide Defense Reform Initiative (DRI). IN particular, the effort should include an examination of DRI implementation to date with a special focus on identifying new and innovative measures that can further enhance the success of this important initiative.

In accordance with Section 10(d) of the Federal Advisory Committee Act, Pub. L. 92–463, as amended (5 U.S.C. App. II, (1994)), it has been determined that this DSB Task Force meeting concerns matters listed in 5 U.S.C. 552b(c)(1) (1994), and that accordingly this meeting will be closed to the public.

Dated: September 28, 1998.

L.M. Bynum,

Alternate OSD Federal Register Liaison Officer, Department of Defense.

[FR Doc. 98–26511 Filed 10–2–98; 8:45 am]

BILLING CODE 5000–04–M

DEPARTMENT OF DEFENSE

Office of the Secretary

Meeting of the Threat Reduction Advisory Committee

AGENCY: Department of Defense, Office of the Undersecretary of Defense (Acquisition and Technology).

ACTION: Notice of meeting.

SUMMARY: The Threat Reduction Advisory Committee will meet in closed

session on October 22, 1998. The Committee advises the Undersecretary of Defense (Acquisition and Technology) on technology security, counterproliferation, chemical and biological defense, sustainment of the nuclear weapons stockpile, and other matters related to the Defense Threat Reduction Agency's mission.

In accordance with section 10(d) of the Federal Advisory Committee Act, Pub. L. 92–463, as amended 5 U.S.C., Appendix II, it has been determined that matters affecting national security, as covered by 5 U.S.C. 552b(c)(1) (1988), will be presented throughout the meeting, and that, accordingly, the meeting will be closed to the public.

DATES: Thursday, October 22, 1998 (8 am to 4 pm).

ADDRESSES: Room 3E869, The Pentagon, Washington DC 20301.

FOR FURTHER INFORMATION: Contact Lieutenant Colonel Barry L. Rhoden, Defense Threat Reduction Agency, Advanced Systems and Concepts Office, 45045 Aviation Drive, Dulles, VA 20166–7517. Telephone: (703) 810–4524.

Dated: September 28, 1998.

L.M. Bynum,

Alternate OSD Federal Register Liaison Officer, Department of Defense.

[FR Doc. 98–26508 Filed 10–2–98; 8:45 am]

BILLING CODE 5000–04–M

DEPARTMENT OF EDUCATION

Submission for OMB Review; Comment Request

AGENCY: Department of Education.

SUMMARY: The Chief Financial and Chief Information Officer, Office of the Chief Financial and Chief Information Officer, invites comments on the submission for OMB review as required by the Paperwork Reduction Act of 1995.

DATES: Interested persons are invited to submit comments on or before November 4, 1998.

ADDRESSES: Written comments should be addressed to the Office of Information and Regulatory Affairs, Attention: Danny Werfel, Desk Officer, Department of Education, Office of Management and Budget, 725 17th Street, N.W., Room 10235, New Executive Office Building, Washington, D.C. 20503 or should be electronically mailed to the internet address *Werfel—d@al.eop.gov.* Requests for copies of the proposed information collection requests should be addressed to Patrick J. Sherrill, Department of Education, 600 Independence Avenue, S.W., Room 5624, Regional Office Building 3, Washington, D.C. 20202–4651, or should be electronically mailed to the internet address *Pat Sherrill@ed.gov,* or should be faxed to 202–708–9346.

FOR FURTHER INFORMATION CONTACT: Patrick J. Sherrill (202) 708–8196. Individuals who use a telecommunications device for the deaf (TDD) may call the Federal Information Relay Service (FIRS) at 1–800–877–8339 between 8 a.m. and 8 p.m., Eastern time, Monday through Friday.

SUPPLEMENTARY INFORMATION: Section 3506 of the Paperwork Reduction Act of 1995 (44 U.S.C. Chapter 35) requires that the Office of Management and Budget (OMB) provide interested Federal agencies and the public an early opportunity to comment on information collection requests. OMB may amend or waive the requirement for public consultation to the extent that public participation in the approval process would defeat the purpose of the information collection, violate State or Federal law, or substantially interfere with any agency's ability to perform its statutory obligations. The Chief Financial and Chief Information Officer, Office of the Chief Financial and Chief Information Officer, publishes that notice containing proposed information collection requests prior to submission of these requests to OMB. Each proposed information collection, grouped by office, contains the following: (1) Type of review requested, e.g. new, revision, extension, existing or reinstatement; (2) Title; (3) Summary of the collection; (4) Description of the need for, and proposed use of, the information; (5) Respondents and frequency of collection; and (6) Reporting and/or Recordkeeping burden. OMB invites public comment at the address specified above. Copies of the requests are available from Patrick J. Sherrill at the address specified above.

Dated: September 29, 1998.

Donald Rappaport,

Chief Financial and Chief Information Officer, Office of the Chief Financial and Chief Information Officer.

Office of Educational Research and Improvement

Type of Review: Revision.

Title: Application for Grants Under the Fund for the Improvement of Education Program.

Frequency: Annually.

Affected Public: Businesses or other for-profits; Not-for-profit institutions; State, local or Tribal Gov't, SEAs or LEAs.

Reporting and Recordkeeping Hour Burden: Responses: 35; Burden Hours: 840.

Abstract: Grant program that supports nationally significant programs and projects to improve the quality of education, assist all students to meet challenging State content standards and challenging State student performance standards, and contribute to the achievement of the National Education Goals.

This information collection is being submitted under the Streamlined Clearance Process for Discretionary Grant Information Collections (OMB Control No. 1890–0001). Therefore, this 30-day public comment period notice will be the only public comment notice published for this information collection.

Office of Postsecondary Education

Type of Review: Revision.

Title: Regulations for Federal Perkins Loan Program, Due Diligence, Reporting/Disclosure and Recordkeeping—Subpart C.

Frequency: Annually.

Affected Public: Individuals or households; Businesses or other for-profits; Not-for-profit institutions.

Reporting and Recordkeeping Burden: Responses: 2,795,396; Burden Hours: 79,931.

Abstract: Institutions of higher education make student loans. This information is necessary in order to monitor loan borrowers and documents are needed that can be used as proof in case of legal implications or proceedings.

Office of Postsecondary Education

Type of Review: Revision.

Title: Federal Perkins Loan, Work-Study, Federal Supplemental Educational Opportunity Grant Programs.

Frequency: Annually.

Affected Public: Individuals or households; Businesses or other for-profits; Not-for-profit institutions.

Reporting and Recordkeeping Burden: Responses: 17,188;

Burden Hours: 12,719.

Abstract: Campus-based program records are maintained by the institutions that administer the program. Records are necessary to ensure that the institution has followed regulatory procedures in administering these programs and to justify the payments of funds by the Department of Education.

[FR Doc. 98–26541 Filed 10–2–98; 8:45 am]

BILLING CODE 4000–01–P

DEPARTMENT OF ENERGY

Environmental Impact Statement for the Proposed Production of Plutonium-238 for Use in Advanced Radioisotope Power Systems for Future Space Missions

AGENCY: Department of Energy (DOE).

ACTION: Notice of Intent.

SUMMARY: Pursuant to the National Environmental Policy Act (NEPA), DOE announces its intent to prepare an environmental impact statement (EIS) for the proposed production of plutonium-238 (Pu-238) using one or more DOE research reactors and facilities. The Pu-238 would be used in advanced radioisotope power systems for potential future space missions. Without a long-term supply of Pu-238, DOE would not be able to provide the radioisotope power systems that may be required for these potential future space missions, and the Department would not fulfill the intended space nuclear power role assigned to the Department in the National Space Policy statement issued on September 19, 1996. This assigned role of maintaining the space nuclear capability is also consistent with the Department's charter under the Atomic Energy Act of 1954, as amended. The Department's space nuclear power role has been recognized for over 35 years in annual appropriations to the Department and its predecessor agencies. This EIS will analyze the potential environmental impacts of establishing a domestic capability to produce Pu-238 including the storage of neptunium-237 (Np-237), fabrication of Np-237 targets, irradiation of targets to produce Pu-238, and the processing of these targets to isolate the Pu-238 and recycle the Np-237. Alternatives to be analyzed for the fabrication of Np-237 targets and for processing the irradiated targets include the use of the Radiochemical Engineering Development Center in Oak Ridge, Tennessee, and the Fuels and Materials Examination Facility at the Hanford Site near Richland, Washington. Alternative facilities for the irradiation of targets for Pu-238 production include the Advanced Test Reactor near Idaho Falls, Idaho, the Fast Flux Test Facility at the Hanford Site, Washington, and the High Flux Isotope Reactor in Oak Ridge, Tennessee. The ''No Action'' alternative would assess the impacts of not establishing a domestic production source for Pu-238 while preserving the option to purchase Pu-238 from Russia. In addition, a second ''No Action'' alternative will evaluate the need for preserving Np-237 for potential future use even if a near-term domestic production capability is not established. The option to purchase Pu-238 from Russia would still remain a viable alternative to domestic Pu-238 production.

DOE invites individuals, organizations, and agencies to submit oral and/or written comments regarding the scope of the EIS, including the environmental issues and alternatives that the EIS should analyze.

DATES: The public scoping period begins with the publication of this Notice in the **Federal Register** (FR) and will continue until November 4, 1998. Written comments postmarked or submitted by fax or electronic mail by that date will be considered in preparation of the EIS. Later comments will be considered to the extent practicable.

DOE will conduct public scoping meetings to assist in defining the appropriate scope of the EIS including the significant environmental issues to be addressed. DOE plans to hold scoping meetings in the vicinity of the proposed alternative sites under consideration (i.e., Oak Ridge National Laboratory, Idaho National Engineering and Environmental Laboratory, and Hanford sites). The date, time, and location will be announced through the local media as soon as determined but at least 15 days prior to the date of the meetings.

ADDRESSES: Please direct comments or suggestions on the scope of the EIS, requests to speak at the public scoping meetings, requests for special arrangements to enable participation at scoping meetings (e.g., interpreter for the hearing impaired), and questions concerning the project to: Colette Brown, Office of Nuclear Energy, Science and Technology (NE–50), U.S. Department of Energy, 19901 Germantown Road, Germantown, MD 20874, Telephone: 301–903–6924, Facsimile: 301–903–1510, Electronic Mail: Colette.Brown@HQ.DOE.GOV.

FOR FURTHER INFORMATION CONTACT: To request information about this EIS, or to be placed on the EIS document distribution list, please call the 24-hour toll-free information line at 1–800–708–2680. For general information about the DOE NEPA process, please contact: Carol Borgstrom, Director, Office of NEPA Policy and Assistance (EH–42), U.S. Department of Energy, 1000 Independence Ave, S.W., Washington, D.C. 20585–0119, Telephone: 202–586–4600 or leave a message at 1–800–472–2756.

SUPPLEMENTARY INFORMATION:

Background

Under the Atomic Energy Act of 1954, as amended, DOE and its predecessor agencies have been developing radioisotope power systems (RPS) and Radioisotope Heater Units (RHUs) and supplying them to the National Aeronautics and Space Administration (NASA) for more than 30 years. The radioisotope used in these systems is Pu-238. These systems have repeatedly demonstrated their value as enabling technologies in various NASA missions. DOE has projected that, over the next 20 to 25 years, NASA will continue to conduct missions that will require or would be enabled or enhanced by RPS fueled with Pu-238.

Under the National Space Policy issued by the Office of Science and Technology Policy in September 1996, and in accordance with its nuclear charter under the Atomic Energy Act of 1954, as amended, DOE has responsibility to assure that it maintains the capability to provide the nuclear infrastructure, including the Pu-238, needed to support these missions. The Intersector Guidelines section of the National Space Policy states that ''The Department of Energy will maintain the necessary capability to support space missions which may require the use of space nuclear power systems.'' Historically, the reactors and chemical processing facilities at DOE's Savannah River Site (SRS) have been used to produce Pu-238 by the irradiation of targets containing Np-237. The irradiated targets were moved from the reactor site to a chemical processing facility where the targets were processed and the Pu-238 was recovered as an oxide powder. The remaining Np-237 was recovered for recycle into additional targets. The Pu-238 oxide powder was then shipped to facilities for producing pellets that were in turn shipped to another DOE site to make the RPS unit. As a result of the downsizing of the DOE nuclear weapons complex due to end of the Cold War, the reactors used to produce Pu-238 at SRS have been shut down. The radiochemical processing facilities at SRS are also planned to be shut down in the near future after existing supplies of radioactive materials no longer needed to support DOE's missions have been processed into a form suitable for long-term storage or disposal.

In 1992, DOE signed a contract to purchase Pu-238 from Russia allowing the U.S. to purchase up to 40 kilograms (kgs) of Pu-238. Under this contract, DOE purchased 9 kgs of Pu-238, and in 1997, extended the contract for another five years. This option, therefore,

continues to be viable. However, it is unclear whether this option will continue to be reliable or viable once the existing contract has expired. The political and economic climate in Russia creates uncertainties about the reliability of this source of Pu-238 to satisfy potential future NASA space mission requirements. Therefore, DOE proposes to reestablish a reliable domestic capability for producing Pu-238 to satisfy these foreseeable space mission requirements. Since the facilities previously used at SRS are no longer available for the production of Pu-238, DOE needs to evaluate other existing DOE reactors and chemical processing facilities for target irradiation and separation of Pu-238. The environmental impacts of purchasing Pu-238 from Russia have already been evaluated and are documented in the Environmental Assessment of the Import of Russian Plutonium-238 (DOE/EA–0841, June 1993) prepared by DOE's Office of Nuclear Energy, Science and Technology.

Purpose and Need for the Agency Action

In accordance with its responsibilities under the National Space Policy issued in September 1996 and consistent with its charter under the Atomic Energy Act of 1954, as amended, DOE is proposing to establish a reliable domestic supply source for Pu-238 to meet the radioisotope-fueled power requirements for future space missions. A near-term decision is needed for two primary reasons. First, the existing inventory of Pu-238 which is available for space missions (approximately 9 kgs, primarily material purchased from Russia) will be exhausted by about 2004. Though additional firm missions cannot be specified at this time, over a planning horizon of the next 20 to 25 years, some future space missions will require Pu-238-fueled RPS. A Pu-238 production rate of 2–5 kgs/year would be sufficient to meet these projected long-term user requirements. Second, the production of Pu-238 begins with the irradiation of Np-237 targets. The United States' only inventory of Np-237 is currently being stored at SRS in an aqueous nitrate solution and will require processing to an oxide form prior to fabrication into targets for irradiation. The environmental impact of converting this material to an oxide form has been addressed in DOE's Office of Environmental Management EIS on the Interim Management of Nuclear Materials at the Savannah River Site (DOE/EIS–0220, October 1995). Unless the Np-237 is used in the production of Pu-238, the Department will establish plans for the future disposition of this material.

Alternatives to be Evaluated

The EIS will analyze a range of reasonable alternatives for the proposed production and processing of 2–5 kgs per year of Pu-238. ''Production'' includes the irradiation of Np-237 targets in reactor(s); ''processing'' includes a Np-237 storage capability and a target fabrication and processing capability (before and after irradiation). Transportation of Np-237 to and from the reactor site for storage and/or processing will also be addressed in this EIS. The alternatives identified for analysis have been selected on the basis of availability of facilities and technical feasibility for accomplishing the proposed production of Pu-238.

No Action Alternative #1

Under this alternative, DOE would maintain the status quo. No domestic Pu-238 production capability would be established. DOE would rely on its existing Pu-238 inventory to meet the power requirements of near-term space missions and on additional Pu-238 purchases from Russia to enable future space missions. The Department would dispose of the Np-237 currently stored at SRS.

No Action Alternative #2

Under this alternative, no domestic Pu-238 production capability would be established. However, to fulfill DOE's responsibility to maintain the RPS supply infrastructure, including the capability to produce Pu-238, DOE will evaluate the alternative of transferring the Np-237 (converted to an oxide form) from SRS to a new storage site for possible future Pu-238 production. This alternative would preserve the Np-237 for potential future use. DOE would rely on additional purchases of Pu-238 from Russia for future space missions.

Alternative Sites for Irradiation

Advanced Test Reactor (ATR) at the Idaho National Engineering and Environmental Laboratory (INEEL): Under this alternative, DOE would irradiate targets (fabricated from Np-237 currently stored at SRS) in the ATR to produce up to 2–5 kgs/year of Pu-238. ATR is an operating test reactor with a main programmatic mission to support the Naval Reactor Fuels Program. Not impacting the primary mission of the reactor would be a prerequisite of applying this alternative.

Fast Flux Test Facility (FFTF) at the Hanford Site: Under this alternative, DOE would irradiate Np-237 targets in FFTF to produce up to 2–5 kgs/year of Pu-238 FFTF is currently in a standby mode and is being evaluated for potential production of tritium and medical isotopes and for other missions. Operating FFTF for the Pu-238 mission alone would not be economic; however, if a decision is made to restart FFTF for other purposes, it would be a reasonable alternative for Pu-238 production. A decision on the future of FFTF is anticipated during the timeframe of this EIS.

High Flux Isotope Reactor (HFIR) at the Oak Ridge National Laboratory (ORNL): Under this alternative, DOE would irradiate Np-237 targets in HFIR to produce 1 to 2 kgs/year of Pu-238. The use of HFIR for production of small quantities of Pu-238 is compatible with the primary neutron scattering and transuranic radioisotope production mission of that reactor. However, current estimates are that Pu-238 production would need to be limited to a rate of 1 to 2 kgs/year. Production of more than this amount would disrupt experimental programs currently being conducted in the HFIR core. Therefore, use of this irradiation facility would have to be supplemented by additional facilities to meet the projected demand.

Alternative Sites for Storage of Np-237, Fabrication of Targets, and Processing of Irradiated Targets

Radiochemical Engineering Development Center (REDC) at ORNL: Under this alternative, DOE would use REDC to perform all the processing activities, including Np-237 storage and target fabrication and post-irradiation processing to extract the Pu-238, and to recycle the unconverted Np-237 into new targets. REDC is located in the same complex as HFIR.

Fuels and Materials Examination Facility (FMEF) at the Hanford Site: Under this alternative, DOE would use FMEF to perform all the processing activities, including Np-237 storage and target fabrication and post-irradiation processing to extract the Pu-238, and to recycle the unconverted Np-237 into new targets. FMEF, which is located near FFTF, could be modified to install all required support facilities for the Pu-238 program. In its Surplus Plutonium Disposition Draft Environmental Impact Statement (July 1998), DOE is also analyzing the use of FMEF as a reasonable alternative for the siting of surplus plutonium disposition facilities, and this analysis could impact the use of FMEF as a reasonable alternative to perform these chemical processing operations.

Preliminary Environmental Analysis

The following issues have been tentatively identified for analysis in the EIS. This list is neither intended to be all inclusive nor is it a predetermination of potential environmental impacts. The list is presented to facilitate comments on the scope of the EIS. Additions to or deletions from this list may occur as a result of the public scoping process.

- Health and Safety: potential public and occupational consequences from construction, routine operation, transportation, and credible accident scenarios.
- Waste Management/Pollution Prevention: types of wastes expected to be generated, handled, and stored; pollution prevention opportunities and the potential consequences to public safety and the environment.
- Hazardous Materials: handling, storage, and use; both present and future.
- Background Radiation: cosmic, rock, soil, water, and air and the potential addition of radiation.
- Water Resources: surface and groundwater hydrology, water use and quality, and the potential for degradation.
- Air Quality: meteorological conditions, ambient background, sources, and potential for degradation.
- Earth Resources: physiography, topography, geology, and soil characteristics.
- Land Use: plans, policies, and controls.
- Noise: ambient, sources, and sensitive receptors.
- Ecological Resources: wetlands, aquatic, terrestrial, economically/recreationally important species, and threatened and endangered species.
- Socioeconomic: demography, economic base, labor pool, housing, transportation, utilities, public services/facilities, education, recreation, and cultural resources.
- Natural Disasters: floods, hurricanes, tornadoes, and seismic events.
- Unavoidable Adverse Impacts.
- Natural and Depletable Resources: requirements and conservation potential.
- Environmental Justice: any potential disproportionately high and adverse impacts to minority and low income populations.

Scoping Meetings

The purpose of this Notice is to encourage public involvement in the EIS process and to solicit public comments on the proposed scope and content of the EIS. DOE will hold public scoping meetings near ORNL, INEEL, and Hanford to solicit both oral and written comments from interested parties. The date, time, and location will be announced through the local media as soon as determined but at least 15 days prior to the date of the meetings.

In order to facilitate an understanding of the program's objectives, DOE personnel will be available at the scoping meetings to explain the program to the public and answer questions. DOE will designate a facilitator for the scoping meetings. At the opening of each meeting, the facilitator will establish the order of speakers and will announce any additional procedures necessary for conducting the meetings. To ensure that all persons wishing to make a presentation are given the opportunity, each speaker may be limited to five minutes, except for public officials and representatives of groups, who will be allotted ten minutes each. DOE encourages those providing oral comments to also submit them in writing. Comment cards will also be available for those who prefer to submit their comments in written form. Speakers may be asked clarifying questions, but the scoping meetings will not be conducted as evidentiary hearings.

A toll free telephone number has been established to receive public comments. Interested parties may call (800) 708–2680 and leave a detailed message with their comments.

DOE will make transcripts of the scoping meetings and project-related materials available for public review in the following reading rooms:

U.S. Department of Energy, Freedom of Information Public Reading Room, Forrestal Building, Room 1E–190, 1000 Independence Avenue, S.W., Washington, D.C. 20585, Telephone: (202) 586–3142

Oak Ridge Operations Office, DOE Oak Ridge Public Reading Room, U.S. Department of Energy, 200 Administration Road, Room G–217, P.O. Box 2001, Oak Ridge, TN 37831, Telephone: (423) 576–1216 or (423) 241–4780

Richland Operations Office, DOE Public Reading Room, 2770 University Drive CIC, Room 101L, P.O. Box 999, mail stop H2–53, Richland, WA 99352, Telephone: (509) 372–7443

Idaho National Engineering and Environmental Laboratory, DOE-Idaho Operations Office Public Reading Room, 1776 Science Center Drive, Idaho Falls, ID 83415, Telephone: (208) 526–0271

NEPA Process

The EIS for the proposed Production of Plutonium-238 for Use in Advanced Radioisotope Power Systems for Space Missions will be prepared in accordance with the National Environmental Policy Act of 1969, the Council on Environmental Quality's Regulations for Implementing the Procedural Provisions of NEPA (40 CFR Parts 1500–1508), and DOE's NEPA Regulations (10 CFR Part 1021).

A 45-day comment period on the draft EIS is planned, and public hearings to receive comments will be held approximately 3 weeks after distribution of the draft EIS. The draft EIS is expected to be issued during Spring 1999. Availability of the draft EIS, the dates of the public comment period, and information about the public hearings will be announced in the **Federal Register** and in the local news media when the draft EIS is distributed.

The final EIS, which will consider the public comments received on the draft EIS, is expected to be published during Fall 1999. No sooner than 30 days after the U.S. Environmental Protection Agency's notice of availability of the final EIS is published in the **Federal Register**, DOE will issue its Record of Decision and publish it in the **Federal Register**.

Signed in Washington, D.C., this 29th day of September 1998.

Peter N. Brush,

Acting Assistant Secretary Environment, Safety and Health.

[FR Doc. 98–26594 Filed 10–2–98; 8:45 am]

BILLING CODE 6450–01–P

DEPARTMENT OF ENERGY

Office of Energy Efficiency and Renewable Energy

RIN 1904–AA67

Proposed Agency Information Collection Activities; Comment Request

AGENCY: Office of Energy Efficiency and Renewable Energy, Department of Energy.

ACTION: Notice and request for comments.

SUMMARY: In accordance with the Paperwork Reduction Act of 1995, Pub. L. 104–13 (44 U.S.C. 3506(c)(2)(A)), the Office of Codes and Standards (OCS) in the Office of Energy Efficiency and Renewable Energy (EE) invites the general public and other Federal agencies to comment on the proposed information collection. OCS is soliciting

comments concerning the collecting of consumer data to determine the value consumers place on clothes washer attributes, such as cycle options, door placement, temperature options, etc. The information collection request describes the nature of the information collection and the expected burden and cost.

DATES: Consideration will be given to comments submitted by December 4, 1998.

ADDRESSES: Written comments may be submitted to: Department of Energy, Attn: Bryan Berringer, Office of Codes and Standards (EE–43), 1J–018/Forrestal Building, 1000 Independence Ave., SW, Washington, DC 20585–0121.

FOR FURTHER INFORMATION CONTACT: Bryan Berringer, U.S. Department of Energy, Office of Energy Efficiency and Renewable Energy, Forrestal Building, Mail Station EE–431, 1000 Independence Avenue, SW, Washington, DC 20585–0121, (202) 586–0371, E-mail: Bryan.Berringer@HQ.DOE.GOV

SUPPLEMENTARY INFORMATION:

Collection title: Proposed Clothes Washer Consumer Impact Analysis.

OMB Number: None.

Form Number: N/A.

Abstract: OCS is collecting consumer data to determine the value consumers place on clothes washer attributes, such as cycle options, door placement, temperature options, etc. Legislation requires that ''the Secretary consider, among other factors, * * * if any lessening of the utility or performance of the products is likely to result from the imposition of the standard,'' (42 U.S.C. 6295(o)(2)(B)(I)(IV)). OCS will analyze the data to determine if the new efficiency standard negatively impacts any of the attributes highly valued by consumers.

OCS will hire a marketing research firm that will collect clothes washer consumer data in a two-phase process. In the first phase, the research firm will interview 10 focus groups comprised of 8–10 individuals (sample of 100 respondents) to be held at five different geographic sites in the United States (the exact sites for holding the focus groups has yet to be determined). The focus groups will refine the initial list of 32 clothes washer attributes that were developed by OCS with input from manufacturers, trade groups, and other stakeholders. The goal is to refine the initial list to 8–12 attributes for use in a conjoint analysis survey that will be given to a representative sample of 500 respondents at five sites in the United States (sites-to-be-determined). Conjoint analysis is a method that permits OCS to identify the value a respondent places on a particular attribute of a clothes washer. This utility analysis is accomplished through a trade-off procedure in which the respondents are asked to give up various attribute levels to achieve other attribute levels. The attributes data are collected through personal interviews with the respondents interacting with a pre-programmed microcomputer. A company that specializes in conjoint analysis will be hired to complete the survey and provide a report to OCS summarizing the findings. Survey respondents will be obtained through intercepts in shopping malls.

Current Actions: OCS is proposing a new information collection and is requesting comment on the proposal.

Type of request: Approval of new collection.

Type of respondents: Individuals or households.

Estimated number of respondents: 600.

Estimated burden hours per respondent: 2 hours.

Frequency of response: 1.

Estimated total reporting burden: 1,200 hours.

Estimate cost burden to respondents: No monetary burden.

Request for comments: Comments submitted in response to this notice will be summarized and/or included in the request for the Office of Management and Budget's (OMB) approval. All comments will become a matter of public record. Comments are invited on: (1) whether the proposed collection of information is necessary for the proper performance of the functions of OCS; (2) proposed method for determining the value consumers place on clothes washer attributes; and (3) ways to minimize the burden of the collection of information on those who are to respond.

Issued in Washington, DC, on September 29, 1998.

Dan W. Reicher,

Assistant Secretary, Energy Efficiency and Renewable Energy.

[FR Doc. 98–26592 Filed 10–2–98; 8:45 am]

BILLING CODE 6450–01–P

DEPARTMENT OF ENERGY

Energy Information Administration

Agency Information Collection Activities: Proposed Modification; Comment Request

AGENCY: Energy Information Administration, DOE.

ACTION: Agency information collection activities: Proposed modification; Comment request.

SUMMARY: The Energy Information Administration (EIA) is soliciting comments concerning the proposed modification of the criteria used to select those companies that must file Form EIA–28, the ''Financial Reporting System.''

DATES: Written comments must be submitted on or before December 4, 1998. If you anticipate that you will be submitting comments, but find it difficult to do so within the period of time allowed by this notice, you should advise the contact listed below of your intention to do so as soon as possible.

ADDRESSES: Send comments to Gregory P. Filas, Energy Information Administration, EI–62, Financial Analysis Team, Forrestal Building, U.S. Department of Energy, Washington, DC 20585, telephone (202) 586–1347; e-mail greg.filas@eia.doe.gov; FAX (202) 586–9753.

FOR FURTHER INFORMATION CONTACT: Requests for additional information or copies of the form and instructions should be directed to Mr. Filas at the address listed above.

SUPPLEMENTARY INFORMATION:

I. Background
II. Current Actions
III. Request for Comments

I. Background

In order to fulfill its responsibilities under the Federal Energy Administration Act of 1974 (Pub. L. 93–275) and the Department of Energy Organization Act (Pub. L. 95–91), the Energy Information Administration (EIA) is obliged to carry out a central, comprehensive, and unified energy data and information program. As part of this program, EIA collects, evaluates, assembles, analyzes, and disseminates data and information related to energy resource reserves, production, demand, and technology, and related economic and statistical information relevant to the adequacy of energy resources to meet demands in the near and longer term future for the Nation's economic and social needs.

The EIA, as part of its continuing effort to reduce paperwork and respondent burden (required by the Paperwork Reduction Act of 1995 (Pub. L. 104–13, title 44, U.S.C. Chapter 35), conducts a presurvey consultation program to provide the general public and other Federal agencies with an opportunity to comment on proposed and/or continuing reporting forms. This program helps EIA to prepare data

requests in the desired format, minimize reporting burden, develop clearly understandable reporting forms, and assess the impact of collection requirements on respondents. Also, EIA will later seek approval by the Office of Management and Budget (OMB) for the collections under Section 3507(h) of the Paperwork Reduction Act of 1995.

II. Current Actions

Under Pub. L. 95–91, section 205(h), the Administrator of the EIA is required to ''identify and designate'' the major energy companies who must annually file Form EIA–28 (the ''Financial Reporting System'' (FRS)) in order to ensure that the data collected provide ''a statistically accurate profile of each line of commerce in the energy industry in the United States.'' Traditionally, the Administrator has chosen to use a set of criteria to assist him in identifying the reporting companies.

The EIA is proposing to modify the criteria currently used to determine which companies must file Form EIA–28, and is seeking comments on this proposal. This is *not* a proposal to change or modify the currently approved form.

The first criterion which must currently be met for a company to qualify as a FRS respondent is that the company be among the top 50 U.S.-based companies ranked by worldwide production of crude oil (the ''Top-50 Requirement''). The second FRS selection criterion requires that the company account for 1 percent or more of U.S. production or reserves of oil, natural gas, coal, uranium, or 1 percent or more of U.S. refining capacity or refined product sales volume.

The current set of FRS respondent company selection criteria ensures that oil and gas producing companies who have grown to account for more than 1 percent of U.S. production or reserves, and vertically-integrated refiners who have acquired more than 1 percent of U.S. refining capacity are added to the survey group. The Top-50 Requirement ensures that only integrated refiners (and not non-integrated independent refiners) are added to the survey group.

Because vertically integrated refiners have traditionally owned the majority of U.S. refining assets, the Top-50 Requirement did not, until recently, significantly limit FRS coverage of the U.S. refining industry. At year-end 1986, the FRS companies accounted for 76 percent of U.S. refining capacity. At year-end 1996, the FRS companies (including their unconsolidated joint ventures) accounted for 73 percent of U.S. refining capacity.

However, the U.S. refining industry has been undergoing a process of restructuring, cost-cutting and consolidation over the past several years, and the trend in industry acquisitions, divestitures, and alliances has sharply accelerated. In recent months, the EIA has been seeing a significant drop in FRS survey coverage for the U.S. refining industry, as well as evidence of newly emerging patterns of U.S. refining industry organization. A number of FRS companies have sold their U.S. refining assets, including assets previously committed to joint ventures.

These rapid industry changes have, and will continue, to substantially reduce the ability of EIA's FRS to meet its legislative requirement to provide ''* * * a statistically accurate profile * * *'' of the U.S. refining line of commerce for the 1998 reporting year and beyond, unless the respondent company selection criteria for Form EIA–28 are modified.

Accordingly, the EIA is proposing to eliminate the Form EIA–28 Top-50 Requirement. Additionally, the EIA is proposing to eliminate the thresholds on coal and uranium production. EIA also proposes to clarify that the U.S.-based companies selected for the survey group, or their parent companies, must be publicly-traded companies. With these changes, the simplified FRS respondent selection criteria will allow for the inclusion of large, publicly-traded, non-integrated independent refiners.

As proposed, the revised respondent company selection criteria for the Form EIA–28 will be that, in order to be included in the survey group, the U.S.-based company (or its parent company) must be publicly-traded, and must account for 1 percent or more of U.S. production or reserves of crude oil (including natural gas liquids) or natural gas, or 1 percent or more of U.S. refining capacity or refined product sales volume.

The proposed deletion of the Top-50 Requirement will have the effect of adding large non-integrated independent refining companies to the Form EIA–28 survey group. This addition will result in EIA's maintaining its compliance with the requirement of Pub. L. 95–91, section 205(h) relative to the U.S. petroleum refining industry. More particularly, the addition of large, U.S. non-integrated refining companies not already identified by the current FRS selection criteria would result in the FRS respondent companies (including their joint ventures) constituting an expected 87 percent of domestic refining capacity during 1998, instead of the 60 percent (or less) industry representation anticipated under the current respondent company selection criteria.

III. Request for Comments

Prospective respondents and other interested parties including FRS data users should comment on the actions discussed in item II. Given that this reporting requirement relies heavily on company financial data, and relates to accounting practices familiar to those developing annual report and/or Securities and Exchange Commission filings, coordination with respondent company Controller offices is recommended. Comments submitted in response to this notice will be summarized and/or included in the request for OMB approval. The comments also will become a matter of public record.

Also, each year the Form EIA–28 respondent companies provide estimates of the reporting burden associated with their annual filings. Reporting burden includes the total time expended to generate, maintain, retain, disclose, or provide the information requested on Form EIA–28. Since the Form EIA–28 respondent companies include some of the largest worldwide energy companies, reporting burden varies considerably among respondents—depending on the geographic extent of their operations, the complexity of the company, the extent of their automation, and the number of lines of business in which they are engaged. The currently reported average burden for the more complex respondent companies is approximately 1050 hours per year, ranging from a high of 2,200 hours to a low of 440 hours. Less complex Form EIA–28 respondent companies, such as those primarily involved in only one energy-related line of business, have estimated their annual reporting burden at an average of 180 hours, ranging from a high of 400 hours to a low of 35 hours. If a company has questions about what level of Form EIA–28 reporting burden it might experience, please contact Jon Rasmussen at (202) 586-1449 (or e-mail: jon.rasmussen@eia.doe.gov) for additional information. If a company is interested in learning of steps it might take to reduce its current reporting burden, please contact Greg Filas at (202) 586–1347 (or e-mail: greg.filas@eia.doe.gov).

Statutory Authority: Section 3506(c)(2)(A) of the Paperwork Reduction Act of 1995 (Pub. L. 104–13, title 44, U.S.C. Chapter 35).

Issued in Washington, DC September 29, 1998.

Jay H. Casselberry,

Agency Clearance Officer, Statistics and Methods Group, Energy Information Administration.

[FR Doc. 98–26593 Filed 10–2–98; 8:45 am]

BILLING CODE 6450–01–P

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

[Docket No. CP98–774–000]

Columbia Gas Transmission Corporation; Notice of Request Under Blanket Authorization

September 29, 1998.

Take notice that on September 11, 1998, Columbia Gas Transmission Corporation (Columbia), 12801 Fair Lakes Parkway, Fairfax, Virginia 22030–0146, filed in Docket No CP98–679–000, a request pursuant to Section 157.205, 157.212 and 157.216 of the Commission's Regulations under the Natural Gas Act (18 CFR 157.205, 157.211 and 157.216) for authorization to relocate various points of delivery to Columbia Gas of Pennsylvania (CPA) and to abandon 6.6 miles of 8-, 4- and 2-inch pipeline located in McKean County, Pennsylvania, under Columbia's blanket certificate issued in Docket No. CP83–76–000, pursuant to 18 CFR Part 157, Subpart F of the Natural Gas Act, all as more fully set forth in the request which is on file with the Commission and open to public inspection.

Specifically, Columbia requests that its Corwins Lane point of delivery to CPA be relocated from Columbia's 2-nch Line 4389 to its 8-nch Line 4226 right-of-way. Columbia states that it intends to relocate 145 feet of its 2-inch Line 4389 with 260 feet of 2-inch pipeline under Sections 157.212 and 157.216 of the Commission's Regulations. Columbia further states that regulation must be installed at the new interconnection of Columbia's 2-inch Line 4389 and 8-inch Line 422, and it is more feasible to have both the regulation and measurement at the same location.

It is further stated that Columbia's Spencer point of delivery (CPA POD 13) would be relocated from Columbia's 8-inch Line 4008 to its 8-inch Line 4226. It is stated that Line 4226 is parallel to Line 4008 and shares the same right-of-way. The replacement tap would be located approximately 5 feet from the existing tap, it is stated.

Columbia states that in addition to the relocation of the two points of delivery, Columbia intends to relocate five domestic taps to nine residences from Line 4008 to Line 4226 to allow for the partial abandonment of Line 4008. It is stated that CPA agrees to the relocation at the points of delivery.

Columbia further states that in addition to the relocations, Columbia proposes to abandon approximately 6.5 miles of 8-inch Line 4008 in two sections, 10 feet of 2-inch Line 4397, and 61 feet of 4-inch Line 4168, all located in McKean County, Pennsylvania. Columbia states that there are no shippers or points of delivery associated with the 10 feet of 2-inch Line 4397 pipeline. It is stated that Line 4008 consists of 8-inch coupled pipe in need of replacement and currently serves a mixture of residential customers and two CPA points of delivery (Corwine Lane—CPA POD 15 and Spencer—CPA POD 13). It is also stated that the gas supply for Line 4008 markets ultimately is delivered from parallel Line 4226 to Line 4008 via the Dallas City point of delivery. Columbia states that it would maintain approximately 0.4 mile of Line 4008 which would continue to be served from the Dallas City point of delivery for continuing service to multiple domestic taps. It is indicated that with the abandonment of Line 4168 the Red Rock point of delivery would continue to maintain a gas supply to CPA from Line 4226.

Any person or the Commission's staff may, within 45 days after issuance of the instant notice by the Commission, file pursuant to Rule 214 of the Commission's Procedural Rules (18 CFR 385.214) motion to intervene or notice of intervention and pursuant to Section 157.205 of the Regulations under the Natural Gas Act (18 CFR 157.205) a protest to the request. If no protest is filed within the time allowed therefor, the proposed activity shall be deemed to be authorized effective the day after the time allowed for filing a protest. If a protest is filed and not withdrawn within 30 days after the time allowed for filing a protest, the instant request shall be treated as an application for authorization pursuant to Section 7 of the Natural Gas Act.

Linwood A. Watson Jr.

Acting Secretary.

[FR Doc. 98–26533 Filed 10–2–98; 8:45 am]

BILLING CODE 6717–01–M

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

[Docket No. CP98–793–000]

Kern River Gas Transmission Company: Notice of Request Under Blanket Authorization

September 29, 1998.

Take notice that on September 18, 1998, Kern River Gas Transmission (Kern River), 295 Chipeta Way, Salt Lake City, Utah 84108, filed in Docket No. CP98–793–000 a request pursuant to Section 157.205 of the Commission's Regulations under the Natural Gas Act (18 CFR 157.205) for authorization to modify its Fillmore and Milford Meter Station in Fillmore and Beaver Counties, Utah, respectively by partially abandoning certain existing facilities and construction and operating appropriate replacement facilities, under Kern River's blanket certificate issued in Docket No. CP98–2048–000 pursuant to Section 7 of the Natural Gas Act, all as more fully set forth in the request which is on file with the Commission and open to public inspection.

Kern River proposes to remove the existing 2-inch rotary meters and associated 2-inch regulators, 2-inch relief valve and appurtenances and replacing them with new high-capacity 1-inch turbine meters and appurtenances. It is said that the design delivery capacity of the meter stations would not change as a result of the modifications.

Kern River states that the estimated cost of the facilities would be approximately $11,206 at the Fillmore Meter Station and $11,406 at the Milford Meter Station.

Any person or the Commission's staff may, within 45 days after issuance of the instant notice by the Commission, file pursuant to Rule 214 of the Commission's Procedural Rules (18 CFR 385.214) a motion to intervene or notice of intervention and pursuant to Section 157.205 of the Regulations under the Natural Gas Act (18 CFR 157.205) a protest to the request. If no protest is filed within the time allowed therfor, the proposed activity shall be deemed to be authorized effective the day after the time allowed for filing a protest. If a protest is filed and not withdrawn within 30 days after the time allowed for filing a protest, the instant request shall be treated as an application for

authorization pursuant to Section 7 of the Natural Gas Act.

Linwood A. Watson, Jr.,

Acting Secretary.

[FR Doc. 98–26535 Filed 10–2–98; 8:45 am]

BILLING CODE 6717–01–M

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

[Project No. 346–MN]

Minnesota Power, Inc.; Notice of Minnesota Power, Inc's Request for Waiver and To Use Alternative Procedures in Filing a License Application

September 29, 1998.

On September 21, 1998, the existing licensee, Minnesota Power, Inc. (Minnesota Power), filed a request to waive certain Commission regulations and to use alternative procedures for submitting an application for new license for the existing Blanchard Hydroelectric Project No. 346. The project is located on the Mississippi River, in Morrison County, Minnesota, and consists of 750-foot-long, 45-foot-high concrete gravity dam with an integral powerhouse, and 1,152-acre reservoir, three generating units with a total installed capacity of 18 MW, and appurtenant facilities.

Minnesota Power has demonstrated that it has made an effort to contact all resource agencies, nongovernmental organizations (NGOs), and other affected by the proposal, and that a consensus exists that the use of alternative procedures is appropriate in this case. Further, waiving the Commission's regulations will be automatic upon approval of the alternative procedures stipulated in Order No. 596.[1]

Minnesota Power has submitted a communications protocol that is supported by the interested entities.

The purpose of this notice is to invite any additional comments on Minnesota Power's request to use the alternative procedures, pursuant to Section 4.34(i) of the Commission's regulations. Additional notices seeking comments on the specific project proposal, interventions and protests, and recommended terms and conditions will be issued at a later date.

The alternative procedures being requested here combine the prefiling consultation process with the environmental review process, allowing Minnesota Power to complete and file an Environmental Assessment (EA) in lieu of Exhibit E of the license application. This differs from the traditional process, in which an applicant consults with agencies, Indian tribes, and NGOs during preparation of the application for the license and before filing it, but the Commission staff performs the environmental review after the application is filed. The alternative procedures are intended to simplify and expedite the licensing process by combining the prefiling consultation and environmental review processes into a single process, to facilitate greater participation, and to improve communication and cooperation among the participants.

Applicant Prepared EA Process and Blanchard Project Schedule

Minnesota Power has met with state and federal resource agencies, and NGOs regarding the Blanchard Hydroelectric Project. Minnesota Power has submitted a proposed schedule for the alternative procedures that leads to the filing of a license application by August 2001.

Comments

Interested parties have 30 days from the date of this notice to file with the Commission, any comments on Minnesota Power's proposal to use the alternative procedures to file an application for the Blanchard Hydroelectric Project.

Filing Requirements

The comments must be filed by providing an original and 8 copies as required by the Commission's regulations to: Federal Energy Regulatory Commission, Office of the Secretary, Dockets—Room 1A, 888 First Street, N.E., Washington, DC 20426.

All comment filings must bear the heading ''Comments on the Alternative Procedures,'' and include the project name and number (Blanchard Hydroelectric Project No. 346).

For further information on this process,please call Tom Dean of the Federal Energy Regulatory Commission at 202–219–2778.

Linwood A. Watson, Jr.,

Acting Secretary.

[FR Doc. 98–26538 Filed 10–2–98; 8:45 am]

BILLING CODE 6717–01–M

[1] Order No. 596, Regulations for the Licensing of Hydroelectric Projects, 81 FERC ¶ 61,103 (1997).

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

[Docket No. RP96–331–009]

National Fuel Gas Supply Corporation; Notice of Proposed Changes in FERC Gas Tariff

September 29, 1998.

Take notice that on September 15, 1998, National Fuel Gas Supply Corporation (National Fuel) tendered for filing as part of its FERC Gas Tariff, Fourth Revised Volume No. 1, First Revised Sheet No. 12, to be effective November 1, 1998.

National Fuel states that the filing is made to implement two firm storage agreements between National Fuel and National Fuel Resources, Inc. (NFR) and one firm storage agreement between National Fuel and Engage U.S., L.P. (Engage). National Fuel states that each of these agreements provides for negotiated rates pursuant to GT&C Section 17.2 of National Fuel's tariff and the Commission's policy regarding negotiated rates. National Fuels states that under its agreements with NFR and Engage, firm storage service would be provided under its FSS Rate Schedule at a formula rate based upon the difference between the price of gas at Niagara, as published by *Gas Daily*, applicable at the time of injection, and such price applicable at the time of withdrawal. The specific formula is set forth in the amendments to the agreements, which accompany National Fuel's tariff filing.

National Fuel states that it is serving copies of the filing upon its firm customers, interested state commissions and on all interruptible customers.

Any person desiring to protest this filing should file a protest with the Federal Energy Regulatory Commission, 888 First Street, NE., Washington, DC 20426, in accordance with Section 385.211 of the Commission's Rules and Regulations. All such protests must be filed on or before October 5, 1998. Protests will be considered by the Commission in determining the appropriate action to be taken, but will not serve to make protestants parties to the proceedings. Copies of this filing are on file with the Commission and are available for public inspection in the Public Reference Room.

Linwood A. Watson, Jr.,

Acting Secretary.

[FR Doc. 98–26539 Filed 10–2–98; 8:45 am]

BILLING CODE 6717–01–M

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

[Docket No. RP98–416–000]

National Fuel Gas Supply Corporation; Notice of Proposed Changes in FERC Gas Tariff

September 29, 1998.

Take notice that on September 25, 1998, National Fuel Gas Supply Corporation (National Fuel) tendered for filing as part of its FERC Gas Tariff, Fourth Revised Volume No. 1, the tariff sheets listed on Appendix A to the filing, to be effective November 1, 1998.

National Fuel states that the purpose of this filing is to establish a seasonal firm service under new Rate Schedule FT–S (Firm Transportation Service—Seasonal) to comply with the Commission's directive in its April 22, 1998 order in Docket No. CP98–94–000 (83 FERC 61,058) authorizing the construction and operation of the facilities comprising Phase II of National Fuel's 1997 Niagara Expansion Project.

National Fuel states that on May 29, 1998, Renaissance Energy (U.S.), Inc. (Renaissance) and National Fuel entered into a service agreement (the Renaissance Agreement) for service to commence on November 1, 1998. The Renaissance Agreement contains provisions which deviate from the form of service agreement contained in National Fuel's Volume No. 1 FERC Gas Tariff because the Renaissance Agreement is tailored around the specific circumstances of Phase II of National Fuel's 1997 Niagara Expansion Project, it is stated.

National Fuel states that because the Renaissance Agreement contains provisions which may deviate in a material aspect from the FT and FT–S Rate Schedules, pursuant to Section 154.1(d) of the Commission's regulations, National Fuel is filing the agreement with the Commission and requesting that the Commission accept and permit it to become effective November 1, 1998. National Fuel also states that, pursuant to Section 154.112(b) of the Commission's Regulations, the tendered tariff sheets include a reference to the Renaissance Agreement.

National Fuel states that it is serving copies of the filing upon its firm customers and interested state commissions. Copies are also being served on all interruptible customers as of the date of this filing.

Any person desiring to be heard or to protest said filing should file a motion to intervene or a protest with the Federal Energy Regulatory Commission, 888 First Street, NE, Washington, DC 20426, in accordance with Sections 385.214 or 385.211 of the Commission's Rules and Regulations. All such motions or protests must be filed in accordance with Section 154.210 of the Commission's Regulations. Protests will be considered by the Commission in determining the appropriate action to be taken, but will not serve to make protestant parties to the proceedings. Any person wishing to become a party must file a motion to intervene. Copies of this filing are on file with the Commission and are available for public inspection in the Public Reference Room.

Linwood A. Watson, Jr.

Acting Secretary.

[FR Doc. 98–26540 Filed 10–2–98; 8:45 am]

BILLING CODE 6717–01–M

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

[Docket No. CP98–796–000]

Panhandle Eastern Pipe Line Company; Notice of Request Under Blanket Authorization

September 29, 1998.

Take notice that on September 22, 1998, Panhandle Eastern Pipe Line Company (Panhandle), P.O. Box 1642, Houston, Texas 77251–1642, filed in Docket No. CP98–796–000 a request pursuant to Sections 157.205 and 157.211 of the Commission's Regulations under the Natural Gas Act (18 CFR 157.205, 157.211) for authorization to construct, own and operate a new delivery point and appurtenant facilities for Michigan Consolidated Gas Company (MichCon) in Washtenaw County, Michigan under Panhandle's blanket certificate issued in Docket No. CP83–83–000 pursuant to Section 7 of the Natural Gas Act, all as more fully set forth in the request that is on file with the Commission and open to public inspection.

Panhandle proposes to construct, own, and operate a delivery meter and appurtenant facilities in Washtenaw County, Michigan. Panhandle will provide firm transportation service to the new delivery point under its open access rate schedules. The proposed facility will have a maximum design capacity of 20 Mmcf at 450 psig. MichCon will reimburse Panhandle for 100% of the costs and expenses Panhandle will incur. Such costs and expenses are estimated to be approximately $136,997.

Any person or the Commission's staff may, within 45 days after issuance of the instant notice by the Commission, file pursuant to Rule 214 of the Commission's Procedural Rules (18 CFR 385.214) a motion to intervene or notice of intervention and pursuant to Section 157.205 of the Regulations under the Natural Gas Act (18 CFR 157.205) a protest to the request. If no protest is filed within the time allowed therefore, the proposed activity shall be deemed to be authorized effective the day after the time allowed for filing a protest. If a protest is filed and not withdrawn within 30 days after the time allowed for filing a protest, the instant request shall be treated as an application for authorization pursuant to Section 7 of the Natural Gas Act.

Linwood A. Watson, Jr.,

Acting Secretary.

[FR Doc. 98–26536 Filed 10–2–98; 8:45 am]

BILLING CODE 6717–01–M

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

[Docket No. CP98–782–000]

Texas Eastern Transmission Corporation; Notice of Request for Authorization

September 29, 1998.

Take notice that on September 14, 1998, as supplemented on September 25, 1998, Texas Eastern Transmission Corporation (Texas Eastern), 5400 Westheimer Court, Houston, Texas 77056–5310, filed in Docket No. CP98–782–000, a request pursuant to Sections 7(b) and 7(c) of the Natural Gas Act for authorization (1) to abandon by removal Texas Eastern's M&R 70112, an existing delivery meter located in Montgomery County, Kentucky, and (2) to include a new point of receipt to be built by Columbia Gas Transmission Corporation (Columbia) on Columbia's existing Rate Schedule CTS service agreement with Texas Eastern.

Texas Eastern states that the delivery point to be abandoned was constructed in 1952 to deliver gas from Texas Eastern to Columbia. However, Texas Eastern relates that it currently has no firm obligations at the delivery point and the delivery point is not used. Texas Eastern says the facilities to be abandoned include approximately 165 feet of 12-inch interconnect piping and associated metering equipment on Texas Eastern's existing 30-inch Line Nos. 10 and 15, at approximate Mile Post 489.02 in Montgomery County, Kentucky.

Columbia has informed Texas Eastern that it desires to build a new interconnect to deliver gas from its system into Texas Eastern's system. Columbia says it will build the interconnect pursuant to Section 157.208(a) of the Commission regulations. Texas Eastern and Columbia have determined that the most efficient and least environmentally intrusive manner for Columbia to construct the new interconnect is to utilize the existing site on which the delivery point to be abandoned is located.

Texas Eastern also requests authorization to add the new interconnect as a point of receipt on Columbia's existing Rate Schedule CTS service agreement pursuant to which Texas Eastern would receive gas quantities from Columbia on an interruptible basis. Texas Eastern relates that the new Columbia interconnect will provide an additional point of interconnection between Texas Eastern's and Columbia's systems and will be available for use by shippers on both pipeline systems.

Any person desiring to be heard or to make any protest with reference to said application should on or before October 14, 1998, file with the Federal Energy Regulatory Commission, 888 First Street, NE., Washington, DC 20426, a motion to intervene or a protest in accordance with the requirements of the Commission's Rules of Practice and Procedure (18 CFR 385.214 and 385.211) and the regulations under the Natural Gas Act (18 CFR 157.10). All protests filed with the Commission will be considered by it in determining the appropriate action to be taken but will not serve to make the protestants parties to the proceeding. The Commission's rules require that protestors provide copies of their protests to the party or parties directly involved. Any person wishing to become a party in any proceeding herein must file a motion to intervene in accordance with the Commission's rules.

Linwood A. Watson, Jr.,

Acting Secretary.

[FR Doc. 98–26534 Filed 10–2–98; 8:45 am]

BILLING CODE 6717–01–M

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

[Docket No. CP98–790–000]

Western Gas Interstate Company; Notice of Application

September 29, 1998.

Take notice that on September 18, 1998, Western Gas Interstate Company (Western Gas) 211 North Colorado, Midland, Texas 79701, filed in Docket No. CP98–790–000 an application pursuant to Sections 7(b) and 7(c) of the Natural Gas Act, for permission and approval to abandon a portion of its 4-inch and 6-inch main line, to operate certain pipeline facilities previously constructed under Natural Gas Policy Act (NGPA) Section 311 authority, and to abandon service to a customer located on the segment of the pipeline to be abandoned, all as more fully set forth in the application on file with the Commission and open to public inspection.

Western Gas states that this application is prompted by a highway construction project that will require Western Gas to abandon approximately 7.5 miles of its 4- and 6-inch main line in Texas County, Oklahoma. Western Gas indicates that rather than constructing replacement facilities, Western Gas is requesting certificate authority to operate, as part of its main line, certain existing pipeline facilities previously constructed and used strictly for service under NGPA Section 311. Western Gas claims that these facilities consist of approximately 15.5 miles of 6-inch and 8-inch diameter pipeline and were built to provide service on behalf of the City of Guymon, Oklahoma. Western Gas asserts that to integrate the existing Section 311 facilities with its main line, it will need to install three new proposed taps.

Western Gas also requests authorization to abandon service at an existing tap located on the 4-inch line proposed to be abandoned. Western Gas states that it currently delivers very small volumes of gas (a total of approximately 425 Mcf per year) at this point to West Texas Gas, Inc., (WTG) an Oklahoma local distribution company regulated by the Oklahoma Corporation Commission. Western Gas claims that WTG in turn delivers and sells the gas to four rural customers. Western Gas asserts that to mitigate the impact of this abandonment of service, it has offered to furnish and install, at its expense, the facilities needed to convert WTG's four customers to propane. Western Gas also states that, in the alternative, if requested by WTG, it has offered to install a side valve and tap for a new delivery point to WTG at the same point where it will be cutting the line to be abandoned. Western Gas further states that as part of this application, it requests the Commission to authorize this new delivery point, if the new point is requested by WTG.

Any person desiring to be heard or to make any protest with reference to said application should on or before October 20, 1998, file with the Federal Energy Regulatory Commission, 888 First Street, NE, Washington, DC 20426, a motion to intervene or a protest in accordance with the requirements of the Commission's Rules of Practice and Procedure (18 CFR 385.214 or 385.211) and the Regulations under the Natural Gas Act (18 CFR 157.10). All protests filed with the Commission will be considered by it in determining the appropriate action to be taken but will not serve to make the protestants parties to the proceeding. Any person wishing to become a party to a proceeding or to participate as a party in any hearing therein must file a motion to intervene in accordance with the Commission's Rules.

Take further notice that, pursuant to the authority contained in and subject to jurisdiction conferred upon the Federal Energy Regulation Commission by Sections 7 and 15 of the Natural Gas Act and the Commission's Rules of Practice and Procedure, a hearing will be held without further notice before the Commission or its designee on this application if no motion to intervene is filed within the time required herein, if the Commission on its own review of the matter finds that a grant of the certificate, and 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 herein provided for, unless otherwise advised, it will be unnecessary for Western Gas to appear or be represented at the hearing.

Linwood A. Watson, Jr.,

Acting Secretary.

[FR Doc. 98–26537 Filed 10–2–98; 8:45 am]

BILLING CODE 6717–01–M

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

[Docket No. ER98–4561–000, et al.]

Metropolitan Edison Company, et al. Electric Rate and Corporate Regulation Filings

September 28, 1998.

Take notice that the following filings have been made with the Commission:

1. Metropolitan Edison Company

[Docket No. ER98–4561–000]

Take notice that on September 23, 1998, Metropolitan Edison Company (trading and doing business as GPU Energy), filed a letter clarifying the effective date requested for a settlement agreement and a service agreement under GPU Energy's Market-Based Sales Tariff, both filed in the above-captioned docket on September 16, 1998.

GPU Energy states that copies of its letter have been served on Middletown and on the Public Utilities Commission of Pennsylvania.

Comment date: October 13, 1998, in accordance with Standard Paragraph E at the end of this notice.

2. New York State Electric & Gas Corporation, NGE Generation, Inc., Pennsylvania Electric Company, and Mission Energy Westside, Inc.

[Docket Nos. EC98–64–000 and ER98–4600–000]

Take notice that on September 21, 1998, New York State Electric & Gas Corporation (NYSEG), NGE Generation, Inc. (NGE Gen), and Pennsylvania Electric Company (Penelec) filed an application pursuant to Section 203 of the Federal Power Act, 16 U.S.C. § 824, and Part 33 of the Commission's Regulations (18 CFR Part 33), requesting authority to sell certain facilities to Mission Energy Westside, Inc. (MEW) (collectively, Applicants). The Applicants also tendered for filing certain agreements pursuant to Section 205 of the Federal Power Act, which are part of the Divestiture Transaction.

The Applicants have served a copy of this filing on the NYPSC and the PaPUC.

Comment date: October 28, 1998, in accordance with Standard Paragraph E at the end of this notice.

3. Fitchburg Gas and Electric Light Company

[Docket No. ER98–4617–000]

Take notice that on September 23, 1998, Fitchburg Gas and Electric Light Company (Fitchburg), tendered for filing a service agreement between Fitchburg and Engage Energy US, L.P. (Engage Energy), for service under Fitchburg's Market-Based Power Sales Tariff. This Tariff was accepted for filing by the Commission on September 25, 1997, in Docket No. ER97–2463–000.

Fitchburg requests an effective date of August 28, 1998, for the service agreement with Engage Energy.

Comment date: October 13, 1998, in accordance with Standard Paragraph E at the end of this notice.

4. Unitil Power Corp.

[Docket No. ER98–4618–000]

Take notice that on September 23, 1998, Unitil Power Corp. (UPC), tendered for filing a service agreement between UPC and Engage Energy US, L.P. (Engage Energy), for service under UPC's Market-Based Power Sales Tariff. This Tariff was accepted for filing by the Commission on September 25, 1997, in Docket No. ER97–2460–000.

UPC requests an effective date of August 28, 1998, for the service agreement with Engage Energy.

Comment date: October 13, 1998, in accordance with Standard Paragraph E at the end of this notice.

5. Consumers Energy Company

[Docket No. ER98–4619–000]

Take notice that on September 23, 1998, Consumers Energy Company (Consumers), tendered for filing an executed Service Agreement for Network Integration Transmission Service pursuant to Consumers' Open Access Transmission Service Tariff and a Network Operating Agreement with Lakehead Pipe Line Company (Customer), with effective date of September 11, 1998.

Copies of the filed agreements were served upon the Michigan Public Service Commission and the Customer.

Comment date: October 13, 1998, in accordance with Standard Paragraph E at the end of this notice.

6. PP&L, Inc.

[Docket No. ER98–4620–000]

Take notice that on September 23, 1998, PP&L, Inc. (formerly known as Pennsylvania Power & Light Company) (PP&L), filed a Service Agreement dated September 11, 1998 with Baltimore Gas & Electric (BG&E) under PP&L's Market-Based Rate and Resale of Transmission Rights Tariff, FERC Electric Tariff, Volume No. 5. The Service Agreement adds BG&E as an eligible customer under the Tariff.

PP&L requests an effective date of September 23, 1998, for the Service Agreement.

PP&L states that copies of this filing have been supplied to BG&E and to the Pennsylvania Public Utility Commission.

Comment date: October 13, 1998, in accordance with Standard Paragraph E at the end of this notice.

7. PP&L, Inc.

[Docket No. ER98–4621–000]

Take notice that on September 23, 1998, PP&L, Inc. (formerly known as Pennsylvania Power & Light Company) (PP&L), filed a Service Agreement dated September 9, 1998, with NGE Generation, Inc., (NGE) under PP&L's Market-Based Rate and Resale of Transmission Rights Tariff, FERC Electric Tariff, Volume No. 5. The Service Agreement adds NGE as an eligible customer under the Tariff.

PP&L requests an effective date of September 23, 1998, for the Service Agreement.

PP&L states that copies of this filing have been supplied to NGE and to the Pennsylvania Public Utility Commission.

Comment date: October 13, 1998, in accordance with Standard Paragraph E at the end of this notice.

8. Wisconsin Electric Power Company

[Docket No. ER98–4622–000]

Take notice that on September 23, 1998, Wisconsin Electric Power Company (Wisconsin Electric), tendered for filing electric service agreements under its Market Rate Sales Tariff (FERC Electric Tariff, Original Volume No. 8) with Minnesota Power, Inc. (MP) and Western Resources, Inc., (Western).

Wisconsin Electric respectfully requests an effective date of September 23, 1998, to allow for economic transactions.

Copies of the filing have been served on MP and Western, the Michigan Public Service Commission, and the Public Service Commission of Wisconsin.

Comment date: October 13, 1998, in accordance with Standard Paragraph E at the end of this notice.

9. Cleco Corporation

[Docket No. ER98–4623–000]

Take notice that on September 23, 1998, Cleco Corporation, (CLECO), tendered for filing a service agreement under which Cleco Corporation, Transmission Services will provide Long Term Firm point-to-point transmission service to Cleco Corporation, Merchant Energy Services under its point-to-point transmission tariff.

CLECO states that a copy of the filing has been served on Cleco Corporation, Merchant Energy Services.

Comment date: October 13, 1998, in accordance with Standard Paragraph E at the end of this notice.

10. The United Illuminating Company

[Docket No. ER98–4625–000]

Take notice that on September 23, 1998, The United Illuminating Company (UI), tendered for filing a Service Agreement, dated September 9, 1998, between UI and Griffin Energy Marketing, L.L.C. (Griffin), for non-firm point-to-point transmission service under UI's Open Access Transmission Tariff, FERC Electric Tariff, Original Volume No. 4, as amended. The Service Agreement adds Griffin as a transmission customer under the Tariff.

UI requests an effective date of September 9, 1998 and has therefore requested that the Commission waive its 60-day prior notice requirement.

Copies of the filing were served upon the Director—Power Marketing, Griffin Power Marketing, L.L.C. and Robert J. Murphy, Executive Secretary, Connecticut Department of Public Utility Control.

Comment date: October 13, 1998, in accordance with Standard Paragraph E at the end of this notice.

11. Entergy Services, Inc.

[Docket No. ER98–4627–000]

Take notice that on September 23, 1998, Entergy Services, Inc., on behalf of Entergy Arkansas, Inc., Entergy Gulf States, Inc., Entergy Louisiana, Inc., Entergy Mississippi, Inc., and Entergy New Orleans, Inc., tendered for filing a Non-Firm Point-to-Point Transmission Service Agreement and a Short-Term Firm Point-to-Point Transportation Agreement both between Entergy Services, Inc., as agent for the Entergy Operating Companies, and Duke/Louis Dreyfus, L.L.C.

Comment date: October 13, 1998, in accordance with Standard Paragraph E at the end of this notice.

12. Entergy Services, Inc.

[Docket No. ER98–4628–0000]

Take notice that on September 23, 1998, Entergy Services, Inc. (Entergy Services), on behalf of Entergy Arkansas, Inc., Entergy Gulf States, Inc., Entergy Louisiana, Inc., Entergy Mississippi, Inc., and Entergy New Orleans, Inc. (collectively, the Entergy Operating Companies), tendered for filing a Short-Term Market Rate Sales Agreement between Entergy Services, as agent for the Entergy Operating Companies, and PanCanadian Energy Services, Inc., for the sale of power under Entergy Services' Rate Schedule SP.

Comment date: October 13, 1998, in accordance with Standard Paragraph E at the end of this notice.

13. Entergy Services, Inc.

[Docket No. ER98–4629–000]

Take notice that on September 23, 1998, Entergy Services, Inc., on behalf of Entergy Arkansas, Inc., Entergy Gulf States, Inc., Entergy Louisiana, Inc., Entergy Mississippi, Inc., and Entergy New Orleans, Inc., (collectively, the Entergy Operating Companies) tendered for filing a Non-Firm Point-to-Point Transmission Service Agreement between Entergy Services, Inc., as agent for the Entergy Operating Companies, and Commonwealth Edison Company.

Comment date: October 13, 1998, in accordance with Standard Paragraph E at the end of this notice.

14. Niagara Mohawk Power Corporation

[Docket No. ER98–4630–000]

Take notice that on September 23, 1998, Niagara Mohawk Power Corporation (Niagara Mohawk), tendered for filing a pro forma Service Agreement for Niagara Mohawk Power Corporation's Scheduling and Balancing Services Tariff, signed by Lyonsdale Power Company, L.L.C. This Service Agreement implements the terms of the proposed Tariff, which would establish a system of economic incentives designed to induce users of Niagara Mohawk's electric transmission system to match actual deliveries of electricity to delivery schedules provided under Niagara Mohawk's Open Access Transmission Tariff (OATT).

A copy of the filing was served upon Lyonsdale Power Company, L.L.C., and the New York Public Service Commission.

Comment date: October 13, 1998, in accordance with Standard Paragraph E at the end of this notice.

15. Niagara Mohawk Power Corporation

[Docket No. ER98–4631–000]

Take notice that on September 23, 1998, Niagara Mohawk Power Corporation, tendered for filing a pro forma Service Agreement for Niagara Mohawk Power Corporation's Scheduling and Balancing Services Tariff, signed by Niagara Mohawk Energy Marketing, Inc., a Niagara Mohawk Power Corporation subsidiary. This Service Agreement implements the terms of the proposed Tariff, which would establish a system of economic incentives designed to induce users of Niagara Mohawk's electric transmission system to match actual deliveries of electricity to delivery schedules provided under Niagara Mohawk's Open Access Transmission Tariff (OATT).

A copy of the filing was served upon Niagara Mohawk Energy Marketing, Inc., and the New York Public Service Commission.

Comment date: October 13, 1998, in accordance with Standard Paragraph E at the end of this notice.

16. Western Kentucky Energy Corp.

[Docket No. ER98–4634–000]

Take notice that on September 23, 1998, Western Kentucky Energy Corp. (WKEC), submitted for filing with the Federal Energy Regulatory Commission (Commission) a form of service agreement for short-term energy sales and an executed service agreement for short-term energy sales with LG&E Energy Marketing Inc., (LEM).

WKEC asks for waiver of the Commission's prior notice requirements to permit the service agreement with LEM to go into effect as of July 17, 1998.

Comment date: October 13, 1998, in accordance with Standard Paragraph E at the end of this notice.

17. Niagara Mohawk Power Corporation

[Docket No. ER98–4635–000]

Take notice that on September 23, 1998, Niagara Mohawk Power Corporation, tendered for filing a proposed Scheduling and Balancing Services Tariff. The proposed Tariff would establish a system of economic incentives designed to induce users of Niagara Mohawk's electric transmission system to match actual deliveries of electricity to delivery schedules provided under Niagara Mohawk's Open Access Transmission Tariff (OATT).

While the Commission in its Order 888A recognized the need for the kind of scheduling and balancing incentives provided by the Tariff, it also determined that these issues should not be addressed through the mechanism of the transmission providers' OATT tariffs. Consequently, Niagara Mohawk submits the current Tariff, which operates separately from the OATT to effect the required coordination on a uniform and nondiscriminatory basis in a free-market context.

Copies of the filing were served upon Niagara Mohawk's OATT customers, all generators in Niagara Mohawk's control area, and the New York Public Service Commission.

Comment date: October 13, 1998, in accordance with Standard Paragraph E at the end of this notice.

Standard Paragraphs

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 these filings are on file with the Commission and are available for public inspection.

David P. Boergers,

Secretary.

[FR Doc. 98–26532 Filed 10–2–98; 8:45 am]

BILLING CODE 6717–01–P

DEPARTMENT OF ENERGY

Southeastern Power Administration

Notice of Proposed Rate Adjustment

AGENCY: Southeastern Power Administration, DOE.

ACTION: Notice of rate order.

SUMMARY: Notice is given of the confirmation and approval by the Deputy Secretary of the Department of Energy, on an interim basis, of Rate Schedules SOCO–1, SOCO–2, SOCO–3, SOCO–4, ALA–1–I, MISS–1–I, Duke-1, Duke-2, Duke-3, Duke-4, Santee-1, Santee-2, Santee-3, Santee-4, SCE&G–1, SCE&G–2, SCE&G–3, SCE&G–4, and Pump-1. The rates were approved on an interim basis through September 30, 2003, and are subject to confirmation and approval by the Federal Regulatory Commission on a final basis.

DATES: Approval of rates on an interim basis is effective through September 30, 2003.

FOR FURTHER INFORMATION CONTACT: Leon Jourolmon, Assistant Administrator, Finance & Marketing, Southeastern Power Administration, Department of Energy, Samuel Elbert Building, 2 South Public Square, Elberton, Georgia 30635–2496,(706) 213–3800.

SUPPLEMENTARY INFORMATION: The Federal Energy Regulatory Commission by Order issued March 18, 1994, in Docket No. EF93–3011–000, confirmed and approved Wholesale Power Rate Schedules GA–1–D, GA–2–D, GA–3–C, GU–1–D, ALA–1–H, MISS–1–H, MISS–2–D, SC–3–C, SC–4–B, CAR–3–C, SCE–2–C, GAMF–3–B. Rate schedules SOCO–1,SOCO–2, SOCO–3, SOCO–4, ALA–1–I, MISS–1–I, Duke-1, Duke-2, Duke-3, Duke-4, Santee-1, Santee-2, Santee-3, Santee-4, SCE&G–1, SCE&G–2, SCE&G–3, SCE&G–4, and Pump-1 replace these schedules.

Dated: September 18, 1998.

Elizabeth A. Moler,

Deputy Secretary.

In the matter of: Southeastern Power Administration—Georgia-Alabama-South Carolina System Power Rates. Rate Order No. SEPA–37.

Order Confirming and Approving Power Rates on an Interim Basis

Pursuant to Sections 302(a) and 301(b) of the Department of Energy Organization Act, Pub. L. 95–91, the functions of the Secretary of the Interior and the Federal Power Commission under Section 5 of the Flood Control Act of 1944, 16 U.S.C. 825s, relating to the Southeastern Power Administration (Southeastern) were transferred to and vested in the Secretary of Energy. By Delegation Order No. 0204–108, effective May 30, 1986, 51 FR 19744 (May 30, 1986), the Secretary of Energy delegated to the Administrator the authority to develop power and transmission rates, and delegated to the Under Secretary the authority to confirm, approve, and place in effect such rates on an interim basis, and delegated to the Federal Energy Regulatory Commission (FERC) the authority to confirm and approve on a final basis or to disapprove rates developed by the Administrator under the delegation. On November 4, 1993, the Secretary of Energy issued Amendment No. 3 to Delegation Order No. 0204–108, granting the Deputy Secretary authority to confirm, approve, and place into effect Southeastern's rates on an interim basis. This rate is issued by the Deputy Secretary pursuant to said notice.

Background

Power from the Georgia-Alabama-South Carolina System of Projects is presently sold under Wholesale Power Rate Schedules GA–1–D, GA–2–D, GA–3–C, GA–1–D, ALA–1–H, ALA–3–D, MISS–1–H, MISS–2–D, SC–3–C, SC–4–B, CAR–3–C, SCE–2–C, and GAMF–3–B. These rate schedules were approved by the FERC on March 18, 1994, for a period ending September 30, 1998 (66 FERC 62168).

Discussion

System Repayment

An examination of Southeastern's revised system power repayment study, prepared in July 1998, for the Georgia-Alabama-South Carolina System shows that with an annual revenue increase of $1,877,000 over the revenues in the current repayment study using current rates, all system power costs are paid within the 50-year repayment period required by existing law and DOE Procedure RA 6120.2. The Administrator of Southeastern has certified that the rates are consistent with applicable law and that they are the lowest possible rates to customers consistent with sound business principles.

Public Notice and Comment

Opportunities for Public Review and Comment on Wholesale Power Rate Schedules SOCO–1, SOCO–2, SOCO–3, SOCO–4, ALA–1–I, MISS–1–I, Duke-1, Duke-2, Duke-3, Duke-4, Santee-1, Santee-2, Santee-3, Santee-4, SCE&G–1, SCE&G–2, SCE&G–3, SCE&G–4, and Pump-1, was announced by notice published in the **Federal Register** March 24, 1998. Public Information and Comment Forums were held April 29, 1998, in College Park, Georgia, and April 30, 1998, in Columbia, South Carolina, and written comments were invited through June 22, 1998. The notice proposed rates with a revenue increase of $14.6 million in Fiscal Year 1999 and all future years. An alternative set of rates including the costs associated with the Pump Storage Units at the Richard B. Russell Project was also proposed. There were 22 comments received and evaluated. Written comments were received from five (5) sources by mail and facsimile during the comment period. Transcripts of the Public Information and Comment Forums are included as Exhibits A–4–A and A–4–B. A review of comments is included as Exhibit A–5. The following is a summary of the 22 comments.

Staff Evaluation of Public Comments

1. *Comment:* Using the 1997 Corps of Engineers' O&M amount, which is significantly higher than prior years, as a base for the 1998 study amount for O&M yields an unrealistically high number. In computing Corps O&M Expense, Southeastern should take 1993–1997 average costs and escalate them at a rate of about 4% for 2.5 years yielding an average annual cost of $34,307,000.

Response: Two responders suggested an alternative way to estimate Corps of Engineers O&M expenses. Because the

estimates provided by the Corps of Engineers were based on an accounting number which appears to be suspect, and because the accounting system that created that number is new and people do not feel comfortable with the accuracy of the numbers, Southeastern agrees that an alternative method should be used. Southeastern used a method that in some ways was similar to the one described in the two responders comments. Southeastern took the actual escalation rate for the 5-year period 1992 through 1996, thereby not including 1997. The actual rate of escalation over the 5-year period was 3.7%. Southeastern then escalated the actual 1996 amount of $30,461,000 at a 3.7% rate until half way through the cost evaluation period or midway through fiscal year 2001 or 4.5 years. The resultant O&M Expense is $32,784,927 in 1998, $34,012,547 in 1999, $35,286,135 in 2000, and $35,946,773 in 2001 to the end of the study.

2. *Comment:* Corps of Engineers should analyze joint O&M costs and any inappropriate joint costs should be excluded.

Response: The Corps of Engineers and Southeastern are discussing which of the costs that are currently recorded as Joint Costs should be recorded more appropriately as specific costs to purposes other than power. Corps of Engineers personnel believe that any decision to record costs to other purposes would need to be approved at the Headquarters level in Washington, D.C. Southeastern will continue to investigate methods to allocate as many costs as possible to specific purposes. However, Southeastern has made no modification to the present rate proposal in regard to this comment.

3. *Comment:* The Corps of Engineers' projections of capitalized costs from 1999 through 2003 should be reexamined.

Response: The Corps of Engineers reexamined the projections of the capitalized costs for the period 1998 through 2003. In the reexamination, they looked at the question of whether costs were a capitalized item or an expenditure. The corrected numbers are intended to be included when they will be capitalized and modified to be the Corps of Engineers' best estimate. The corrected numbers are included in the proposed rates. The amount of costs decreased by a total of about $6,000,000 for the 1998 to 2003 period.

4. *Comment:* The Southeastern projections of capitalized costs at the Corps of Engineers' projects after 2003 should be reexamined.

Response: Southeastern reexamined the projections of capitalized costs for the fiscal years after 2003. Southeastern determined that the in-service dates should be modified to agree with the major rehabilitation work currently going on. Using the original in-service date overlooks the current work on the system. Changing these in-service dates meant that replacement costs for fiscal years 2004 through 2045 decreased from $238 million to $214 million.

5. *Comment:* Southeastern marketing expenses should be recalculated using a more normal escalation rate and escalating the costs until midway through the cost evaluation period.

Response: Southeastern agrees with the comment of the responders. Southeastern's marketing cost used in the repayment study at the time of the forum included costs escalated at 6.235% until the year 2003. The 6.235% was the actual annual rate of escalation over the period from 1993 through 1997. The amount used in the earlier study was $3,587,892. The period used to compute the escalation rate was determined to be an inappropriate period because the increase in costs were primarily one-time costs to begin an operating center and control areas. Southeastern has modified its projected marketing costs by using the escalation rate allowed in Federal budgeting and escalating the costs until the midpoint of the cost evaluation period, or midway through fiscal year 2001. Southeastern marketing expenses are now estimated to be $2,698,067 in 1998, $2,733,142 in 1999, $2,823,335 in 2000, and $2,869,920 from 2001 to the end of the study.

6. *Comment:* Southeastern should review all costs to determine if any can be reduced or eliminated. Areas to consider include personnel, communications, contract maintenance, competitive resources strategy (CRS) services and supplies, ADP supplies and equipment, and other services.

Response: Southeastern is continually looking at the appropriateness of the costs including those mentioned. It is Southeastern's position that the costs used in the past and the costs requested for the present and near future are necessary and are the lowest possible costs consistent with sound business principles.

7. *Comment:* Southeastern should include additional capacity resulting from rehabilitation work at various projects and the revenues resulting from that additional capacity in the rate proposal.

Response: Southeastern has reexamined the capacity available for sale because of the rehabilitation work currently in progress. We believe that an additional 144,000 kilowatts of capacity will be available because of the rehabilitation work. For the next few years the increased amount will help provide reserves for the time units are out of service because of the rehabilitation work. Therefore, in the years 2001 through 2003 Southeastern has included an additional 79,000 kilowatts and in 2004 through the end of the study Southeastern has included an additional 144,000 kilowatts marketed in the proposed repayment study.

8. *Comment:* Southeastern should not include Civil Service Retirement System costs (CSRS) and pension health benefits costs that are funded by the Office of Personnel Management.

Response: The Department of Energy has made a determination that it is appropriate for the Power Marketing Administrations to include the Civil Service Retirement System costs and pension health benefits costs that are funded by the Office of Personnel Management in the rates charged to customers. Therefore, Southeastern has included the costs in the repayment study and thereby included them in the rates that Southeastern proposes to charge to the customers.

9. *Comment:* Southeastern does not have legal authority to collect Civil Service Retirement System costs that are funded by the Office of Personnel Management.

Response: One of the responders made several legal arguments contending the Southeastern did not have the requisite legal authority to collect Civil Service Retirement System costs and pension health benefits costs that are funded by the Office of Personnel Management (OPM). On July 1, 1998, the Department of Energy's General Counsel Mary Anne Sullivan issued a Memorandum of same date entitled ''PMA Authority To Collect In Rates, And Reimburse To Treasury, Government's Full Costs Of Post-Retirement Benefits.'' (Opinion) A copy of the Opinion is included as Attachment 1 to this notice, as well as part of the Administrator's record of decision as Exhibit A–5 filed with the Federal Energy Regulatory Commission (FERC) pursuant to 18 CFR 300.10 et seq. in support of this rate action.

Preliminarily, the Opinion relates that the Administration's FY 1998 budget documentation states that starting in FY 1998 Southeastern and the three other Power Marketing Administrations (PMA's) '' '* * * will set rates, consistent with current law, to begin to recover the full cost of the Civil Service Retirement System and Post-Retirement

Health Benefits for its employees that have not been recovered in the past' ''. (Opinion, p. 1.) The Opinion notes that (1) PMA rates generally have not reflected the cost to the Government of the unfunded liability related to the Retirement Fund or post-retirement health and life insurance benefits, and (2) that these undercollected amounts are eleven percent in the case of Civil Service Retirement System employees. (Opinion, pp. 1 & 6)

As a matter of background Congress addressed the problem of potential shortfalls * * * of funding for retiree benefits by authorizing a permanent indefinite appropriations to the Retirement Fund to finance the unfunded liability created by: (1) New or liberalized benefits payable from the Fund; (2) extension of coverage of the Fund to new groups of employees or; (3) increases in pay on which benefits are computed. (Opinion, p. 2), citing 5 U.S.C. 8348(f).

The relevant statutory authority for Southeastern to set rates is found in the Flood Control Act of 1944 16 U.S.C. 825s (the Act), which applies to projects built by the Army Corps of Engineers and provides that rates shall be set (by Southeastern) ''* * * having regard to the recovery * * * of the costs of producing and transmitting such electric energy.'' This statutory obligation is also coupled with the obligation to:

> * * * transmit and dispose of such power and energy in such manner as to encourage the most widespread use thereof at the lowest possible rates to consumers consistent with sound business principles * * *

All PMA revenues are required to be deposited in a statutorily specified fund or account in the Treasury.

The Opinion also notes that, ''pursuant to the Flood Control Act requirements, monies received from power rates to recover costs of unfunded liabilities from power marketed by Southeastern * * * would be deposited into the general fund of the Treasury as miscellaneous receipts (Opinion, p. 10).

The Opinion recognizes that Section 5 of the Act (as to Southeastern) leaves considerable discretion to the Southeastern regarding the recovery of costs. Courts have noted the broad discretionary authority conferred upon the Secretary of Energy, Southeastern and the other PMAs regarding actions taken pursuant to the Act. The 9th Circuit has observed that Section 5 of the Act, ''* * * 'breathes discretion at every pore' * * * (it) permits the exercise of the widest administrative discretion by the Secretary. It does not supply 'law to apply.' '' for purposes of judicial review under the Administrative Procedures Act. *City of Santa Clara* v. *Andrus,* 572 F.2d 660 at 668 (cert. den. 439 U.S. 859 (1978). See also *Greenwood Utilities Commission* v. *Hodel,* 764 F.2d 1459, 1464 (11th Cir. 1985) *Electricities of North Carolina* v. *Southeastern Power Administration,* 774 F.D. 1262, 1267 (4th Cir. 1985).

With recognition of the broad discretionary authority conferred by Section 5 of the Act, the Opinion alludes, at page 4, to a ''Reasonable Interpretation of 'Cost.' '' It concludes that it is ''* * * reasonable to interpret the term 'cost' in the organic statutes to include the total costs to the Government of post-retirement benefits for PMA-related employees'' * * * because ''courts accord considerable weight to an executive department's 'construction of a statutory scheme it is entrusted to administer,'' citing *Chevron* v. *Natural Resources Defense Council,* 467 U.S. 837, 844 (1984).

Also, the Opinion notes that ''in reviewing actions of the PMA's, courts give substantial deference to PMA interpretations of their organic statutes,'' citing *Department of Water & Power of the City of Los Angeles* v. *Bonneville Power Administration.,* 759 F.2d 684, 690–91 (9th Cir. 1985). In addition, *Alcoa* v. *Central Lincoln Peoples' Util. Dist.,* 467 U.S. 380, 389 (1984) is cited for the proposition that the ''* * * courts need not find that an agency's interpretation of its organic statutes 'is the only reasonable one, or even that it is the result [the court] would have reached had the question arisen in the first instance in judicial proceedings.' '' (Citations omitted.) The court ''need only conclude that the interpretation is a reasonable one,'' citing *Chevron* v. *Natural Resources Defense Council,* 467 U.S. at 845.

The Department of Energy repayment policy is set forth in Department of Energy Order No. RA 6120.2, dated September 20, 1979. The Opinion cites Section 12(a)(1) of DOE Order No. RA 6120.2 (Sept. 20, 1979), which states that rates for a power system are ''* * * adequate if, and only if, a power repayment study indicates that * * * expected revenues are at least sufficient to recover,'' *inter alia,* ''* * * (a)ll costs of operating and maintaining the power system during the year in which such costs are incurred.''

The General Counsel concludes in the Opinion that, ''On a practical, common sense level, there seems little room to dispute that the full amount of the retiree benefits is a 'cost' of hiring the employees to operate and maintain the PMA power systems.'' (Opinion, p. 5.) The General Counsel further reasoned that ''* * * recovering those costs in rates is entirely consistent with the congressional objective that the PMA's operate on fiscally self-supporting basis.'' Ibid, at 5. Also, by way of analogy, The Opinion notes that:

> Similarly, FERC has recognized that the obligation for such retiree benefits is legitimately treated as a cost. For example, FERC recognizes, as a component of cost-based rates, allowances for prudently incurred cost of post-retirement benefits other than pensions (PBOPs) that are consistent with the accounting principles set forth in FASB Statement No. 106 (1991) 61 FERC ¶ 61,330, at 62,200 (1992). Opinion, p. 5.

The Opinion also notes that, at present, the ''four PMA's are recovering in rates the cost of their own direct contributions to the three OPM funds with respect to their own employees'' as well as ''power-related generation and maintenance expenses of the Corps * * *.'' Such Corps costs ''include contributions'' by the Corps of Engineers ''to the OPM Funds to the extent Corps of Engineers employees conduct these functions.'' The Opinion concludes that ''[t]hus there is no question as to the authority to include in rates the agency funded contributions to these funds.'' (Opinion, p. 6). It also notes that although ''PMA rates generally have not reflected the cost to the Government of the unfunded liability related to the Retirement Fund or post-retirement health and life insurance benefits,'' however the ''Alaska Power Administration, has recovered these costs in rates since FY 1991.'' Also, the Western Area Power Administration rates included these costs for two years (FY 1992 and 1993). (Opinion, p. 6).

Western Area Power Administration included retirement costs as a function of operation and maintenance expense. Notice of proposed Salt Lake City Integrated Project Rates (56 FR 47203; September 18, 1991); and Notice of Boulder Canyon Project Rate Adjustment (57 FR 61,074, 61,080, December 23, 1992).

DOE's Order RA No. 6120.2 holds power rates are adequate only it they recover all costs of operating and maintaining the power system. Employee salaries and post-retirement personnel benefits are in Southeastern's opinion in the nature of operating costs.

The General Counsel elaborates by stating:

> The relevant statutory text provides that the PMA's must set rates that fully recover costs. Because the statutes provide direction as to how the agencies are to interpret the term ''costs'' and leave considerable discretion to the PMAs (including

Southeastern) in applying the standard, it is entirely reasonable for the PMAs to interpret costs to include all employer costs of employee retirement benefits. The PMA rate practices to date acknowledge that PMA customers bear responsibility for some of the Government's costs of post-retirement benefits for PMA employee and for the power operations employees of the Bureau (of Reclamation) and the Corps. DOE policy, (Financial Accounting Standards Board) FASB principles, and FERC ratemaking policy indicate the inclusion in rates applicable for a given period of all employer costs accruing in that period is a reasonable interpretation of the statutory obligation to recover costs. A reasonable interpretation adopted by DOE and the PMA's is entitled to judicial deference. On these grounds, we conclude that it is within the discretion of the PMA Administrators to include in rates the allocated undercollections for post-retirement benefits. (Opinion, pp. 6–7).

The General Counsel also determined that the ''flow of rate revenues for * * * Southeastern * * * is governed by the Flood Control Act of 1944'' which provides that ''[a]ll moneys received from * * * (electric) sales shall be deposited in the Treasury of the United States as miscellaneous receipts.'' 16 U.S.C. 825s and that, ''any monies received in rates to recover the costs of unfunded liabilities would be deposited directly into the miscellaneous receipts fund of the Treasury, and could not be expended without further appropriation. See 31 U.S.C. 3302(b).'' (Opinion, p. 7). For these reasons, Southeastern has included these costs in the repayment study and in the rates that Southeastern proposes to charge the customers.

10. *Comment:* FERC ratemaking requirements imposed upon regulated electric and natural gas utilities derived from Statement 106 of the Financial Accounting Standards Board (FASB) including establishment of an ''irrevocable external trust fund'' to receive monies collected as post-retirement benefit costs in these rates should apply to Southeastern and the other PMAs.

Response: At the outset it should be recognized that the jurisdiction conferred by The Federal Power Act (FPA) (18 U.S.C. 824 et seq.) upon FERC to regulate electric and natural gas public utilities does not apply to the PMAs. Jurisdiction to review PMA rates is conferred and limited by a delegation from the Secretary of Energy to FERC. See Department of Energy Delegation Order No. 0204–108, as amended. 58 F. R. 59716 (November 10, 1993). For example, the Commission recognizes that, as to the FPA's prohibition regarding ''retroactive ratemaking'', ''* * * [it] does not apply to PMAs including Southeastern (Power Administration), that operate subject to a different statutory and regulatory scheme''. *U.S. Department of Energy—Southeastern Power Administration* 55 FERC ¶ 61, 016, p. 61045 (1991), appeal pending sub nom. *Central Electric Power Corp.* v. Southeastern, Civil No. 3–91–2449–0 (D. S. C. Filed August 15, 1991). See also: *US Department of Energy-Southwestern Power Administration,* 56 FERC ¶ 61,398, p. 62,469 (1991) and *U.S. Department of Energy, Western Area Power Administration,* 65 FERC ¶ 61,186, p. 61,914 (1993). Since Southeastern is not a regulated public utility under the FPA, the ratemaking requirements of FERC advocated by the responder should not be applied herein.

Also because Southeastern is required by Flood Control Act of 1944 as well as the Miscellaneous Receipts Act (31 U.S.C. 3302) to deposit all monies received to the Treasury of United States as miscellaneous receipts, it is not possible for Southeastern to establish an ''irrevocable external trust fund'' for these monies as FERC has in some instances required of regulated electric and gas public utilities.

11. *Comment:* Collection of full CSRS costs as proposed in Southeastern's rates and deposit to the U.S. Treasury will constitute an illegal augmentation of appropriations.

Response: Although the Opinion does not directly address this comment, it noted, however, that, ''In 1969, Congress addressed the problem of potential shortfalls in the sufficiency of funding for retiree benefits by authorizing a permanent indefinite appropriation for transfer of general funds from the Treasury,'' (Opinion p. 2), citing 5 U.S.C. 8348(f). The Opinion concludes that the 1969 Act ''authorizes appropriations to the Retirement Fund to finance the unfunded liability created by new or liberalized benefits payable from the Fund, extension of the coverage of the Fund to new groups of employees, or increases in pay on which benefits are computed.'' (Opinion, p.2.)

It was found that, ''All PMA rate revenues are required to be deposited in a statutorily specified fund or account of the Treasury,'' and that ''(p)ursuant to Flood Control Act requirements, monies received from power rates to recover costs of unfunded liabilities from power marketed by Southeastern and SWPA'' are to ''* * * be deposited into the general fund of the Treasury as miscellaneous receipts.'' The Opinion concludes that such deposits to miscellaneous receipts would ''therefore offset the appropriation for unfunded liability made to the OPM Funds,'' from the general fund of the Treasury. (Opinion p.10).

By adoption of Public Law 91–93 of Oct. 20, 1969, 5 U.S.C. 8348 (f) and (g), ''Congress made it clear that increases in the unfunded liability of the Civil Service Retirement Fund were not to be permitted.'' *In the matter of Dr. Katsura Fukui,* (B–191321), 58 Comp. Gen. 115, 118 (November 30, 1978). The Comptroller General explained such unfunded liability would be avoided by the addition of subsections (f) and (g) of the 1969 Act which authorizes appropriations to the Civil Service Retirement Fund to fund the ''new liability'' under ''any statute authorizing new or more liberal annuity payments, extension of retirement coverage to new groups, or increases in the pay used to compute retirement benefits.'' Id. at p. 118. The Comptroller General also said that ''Taken together, these provisions express a congressional mandate limiting further increases to the unfunded liability of the Retirement Fund.'' See Senate Report 91–339, 91st Cong., 1st Sess., August 1, 1969. Id.

Since Congress provided for a permanent indefinite appropriations (ie: without imposing a dollar ceiling on a particular fund) for the transfer of general funds from the Treasury to address the unfunded utility of the CSRS, the augmentation of appropriations prohibition would not apply. Rather the reason for such a prohibition is to:

''* * * protect Congress' power of the purse and its prerogative to determine the level at which an agency of Federal program may operate.'' See Nolan: *Public Interest, Private Income: Conflicts and Control Units on the Outside Income of Government Officials,* 87 Nw. U. L. Rev. 57, 122 (1992).

Again, in this instance, Congress has addressed an ongoing problem by placing no dollar limits on appropriations from the general fund (or derived from miscellaneous receipts) to assure full funding of these employee benefits. Southeastern is depositing the revenues to miscellaneous receipts, no funds are remitted to OPM, and therefore there is no augmentation of appropriations.

12. *Comment:* Southeastern's proposed increase in PMA rates to collect post-retirement benefits is an unexplained departure from previous interpretations.

Response: The Opinion acknowledges Congress's 1969 effort to address the ongoing problem of agencies' underfunding of retiree benefits under the Civil Service Retirement Act and other acts. (Opinion, p. 2) The Opinion concludes '' * * *that the PMA's have sufficient statutory authority to include

these costs in their rates and can deposit such funds into an appropriate Treasury account so as to effectively offset the appropriations made to the OPM funds from which these post-retirement costs are paid to retirees.'' Id., at p. 2. By passing Public Law 91–93 of Oct. 20, 1960, (5 USC 8348 (f) & (g)) Congress made it clear that further increases in the unfunded liability of the Civil Service Retirement Fund were not to be permitted and, as demonstrated in the legislative history, there is a Congressional mandate limiting such increases in unfunded liability. See Senate Report 91–339, 91st Congress 1st Sess., August 1, 1969.

The Southeastern Power Administration like non-Federal enterprises must be mindful of the Generally Accepted Accounting Principles adopted by the Financial Accounting Standards Board. PMAs are required by Section 6(a) of DOE Order No. RA 6120.2 to use ''accounting practices'' in ''accordance'' with Financial Accounting Standards Board principles. FERC, for example, regards RA 6120.2 and its accounting principles and Financial Standards as a substantive regulation binding upon BPA when FERC reviews BPA's rates under Section 7(a)(2) of the Northwest Power Act, 16 U.S.C. 839(e)(a)(2). See: U.S. Department of Energy, Bonneville Power Administration 72 FERC ¶ 62,045, p. 64,064, fn. 4 (1995); 67 FERC ¶ 61,351, p. 62,217, fn. 8 (1994); 65 FERC ¶ 62,179, p. 64,396, fn. 4 (1993); and 64 FERC ¶ 61,375, p. 63,606, fn. 5 (1993).

In the view of Southeastern and DOE, Section 6(a) of DOE Order No. RA 6120.2 requires the PMAs to use accounting practices consistent with the Generally Accepted Accounting Principles prescribed by the Financial Accounting Standards Board. The requirement to set rates consistent with this DOE order has been judicially recognized. *E.g. Overton Power Dist. No. 5* v. *Watkins,* 829 F. Supp.1523, 1530 n.5 (D. Nev.1993).

The Financial Accounting Standards Board (FASB) in December 1985 established standards for financial reporting and accounting of employee pension benefits. The standard is Statement of Accounting Standards No. 87 (FAS 87). Under FAS 87, ''a company must recognize future pension benefits earned by current employees as current pension costs rather than when the pension benefits are actually paid.'' *Southwestern Bell Telephone Co.,* Missouri Public Service Commission. (case No. TC–93–224), 2 Mo. P.S.C. 3d 479; 1993 Mo. P.S.C. Lexis 62 (Dec. 17, 1993).

The Opinion, likewise, notes FAS 87, stating (1) ''The Financial Accounting Standards Board (FASB)'' by ''FASB Statement No. 87 (1990)'' has ''issued rules and audit procedures for pensions'' and that (2) ''FASB 87 recognizes that unfunded pensions promised to current and retired employees are actual liabilities'' so that there must be ''recognition as a cost in any period of ''the actuarial present value of benefits attributed by the pension benefit formula to employee service during the period.'' Opinion at p. 5, f.n. 5.

In 1991, the Financial Accounting Standards Board issued FAS No. 106, (''FAS 106''). This ''changes generally accepted accounting principles * * * for post-retirement, medical and life insurance benefits from accounting on a pay-as-you-go basis to an accrual basis.'' *Pennsylvania Public Utility Commission* v. *Metropolitan Edison Company.* Case No. R–00922314) 78 Penn, PUC 124; 141 P.U.R. 4th 336 (January 21, 1993).

Prior to FAS 106, ''most companies expensed these benefits as they were paid.'' *Puget Sound Power and Light Co.,* (Docket No. UE–920433) (Washington Utilities and Transportation Commission), 147 P.U.R. 4th 80 (September 21, 1993).

In this connection, it should be noted that the Federal Government since 1969 has operated in essentially the same manner. It has established a general indefinite appropriation from the Federal Treasury to the Civil Service Retirement Fund of amounts needed to fund retiree benefits not covered by employer-employee contributions to the Fund.

The Opinion also addressed FAS 106, stating: ''the FASB in ''December 1990'' by ''FASB Statement No. 106'' recognized post-retirement benefits to be broader than simply pensions.'' The General Counsel stated, the FASB issued ''standards, regarding post-retirement benefits other than pensions,'' and that ''post-retirement benefits include post-retirement health care and life insurance provided outside a pension plan to retirees * * *.'' (Opinion, p. 5, fn. 5).

The General Counsel concluded stating that, ''(a) post-retirement benefits are part of the compensation paid to an employee for services rendered,'' citing FASB 106.18. (Ibid at 5, fn. 5). This was so because the General Counsel was of the view that (1) ''the (FASB) believes that the cost of providing the benefits should be recognized over those employee service periods,'' citing FASB 106.03 and (2) ''(b)ecause the obligation to provide benefits arises as employees render services.'' (Opinion, p. 5, f.n. 5).

Southeastern did not in prior rate proceedings include the unfunded portion of employee benefit costs in its rates. It does so now in light of Administration policy as set forth in and confirmed by General Counsel Sullivan's Opinion.

Also, the non-collection of these costs by the PMAs has recently received ongoing congressional scrutiny and criticism. See e.g.: Reports of United State General Accounting Office: *Power Marketing Administrations: Repayment of Power Cost Need Closer Monitoring* (GAO/AIMED–98–164, June 30, 1998), *Federal Electricity Activities: The Federal Government's Net Cost and Potential for Future Losses,* volumes 1 and 2 (GAO/AIMD–97–110 and 110A, September 19, 1997), *Addressing The Deficit: Budgetary Implications of Selected GAO Work for Fiscal Year 1998* (GAO/O.G.–97–2, March 14, 1997), *Power Marketing Administrations: Cost Recovery Financing, and Comparison to Nonfederal Utilities,* (GOA/AIMD–96–145, September 19, 1996). The Opinion also acknowledges the Administration's FY 1998 budget documentation that states that, ''starting in FY 1998'' Southeastern (and two other PMAs) ''* * * will set rates, consistent with current law, to begin to recover the full cost of the Civil Service Retirement system and post-retirement health benefits for its employees that have not been recovered in the past.'' (Opinion, p. 1). This seems to implement the 1969 Congressional effort to deal with ongoing underfunding problems in this regard.

The Opinion reviews; (1) legal and statutory authorities; (2) establishment of a reasonable interpretation of ''cost'; and (3) DOE and FERC policy on ratemaking and rate practices of PMAs. The Opinion states that:

> Given the PMA's previous practice of not securing recovery in rates of the unfunded portion of employee retirement benefits, it may be argued that the PMAs' inclusions of such costs now would represent a change in agency interpretation. We do not understand this practice, however, to have been premised on an articulated legal judgment that it would be legally impermissible. (Opinion, p.).

The Opinion further states in regards to current and past rate practices of PMAs that:

> At present, the four PMA's are recovering in rates the cost of their own direct contributions to the three OPM funds with respect to their own employees. They also are recovering in rates the power-related operation and maintenance expenses of the Corps and the Bureau, which we understand to include contributions by those two agencies to the OPM funds to the extent that

their employees conduct these functions. Thus, there is no question as to the authority to include in rates the agency-funded contributions to these funds.

The PMA rates generally have not reflected the cost to the Government of the unfunded liability related to the Retirement fund or post-retirement health and life insurance benefits. However, the Alaska Power Administration has recovered these costs in rates since FY 1991, and WAPA rates included these costs for two years (FY 1992 and FY 1993). (Opinion, p. 6)

Given the current and prior recoveries of these funds it is clear that no ''articulated legal judgment'' was in place to bar to the inclusion of such costs in rates. Rather the proposal here is to comply with a congressional mandate that these costs be recovered in accordance with the law and DOE Order No. RA 6120.2 that Southeastern establish its rates in accordance with generally accepted accounting principles as enunciated by the Financial Accounting Standards Board.

13. *Comment:* The estimates of the CSRS costs and pensions health benefits cost that are funded by the Office of Personnel Management are not accurate.

Response: Southeastern estimated the CSRS and pensions health benefits cost of the Corps of Engineers and Southeastern that are funded by the Office of Personnel Management by analyzing the computation of the General Accounting Office discussed in their report *Power Marketing Administrations: Cost Recovery Financing, and Comparison to Nonfederal Utilities* (GAO/AIMD–96–145). The relevant excerpt from this General Accounting Office Report is designated Appendix III at page 100 of the Report. The GAO ''Estimated 1995 Pension and Postretirement Health Benefit Costs Not Recovered from Power Customers.'' They state ''GAO estimates based on information provided by the PMA's, operating agencies and OPM.'' Southeastern recomputed the data using similar methodology. Southeastern received data on the hours allocated to power at the different projects in the Georgia-Alabama-South Carolina System and the percentage of employees that are covered by the CSRS for fiscal year 1995. Health Benefits were estimated by multiplying the number of Full Time Equivalents (FTEs) for Southeastern and the Power FTEs for the Corps of Engineers by the Federal Employee Health Benefits Plan (FEHBP) participation percentage (82%). The product was then multiplied by $1,973, which is the FY 1995 estimated cost of post-retirement health benefits provided to GAO by the OPM. The estimated annual health benefits costs for Southeastern and the Corps are $565,000 per year ($61,000 for Southeastern, $504,000 for the Corps). CSRS costs were estimated by multiplying the Southeastern and Corps payroll expenses for FTEs covered under CSRS times the estimated percentage shortfall by which combined employee and employer contributions toward CSRS pensions fell short of the normal cost of these pensions in FY 1995. The estimated percentage shortfall as provided by OPM for 1995 was 11.14 per cent. The estimated annual unrecovered pension benefits costs for Southeastern and the Corps are $970,000 per year ($109,000 for Southeastern, $861,000 for the Corps). The total estimated annual expenses for CSRS and pension health benefits for Southeastern and the Corps is $1,535,000 per year. Southeastern and the other Power Marketing Administrations are requesting more accurate numbers from the Corps of Engineers in the future.

14. *Comment:* Richard B. Russell pumped storage unit costs should be included only if the units are declared commercially operable first.

Response: One responder made several legal arguments about the ability of Southeastern to include the costs of the pumping units at the Richard B. Russell project prior to the time that the project is declared commercially operable. Southeastern has made no attempt to determine whether it is possible to include the costs in the study. However, Southeastern agrees with the responder that the project should be declared commercially operable before the costs are included in the repayment study. Accordingly the costs of the pumping units at the Richard B. Russell have not been included because the present estimate of the earliest time that the units could be declared commercially operable is after September 30, 1998. Southeastern will file for increased rates that include the costs of the pumping units as soon as the units are declared commercially operable.

15. *Comment:* If the Richard B. Russell pumped storage units costs are included, they should be phased in over a 5 year period.

Response: Southeastern has determined not to include the costs of the pumping units in the present rate adjustment. At the time of the next rate proposal, interested parties will have the opportunity to comment on the advisability of phasing in the rate increase.

16. *Comment:* If the Richard B. Russell pumped storage units costs are included, Southeastern should review the costs with the Corps of Engineers to make sure they are appropriate.

Response: Southeastern has determined not to include the costs of the pumping units in the proposed rates.

17. *Comment:* If the Richard B. Russell pumped storage units costs are included, the environmental litigation and mitigation costs should not be included in the amount allocated to power.

Response: Southeastern has made no attempt to determine the environmental litigation and mitigation costs and whether they should be included in the rates. Southeastern believes this issue should be addressed when the costs are included in a future rate filing.

18. *Comment:* If the Richard B. Russell pumped storage units costs are included, the interest during construction from the period from March 1993 until the units are declared commercially operable should not be allocated to power and should not be recovered in the rates.

Response: This issue is under discussion between the Corps of Engineers and Southeastern. Southeastern believes this issue should be readdressed when the costs are included in a future rate filing.

19. *Comment:* If the Richard B. Russell pumped storage units costs are included, the repayment study should be corrected to show that 260 megawatts will be marketed.

Response: Southeastern is in the process of examining the reserves and losses in all marketing areas of the Georgia-Alabama-South Carolina System. If reserves or losses have been inappropriately taken out of the capacity marketed Southeastern will restore them.

20. *Comment:* Southeastern should demonstrate that depreciation and interest for marketing expense capital expenditures are included in Southeastern's marketing expense component of the rate and not the capital expenditure lump sum.

Response: Financial statements for the Southeastern Federal Power Program are prepared in accordance with Generally Accepted Accounting Principles, including computation of depreciation and interest in Southeastern marketing expense and capitalizing items with a useful life of more than one year. Southeastern has received an unqualified opinion from its auditors since 1991.

21. *Question:* Does Southeastern foresee any other specific changes which would affect marketing expense, but are not in the 1999–2003 study?

Response: Marketing expenses have been changing markedly over the past few years primarily because of the Open Access Tariff orders promulgated by the Federal Energy Regulatory Commission. These changes have been complex and dramatic. Southeastern believes that changes like these may continue because of the volatility of the industry. However, Southeastern does not know of any specific changes which would affect the marketing expense.

22. *Comment:* Southeastern should return the losses to the customers that gave up the losses beginning in October 1, 1996.

Response: Southeastern agrees and plans to return the capacity to the customers in the Southern Company area during fiscal year 1999. The repayment study includes the return of the capacity effective the beginning of fiscal year 2000.

Environmental Impact

Southeastern has reviewed the possible environmental impacts of the rate adjustment under consideration and has concluded that, because the adjusted rates would not significantly affect the quality of the human environment within the meaning of the National Environmental Policy Act of 1969, the proposed action is not a major federal action for which preparation of an Environmental Impact Statement is required.

Availability of Information

The rates hereinafter confirmed and approved on an interim basis, together with supporting documents, will be submitted promptly to the Federal Energy Regulatory Commission for confirmation and approval on a final basis for a period beginning on October 1, 1998, and ending no later than September 30, 2003.

Order

In view of the foregoing and pursuant to the authority delegated to me by the Secretary of Energy, I hereby confirm and approve on an interim basis, effective October 1, 1998, attached Wholesale Power Rate Schedules SOCO–1, SOCO–2, SOCO–3, SOCO–4, ALA–1–I, MISS–1–I, Duke-1, Duke-2, Duke-3, Duke-4, Santee-1, Santee-2, Santee-3, Santee-4, SCE&G–1, SCE&G–2, SCE&G–3, SCE&G–4, and Pump-1. The Rate Schedules shall remain in effect on an interim basis through September 30, 2003, unless such period is extended or until the FERC confirms and approves them or substitute Rate Schedules on an final basis.

Dated: September 18, 1998.

Elizabeth A. Moler,

Deputy Secretary.

[FR Doc. 98–26463 Filed 10–2–98; 8:45 am]

BILLING CODE 6450–01–P

ENVIRONMENTAL PROTECTION AGENCY

[FRL–6172–4]

Agency Information Collection Activities: Proposed Collection; Comment Request; Recordkeeping and Reporting Requirements Under EPA's Energy Star Homes Program

AGENCY: Environmental Protection Agency (EPA).

ACTION: Notice.

SUMMARY: In compliance with the Paperwork Reduction Act (44 U.S.C. 3501 *et seq.*), this document announces that EPA is planning to submit the following proposed Information Collection Request (ICR) to the Office of Management and Budget (OMB): Recordkeeping and Reporting Requirements under EPA's Energy Star Homes Program, EPA ICR No. 1879.01

Before submitting the ICR to OMB for review and approval, EPA is soliciting comments on specific aspects of the proposed information collection as described below.

DATES: Comments must be submitted on or before December 4, 1998.

ADDRESSES: Commenters must send an original and two copies of their comments referencing EPA ICR No. 1879.01 Recordkeeping and Reporting Requirements under EPA's Energy Star Homes Program to: Air and Radiation Docket and Information Center, Atmospheric Pollution Prevention Division (Mail Code 6102), U.S. Environmental Protection Agency Headquarters (EPA, HQ), 401 M Street, SW, Washington, DC 20460. Hand deliveries of comments should be made to Room M1500 at this address.

Comments may also be submitted electronically through the internet to: a-and-r-docket@epamail.epa.gov. Comments in electronic format should also be identified by EPA ICR No. 1879.01 Recordkeeping and Reporting Requirements under EPA's Energy Star Homes Program. All electronic comments must be submitted as an ASCII file avoiding the use of special characters and any form of encryption.

Public comments and supporting materials are available for viewing in the Air and Radiation Docket and Information Center, located at the address above. The Docket is open to the public on all federal government work days from 8:00 a.m. to 5:30 p.m. It is recommended that the public make an appointment to review docket materials by calling (202) 260–7549. The Docket will accept phone and fax requests for material. Phone requests may be made using the phone number listed above, and fax requests may be submitted to (202) 260–4400. A reasonable fee is charged for the duplication of materials.

The official record for this action will be kept in paper form. Accordingly, EPA will transfer all comments received electronically into paper form and place them in the official record, which will also include all comments submitted directly in writing.

EPA responses to comments, whether the comments are written or electronic, will be in a notice in the **Federal Register**. EPA will not immediately reply to commenters electronically other than seek clarification of electronic comments that may be garbled in transmission or during conversion to paper form, as discussed above.

FOR FURTHER INFORMATION CONTACT: For more information on specific aspects of this collection of information, contact Glenn Chinery, Atmospheric Pollution and Prevention Division (Mail Code 620J), U.S. Environmental Protection Agency, 401 M Street, SW, Washington, D.C. 20460, Ph. (202) 564–9784 or chinery.glenn@epa.gov.

SUPPLEMENTARY INFORMATION:

Affected entities: Entities potentially affected by this action are general building contractors, operative builders, utilities, HERS (Home Energy Rating System) providers and new homebuyers.

Title: Recordkeeping and Reporting Requirements under EPA's Energy Star Homes Program, EPA ICR No. 1879.01. OMB Control No. and expiration date are not applicable as this is a new ICR.

Abstract: EPA's Energy Star Homes Program is a voluntary, non-regulatory program initiated under the President's Global Climate Change Action Plan. The broad goal of the program is to demonstrate that energy efficient homes can help builders and related service providers meet key business objectives, improve home quality and homeowner comfort, lower energy demand, reduce air pollution and enhance the national economy. The program encourages residential home builders, developers, manufacturers, Home Energy Rating System (HERS) providers, utilities, service providers, government agencies and other organizations involved in the home building industry to promote energy efficiency in homes.

This Information Collection Request (ICR) covers recordkeeping and reporting activities for both participation in the Energy Star Homes Program as well as participation in a three-year impact evaluation of the Energy Star Homes Program. The results of the impact evaluation will be used to evaluate and improve the Energy Star Homes Program overall.

There are two ways to participate in the Energy Star Homes Program: either as a partner or as an ally. Builders and developers may become partners in the program, whereas, associations, financing companies, utilities, material manufacturers and rating companies may become allies of the program. Partners and allies can terminate their participation in the program at any time. Participation in the program begins with the completion and submittal to EPA of a Memorandum of Understanding (MOU) that outlines responsibilities of the Energy Star Homes partners and allies as well as EPA. Builders and developers that become partners in the program are required to build homes that are at least 30 percent more efficient than the National Model Energy Code (MEC) before they can use the Energy Star logo. Organizations that become allies of the program agree to promote the Energy Star program and consider opportunities to market the program.

The Energy Star Homes Program Impact Evaluation is designed to evaluate the effectiveness of the program in meeting the program's stated objectives. The evaluation will cover Energy Star Homes built during 1997, 1998, and 1999. The evaluation consists of surveying Energy Star homebuyers, non-Energy Star homebuyers (hereafter referred to as ''Control'' homebuyers), Energy Star builder partners, energy suppliers, and HERS providers. By collecting information from these different constituents, EPA will be able to determine whether Energy Star homebuyers are satisfied with their purchase; builder partners are meeting their business objectives; and Energy Star homes are delivering the pollution prevention promised. EPA will ask respondents to receive and review the survey, complete the survey, and return the survey.

An agency may not conduct or sponsor, and a person is not required to respond to, a collection of information unless it displays a currently valid OMB control number. The OMB control numbers for EPA's regulations are listed in 40 CFR part 9 and 48 CFR Chapter 15.

EPA would like to solicit comments to:

i. Evaluate the accuracy of the Agency's estimate of the burden of the proposed collection of information, including the validity of the methodology and assumptions used;

ii. Enhance the quality, utility, and clarity of the information to be collected; and

iii. Minimize the burden of the collection of information on those who are to respond, including the use of appropriate automated electronic, mechanical, or other technological collection techniques or other forms of information technology (e.g., permitting electronic submission of responses).

Burden Statement: EPA will conduct a census of all Energy Star homes using information collected from HERS providers and expects to receive 1,000 responses the first year, 5,500 the second year and 14,000 the third year. The large increase in the number of responses by the end of the third year of the evaluation is due to the fact that EPA believes that there will be 20,500 Energy Star homes in the U.S. by the end of 1999. The agency will also conduct a census of Energy Star home builders. The agency expects to receive 600 responses the first year and 200 more in each of the subsequent years.

EPA will survey 686 Energy Star and control homebuyers each year. It expects to receive 343 responses each year from each group. The agency will also survey the energy suppliers of the homebuyers surveyed and expects to receive 686 responses each year.

Public reporting burden for this collection of information is estimated to average 0.22 hours per respondent. There is no recordkeeping burden. It is expected that respondents will incur no capital costs. The aggregate bottom-line burden and cost for respondents is approximately 3198 hours per year with an annual cost of approximately $171,072. The bottom line burden to the agency is approximately 7,700 hours per year, at a cost of approximately $332,661 per year.

Burden means the total time, effort, or financial resources expended by persons to generate, maintain, retain, or disclose or provide information to or for a Federal agency. This includes the time needed to review instructions; develop, acquire, install, and utilize technology and systems for the purposes of collecting, validating, and verifying information, processing and maintaining information, and disclosing and providing information; adjust the existing ways to comply with any previously applicable instructions and requirements; train personnel to be able to respond to a collection of information; search data sources; complete and review the collection of information; and transmit or otherwise disclose the information.

Dated: September 24, 1998.

Glenn Chinery,

Atmospheric Pollution Prevention Division.

[FR Doc. 98–26633 Filed 10–2–98; 8:45 am]

BILLING CODE 6560–50–U

ENVIRONMENTAL PROTECTION AGENCY

[PB–402404–OH–A; FRL–6030–7]

Lead-Based Paint Activities in Target Housing and Child-Occupied Facilities; Authorization of the Ohio Department of Health's Lead-Based Paint Activities Program

AGENCY: Environmental Protection Agency (EPA).

ACTION: Notice; final approval of the Ohio Department of Health's lead-based paint activities program.

SUMMARY: On April 13, 1998, the State of Ohio submitted an application for EPA approval to administer and enforce training and certification requirements, training program accreditation requirements, and work practice standards for lead-based paint activities in target housing and child-occupied facilities under section 404 of the Toxic Substances Control Act (TSCA). Today's notice announces the approval of Ohio's application, and the authorization of the Ohio Department of Health's lead-based paint program to apply in the State of Ohio effective October 1, 1998, in lieu of the corresponding Federal program under section 402 of TSCA.

DATES: Lead-based paint activities program authorization was granted to the State of Ohio effective on October 1, 1998.

FOR FURTHER INFORMATION CONTACT: David Turpin, Regional Lead Coordinator, Environmental Protection Agency, Region V, DT-8J, 77 West Jackson Blvd., Chicago, IL 60604. Telephone: (312) 886–7836, e-mail address: turpin.david@epamail.epa.gov.

SUPPLEMENTARY INFORMATION:

I. Background

Pursuant to Title IV of TSCA, Lead Exposure Reduction, 15 U.S.C. 2681-2692, and regulations promulgated thereunder, States and Tribes that choose to apply for lead-based paint activities program authorization must submit a complete application to the appropriate Regional EPA office for review. Complete, final applications will be subject to a public comment period, and reviewed by EPA within

180 days of receipt. To receive EPA approval, a State or Tribe must demonstrate that its program is at least as protective of human health and the environment as the Federal program, and provides for adequate enforcement (section 404(b) of TSCA). Notice of Ohio's application, a solicitation for public comment regarding the application, and background information supporting the application was published in the **Federal Register** of May 21, 1998 (63 FR 27960) (FRL–4790–2). As determined by EPA's review and assessment, Ohio's application successfully demonstrated that the State's lead-based paint activities program achieves the protectiveness and enforcement criteria, as required for Federal authorization. Furthermore, no public comments were received regarding any aspect of Ohio's application.

II. Federal Overfiling

TSCA section 404(b), makes it unlawful for any person to violate, or fail or refuse to comply with, any requirement of an approved State or Tribal program. Therefore, EPA reserves the right to exercise its enforcement authority under TSCA against a violation of, or a failure or refusal to comply with, any requirement of an authorized State or Tribal program.

III. Withdrawal of Authorization

Pursuant to TSCA section 404(c), the Administrator may withdraw a State or Tribal lead-based paint activities program authorization, after notice and opportunity for corrective action, if the program is not being administered or enforced in compliance with standards, regulations, and other requirements established under the authorization. The procedures EPA will follow for the withdrawal of an authorization are found at 40 CFR 745.324(i).

IV. Regulatory Assessment Requirements

A. Certain Acts and Executive Orders

EPA's actions on State or Tribal lead-based paint activities program applications are informal adjudications, not rules. Therefore, the requirements of the Regulatory Flexibility Act (RFA, 5 U.S.C. 601 *et seq.*), the Congressional Review Act (5 U.S.C. 801 *et seq.*), Executive Order 12866 (''Regulatory Planning and Review,'' 58 FR 51735, October 4, 1993), and Executive Order 13045 (''Protection of Children from Environmental Health Risks and Safety Risks,'' 62 FR 1985, April 23, 1997), do not apply to this action. This action does not contain any Federal mandates, and therefore is not subject to the requirements of the Unfunded Mandates Reform Act (2 U.S.C. 1531–1538). In addition, this action does not contain any information collection requirements and therefore does not require review or approval by the Office of Management and Budget (OMB) under the Paperwork Reduction Act (44 U.S.C. 3501 *et seq.*).

B. Executive Order 12875

Under Executive Order 12875, entitled ''Enhancing Intergovernmental Partnerships'' (58 FR 58093, October 28, 1993), EPA may not issue a regulation that is not required by statute and that creates a mandate upon a State, local, or Tribal government, unless the Federal government provides the funds necessary to pay the direct compliance costs incurred by those governments. If the mandate is unfunded, EPA must provide to OMB a description of the extent of EPA's prior consultation with representatives of affected State, local, and Tribal governments, the nature of their concerns, copies of any written communications from the governments, and a statement supporting the need to issue the regulation. In addition, Executive Order 12875 requires EPA to develop an effective process permitting elected officials and other representatives of State, local, and Tribal governments ''to provide meaningful and timely input in the development of regulatory proposals containing significant unfunded mandates.''

Today's action does not create an unfunded Federal mandate on State, local, or Tribal governments. This action does not impose any enforceable duties on these entities. Accordingly, the requirements of section 1(a) of Executive Order 12875 do not apply to this action.

C. Executive Order 13084

Under Executive Order 13084, entitled ''Consultation and Coordination with Indian Tribal Governments'' (63 FR 27655, May 19, 1998), EPA may not issue a regulation that is not required by statute, that significantly or uniquely affects the communities of Indian tribal governments, and that imposes substantial direct compliance costs on those communities, unless the Federal government provides the funds necessary to pay the direct compliance costs incurred by the Tribal governments. If the mandate is unfunded, EPA must provide OMB, in a separately identified section of the preamble to the rule, a description of the extent of EPA's prior consultation with representatives of affected Tribal governments, a summary of the nature of their concerns, and a statement supporting the need to issue the regulation. In addition, Executive Order 13084 requires EPA to develop an effective process permitting elected and other representatives of Indian tribal governments ''to provide meaningful and timely input in the development of regulatory policies on matters that significantly or uniquely affect their communities.''

Today's action does not significantly or uniquely affect the communities of Indian tribal governments. This action does not involve or impose any requirements that affect Indian Tribes. Accordingly, the requirements of section 3(b) of Executive Order 13084 do not apply to this action.

List of Subjects

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

Dated: September 24, 1998.

Gail C. Ginsberg,

Acting Regional Administrator, Region V.

[FR Doc. 98–26629 Filed 10–2–98; 8:45 am]

BILLING CODE 6560–50–F

ENVIRONMENTAL PROTECTION AGENCY

[OPPTS–53171; FRL–5771–6]

Proposed Category for Persistent, Bioaccumulative, and Toxic Chemical Substances

AGENCY: Environmental Protection Agency (EPA).

ACTION: Notice.

SUMMARY: EPA has grouped new chemical substances with similar structural and toxicological properties into working categories. These groupings enable the Toxic Substances Control Act (TSCA) section 5(a)(1), Premanufacture Notice (PMN) submitters, and EPA reviewers to benefit from accumulated data and decisional precedents. The establishment of over 45 of these chemical categories has streamlined the process for Agency review of and regulatory follow-up on new chemical substances. Consistent with TSCA section 26(c), which allows EPA action under TSCA with respect to categories of chemical substances or mixtures, EPA is developing a category of persistent, bioaccumulative, and toxic (PBT) chemical substances. This notice solicits comments on proposed criteria for identifying PBT chemical substances and their supporting scientific rationale.

DATES: Written comments should be received on or before December 4, 1998.

ADDRESSES: Comments may be submitted by regular mail, electronically, or in person. Please follow the detailed instructions for each method as provided in Unit I. of this document.

FOR FURTHER INFORMATION CONTACT: Susan B. Hazen, Director, Environmental Assistance Division (7408), Rm. E–531, Office of Pollution Prevention and Toxics, Environmental Protection Agency, 401 M St., SW., Washington, DC 20460, telephone: (202) 554–1404, TDD: (202) 554–0551; e-mail: TSCA-Hotline@epa.gov.

SUPPLEMENTARY INFORMATION:

I. General Information

A. Does this notice apply to me?

You may be potentially affected by this notice if you are or may in the future be a submitter of a Premanufacture Notice (PMN) under TSCA. Potentially affected categories and entities may include, but are not limited to:

Category	Examples of Potentially Affected Entities
Chemical manufacturers or importers	Anyone who plans to manufacture or import a new chemical substance for a non-exempt commercial purpose is required to provide the EPA with a PMN at least 90 days prior to the activity. Any substance that is not on the TSCA Inventory is classified as a new chemical.

This table is not intended to be exhaustive, but rather provides a guide for readers regarding entities likely to be affected by this action. Other types of entities not listed in this table could also be affected. To determine whether you or your business is affected by this action, you should carefully examine the applicability provisions in 40 CFR 720.22. If you have any questions regarding the applicability of this action to a particular entity, consult the technical person listed in the ''FOR FURTHER INFORMATION CONTACT'' section.

B. How can I get additional information or copies of support documents?

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

2. *In person*. The official record for this notice, as well as the public version, has been established under docket control number OPPTS–53171 (including comments and data submitted electronically as described in Unit I.C.3. of this preamble). A public version of this record, including printed, paper versions of any electronic comments, which does not include any information claimed as Confidential Business Information (CBI), is available for inspection from 12 noon to 4 p.m., Monday through Friday, excluding legal holidays. The official record is located in the TSCA Nonconfidential Information Center, Rm. NE–B607, 401 M St., SW., Washington, DC.

C. How and to whom do I submit comments?

All comments must be identified by the docket control number OPPTS–53171. You may submit comments through the mail, in person, or electronically:

1. *By mail*. Submit written comments to: Document Control Office (7407), Office of Pollution Prevention and Toxics (OPPT), Environmental Protection Agency, 401 M St., SW., Rm. G–099, East Tower, Washington, DC 20460. The Document Control Office telephone number is (202) 260–7093.

2. *In person*. Deliver written comments to: Document Control Office in Rm. G–099, East Tower, Waterside Mall, 401 M St., SW., Washington, DC.

3. *Electronically*. Submit your comments and/or data electronically to: oppt.ncic@epa.gov. Please note that you should not submit any information electronically that you consider to be CBI. Electronic comments must be submitted as an ASCII file avoiding the use of special characters and any form of encryption. Comment and data will also be accepted on disks in Wordperfect 5.1/6.1 or ASCII file format. Electronic comments on this notice may also be filed online at many Federal Depository Libraries.

D. How should I handle information that I believe is confidential?

You may claim information that you submit in response to this document as confidential by marking any part or all of that information as CBI. Information so marked will not be disclosed except in accordance with procedures set forth in 40 CFR part 2. A copy of the comment that does not contain CBI must be submitted for inclusion in the public record. Information not marked confidential will be included in the public docket by EPA without prior notice.

II. New Chemicals Program

A. Overview of the PMN Process

Under section 5(a) of TSCA, persons must notify EPA at least 90 days before manufacturing or importing a new chemical substance for non-exempt purposes. A new chemical substance, as defined in section 3(9) of TSCA, is any chemical that is not included on the Inventory compiled under section 8(b) of TSCA.

Section 5 of TSCA gives EPA 90 days to review a PMN. However, the review period can be extended under TSCA section 5(c) for ''good cause''; it may also be suspended voluntarily by the mutual consent of EPA and the PMN submitter. During the review period, EPA may take action under TSCA section 5(e) or (f) to prohibit or limit the production, processing, distribution in commerce, use, and disposal of new chemical substances that raise health or environmental concerns. If EPA has not taken action under TSCA section 5(e) or (f), the PMN submitter may manufacture or import the new chemical substance when the review period expires.

No later than 30 days after the PMN submitter initiates manufacturing or importing, it must provide EPA with a notice of commencement of manufacture or import. Section 8(b) of TSCA provides that, upon receipt of such a notice, EPA must add the substance to the TSCA Inventory. Thereafter, other manufacturers and importers may engage in activities involving the new substance without submitting a PMN.

B. Actions under TSCA Sections 5(e) and (f)

Section 5(e) of TSCA authorizes EPA to control commercial activities involving a new chemical substance for which available information is insufficient to permit a reasoned evaluation of potential health and environmental effects if EPA determines either that:

1. The manufacture (including import), processing, distribution in commerce, use, or disposal of the substance may present an unreasonable risk of injury to health or the environment (''risk-based'' finding, under TSCA section 5(e)(1)(A)(ii)(I)).

2. The substance is or will be produced in substantial quantities, and such substance either enters or may reasonably be anticipated to enter the environment in substantial quantities or there is or may be significant or substantial human exposure to the

substance (''exposure-based'' finding, under TSCA section 5(e)(1)(A)(ii)(II)).

The restrictions under TSCA section 5(e) are imposed pending the development of the test data or other information needed to evaluate the new substance's health or environmental effects.

Section 5(f) of TSCA authorizes EPA to take action where it finds that there is a reasonable basis to conclude that the activities involving a new chemical substance will present an unreasonable risk of injury to health or the environment. If EPA makes such a determination, it may prohibit or limit manufacture (including import), distribution in commerce, processing, use, and disposal of the new substance to protect against the unreasonable risk.

C. EPA's Strategy under TSCA Section 5(e)

On occasion, EPA may have concerns about a new chemical substance based on test data included in the PMN or obtained from other sources. However, because test data on PMN chemical substances are not required, EPA typically receives few PMNs that contain sufficient data on health or environmental effects, or on the potential to persist or bioaccumulate in the environment. As a result, the Agency often relies on computer models and structural or functional analogues as indicators of the potential toxicity and environmental fate of a PMN chemical substance.

Due to the generally limited test data that are submitted or are otherwise available on a new chemical substance, EPA often identifies the substance for TSCA section 5(e) action because it is similar in molecular structure or function to other chemical substances known or suspected to have adverse health or environmental effects. These predictive methods, which estimate the properties of a chemical, e.g., melting point, vapor pressure, toxicity and ecotoxicity, on the basis of its structure, are referred to as Structure-Activity Relationships (SAR). A joint US/European Union (EU) study evaluated the predictive power of the SAR by applying SAR methods to chemical substances for which ''base set'' test data were already available and then comparing the properties predicted by SAR with the properties observed in laboratory testing. The available test data were part of a minimum pre-market data set (MPD) submitted on chemical substances in the context of the notification scheme established in the EU. Analysis of the results of this study showed that while this SAR approach was largely successful in identifying chemical substances of concern, the process could be improved by selectively incorporating specific testing schemes into the process (USEPA, 1994, see Unit IV.1. of this preamble).

As indicated in Unit II.B., during PMN review, EPA may determine that the available information is insufficient to permit a reasoned evaluation of the new chemical substance that is the subject of the PMN. At the same time, EPA may determine, under TSCA section 5(e)(1)(A)(ii)(I), based on SAR analysis that activities involving the new substance ''may present an unreasonable risk of injury to health or the environment.'' When EPA makes both of these two findings, it acts under TSCA section 5(e) to regulate the activities involving the new substance which contribute to the potential risk. The new chemicals program determines the effectiveness of environmental release controls, consistency with existing chemical regulatory activity in the Agency, and the affordability of certain testing, etc. in formulating the appropriate regulatory response for each new chemical. In cases where a potential hazard is identified, EPA believes that it is appropriate to negotiate an order (known as a ''consent order'') under TSCA section 5(e) with the PMN submitter to control human exposure and/or environmental releases until test data or other information sufficient to assess adequately the potential risk become available. Section 5(e) of TSCA ''risk-based'' consent orders have specified a variety of control measures, including protective equipment, use limitations, process restrictions, labeling requirements, and limits on environmental release. Some recent consent orders have included testing requirements that are triggered when specified levels of production volume or other indices of increased exposure are reached; under these orders, the submitter may not exceed the production volume limitation or any other restriction imposed by EPA until test data specified by EPA have been submitted to and reviewed by EPA.

In other instances, during PMN review EPA may determine under TSCA section 5(e)(1)(A) (ii)(II) that a new substance will be produced in substantial quantities and ''may reasonably be anticipated to enter the environment in substantial quantities or there is or may be significant or substantial human exposure to the substance,'' and that the available information is insufficient to determine the effects of the substance. Since 1988, EPA has used internally developed guidelines to assist in identifying new chemical substances received as PMNs which would meet the TSCA section 5(e)(1)(A)(ii)(II) exposure-based finding (USEPA, 1988 and 1989, see Unit IV.2. and 3. of this preamble). Data received as a result of EPA's implementation of this exposure-based policy via TSCA section 5(e) consent orders have been used by EPA to better characterize the fate and effects of the new chemical, confirm or refute a prediction of low risk, and supplement and validate the use of SAR in the review of PMNs. These exposure-based guidelines capture all PMN chemical substances with estimated production volumes greater than or equal to 100,000 kilograms (kg) per year and exceeding specific exposure/release criteria. In some cases, however, where these thresholds are not met, it may be more appropriate to use a case-by-case approach for making findings by applying other considerations (i.e., toxicity or physical/chemical properties). For reasons that have been articulated in the proposed statement of policy for TSCA section 4(a)(1)(B) (July 15, 1991, 56 FR 32294), where persistence and bioaccumulation were used as examples, EPA may consider additional factors for making findings for substances which do not meet the numerical thresholds for evaluating new chemical substances under TSCA section 5(e)(1)(A)(ii)(II). Conversely, EPA may not take action under this TSCA section 5(e)(1)(A)(ii)(II) policy when the chemical substance meets the proposed criteria if EPA finds that existing data are sufficient to evaluate health or environmental effects of the new chemical substance, or that regulation and the development of information is not otherwise necessary.

Exposure-based consent orders issued to address concerns under TSCA section 5(e)(1)(A)(ii)(II) include testing requirements, record keeping provisions, and production volume limits. The proposed PBT category criteria would impact EPA's development of both risk-based and exposure-based TSCA section 5(e) consent orders for new PBT chemical substances.

D. EPA's Use of Chemical Substance Categories in PMN Review and in Regulatory Decision Making under TSCA Section 5(e)

In 1987, EPA grouped chemical substances with similar physicochemical, structural, and toxicological properties into working categories. Candidate categories for the new chemicals review process, such as the category being proposed today for PBT chemical substances, are proposed by new chemicals program staff based

on available data and experience reviewing PMNs on related substances. These groupings enable both PMN submitters and EPA reviewers to benefit from the accumulated data and decisional precedents. The first category defined by SAR was ''acrylates and methacrylates.'' Currently, there are over 45 categories, the detailed summaries of which can be found on the Internet at http://www.epa.gov/opptintr/newchms/chemcat.htm.

The establishment of these categories has streamlined the process for Agency review of new chemical substances. As it gained experience with reviews of chemical substances in categories, EPA moved certain decisions for the category chemical substances to points much earlier in the 90-day PMN review period. One such point is the Focus Meeting, where exposure and hazard information about a PMN substance is first brought together for a risk management decision. If, for example, a new substance is identified as being a member of the proposed PBT chemical substances category, the chemical would be evaluated in the context of the potential health or environmental concerns associated with that category.

The Agency recommends that regulatory action be taken under TSCA section 5(e) to control potential risks to health or the environment on about 10 percent of the approximately 2,000 PMNs submitted yearly. Only 2–3 percent of the total number of PMNs submitted (20–30 percent of the above 10 percent) now undergo a detailed review that takes most of the standard 90-day PMN period, while the remaining 7–8 percent are identified for expedited review by virtue of them being members of the new chemicals program chemical categories. In response to pending regulatory action by the Agency, half of this 10 percent total are voluntarily withdrawn by PMN submitters.

E. New Chemical Significant New Use Rules (SNURs)

TSCA section 5(e) consent orders (as described in Unit II.C.) apply only to PMN submitters. When a PMN submitter commences commercial manufacture of the substance and submits a Notice of Commencement of Manufacture to EPA, EPA adds the substance to the TSCA Chemical Substance Inventory maintained pursuant to section 8(b) of TSCA. When a substance is listed on the Inventory, it is no longer a ''new chemical substance'' for which a PMN would be required. Thus, other persons would be able to manufacture, import, or process the substance without EPA review and without the restrictions imposed on the PMN submitter by the TSCA section 5(e) consent order.

In addition to consent orders issued under section 5(e) of TSCA regulating the PMN submitter, EPA uses its Significant New Use Rule (SNUR) authority under TSCA section 5(a)(2) to extend limitations in TSCA section 5(e) consent orders to other manufacturers, importers, and processors of the PMN substance. Section 5(a)(2) of TSCA (15 U.S.C. 2604(a)(2)) authorizes EPA to determine that a use of a chemical substance is a ''significant new use.'' EPA must make this determination in a SNUR after considering relevant information about the toxicity of the substance and the 4 factors listed in section 5(a)(2) of TSCA (projected production volume, the extent to which a use changes the type or form of exposure to the chemical substance, the extent to which a use changes the magnitude and duration of exposure to the chemical substance, and the reasonably anticipated manner and methods of manufacturing, processing, distribution in commerce, and disposal of the chemical substance). EPA designates the significant new uses of each chemical substance based on these considerations. Once EPA determines that a use of a chemical substance is a significant new use, section 5(a)(1)(B) of TSCA requires persons to submit a notice to EPA at least 90 days before they manufacture, import, or process the substance for that use. The required notice provides EPA with the opportunity to evaluate the intended use, and if necessary, to prohibit or limit that activity before it occurs.

EPA's use of its SNUR authority ensures that the original PMN submitters and subsequent manufacturers, importers, and processors are treated in an equivalent manner. These SNURs are framed so that non-compliance with the control measures or other restrictions in the TSCA section 5(e) consent orders is defined as a ''significant new use.'' Thus, other manufacturers, importers, and processors of the substances must either observe the SNUR restrictions or submit a significant new use notice to EPA at least 90 days before initiating activities that deviate from these restrictions. After receiving and reviewing such a notice, EPA has the option of either permitting the new use or acting to regulate the new submitter's activities.

EPA also reviews some new chemical substances that do not warrant direct regulation of the PMN submitter under TSCA section 5(e) but merit other follow-up monitoring and evaluation. On the basis of test data or SAR analysis, EPA may identify potential health or environmental effects that could create a basis for concern if the substances exposure or release potential later changes or increases beyond that described in the PMN. In most of these cases, EPA believes it is appropriate to use SNUR authority to monitor the commercial development of these substances so that EPA can be apprised of significant increases in exposure potential, which may warrant control measures or testing.

In addition to ensuring that all manufacturers, importers, and processors are subject to similar reporting requirements and restrictions, SNURs have the following additional objectives:

1. EPA will receive notice of any company's intent to manufacture, import, or process a chemical substance listed on the TSCA Inventory for a significant new use before that activity begins.

2. EPA will have an opportunity to review and evaluate data submitted in a SNUR notice before the notice submitter begins manufacturing, importing, or processing a listed chemical substance for a significant new use.

3. When necessary, EPA will be able to take regulatory action under TSCA section 5(e), 5(f), 6, or 7 to control the activities for which it received a SNUR notice before a significant new use of that substance occurs.

III. EPA's PBT Chemical Substances Initiative

A. Background

PBT chemical substances possess characteristics of persistence (P) in the environment, accumulation in biological organisms (bioaccumulation (B)), and toxicity (T) that make them priority pollutants and potential risks to humans and ecosystems. Prominent examples of PBT chemical substances include DDT and polychlorinated biphenyls (PCBs). Consistent with TSCA section 26(c), which allows EPA action under TSCA with respect to categories of chemical substances or mixtures, EPA is developing a category of persistent, bioaccumulative, and toxic (PBT) chemical substances. The category being proposed is for the purposes of facilitating the assessment of new chemical substances under TSCA section 5(e) prior to their entry into the marketplace.

The proposed category description draws upon ongoing international efforts (e.g., the U.S.-Canada Binational Strategy for virtual elimination of PBTs; the North American Free Trade

Agreement (NAFTA) Commission for Environmental Cooperation negotiations on Persistent Organic Pollutants (POPs); the United Nations Economic Commission for Europe (UNECE) convention on Long-Range Transboundary Air Pollution (LRTAP); and the POPs Initiative under the United Nations Environment Programme (UNEP)) as well as Agency efforts (e.g., the Waste Minimization Prioritization Tool (WMPT)) to craft a coordinated and scientifically supportable approach to identifying PBT chemical substances. In particular, the proposed category is viewed by the Agency as furthering the objectives of UNECE's convention on LRTAP, Article 7, paragraphs 2 (b) and (c), which state that ''Each Party shall....encourage the implementation of other management programmes to reduce emissions of persistent organic pollutants'' and ''consider the adoption of additional policies and measures as appropriate in its particular circumstances'' (UNECE-LTRAP, 1998, see Unit IV.4. of this preamble).

The proposed PBT category reflects the exchange of information across offices within EPA and results, in part, from the opportunity for programs to collaborate and complement each other's work. The category statement includes the boundary conditions, such as fish bioconcentration/bioaccumulation factors and environmental persistence values, that would determine inclusion in (or exclusion from) the category, and standard hazard and fate tests to address P, B, and T concerns for the chemical substances fitting the category description.

It should be noted that the Agency is separately considering lower manufacture, processing, and ''otherwise use'' reporting thresholds for PBT chemical substances subject to reporting under the Emergency Planning and Community Right-To-Know Act (42 U.S.C. 11023), section 313 or Toxic Chemical Release Inventory (TRI) program. Rather than rely exclusively on statutorily separate, single-medium approaches to address these pollutants, an Agency-wide PBT Strategy is presently being developed and implemented. The PBT Strategy coordinates the efforts being made by various EPA offices on PBT chemical substances and directs them in a targeted fashion to chemical substances that may present the greatest health and environmental risks. Establishment of this category would thus provide a vehicle by which the Agency may gauge the flow of PBT chemical substances through the TSCA new chemicals program and measure the results of its risk screening and risk management activities for new chemical members of this category of chemical substances as one component in the Agency's overall PBT initiative.

B. Proposed Evaluation Criteria and Process for PBT Chemical Substances

Generally, persistent bioaccumulators are chemical substances that partition to water, sediment, or soil and are not removed at rates adequate to prevent their bioaccumulation in aquatic or terrestrial species (Veith et al., 1979, see Unit IV.5. of this preamble). EPA is proposing the following specific identification criteria and associated process for use in evaluating new chemical substances.

NEW CHEMICALS PROGRAM PBT CATEGORY CRITERIA AND PROCESS

	TSCA Section 5 Action	
	5(e) Order/Significant New Use Rule (SNUR)[1]	Ban Pending Testing[2]
Persistence (transformation half-life).	> 2 months	> 6 months
Bioaccumulation (Fish BCF or BAF)[3].	≥ 1000	≥ 5000
Toxicity	Develop toxicity data where necessary[4].	Develop toxicity data where necessary[4]

[1]Exposure/release controls included in order; testing required.

[2]Deny commercialization; testing results may justify removing chemical from ''high risk concern''.

[3]Chemicals must also meet criteria for M_W (< 1000) and cross-sectional diameter (< 20Å , or $< 20 \times 10^{-8}$ cm).

[4]Based upon various factors, including concerns for P, B, other physical/chemical factors, and predicted toxicity.

The half-life/persistence criterion for aquatic environments of > 2 months is the same as that proposed under the UNECE-LRTAP negotiations (UNECE-LRTAP, 1997, see Unit IV.6. of this preamble). It represents a chronic exposure to aquatic organisms, as well as approximating the duration of some standard bioconcentration (28–56 days) and chronic toxicity (14–90 days) tests, and is therefore thought to be adequate for detecting many long-term toxic effects as well as any tendency for a substance to accumulate in fatty tissue of aquatic organisms. The bioconcentration or bioaccumulation factor (BCF/BAF) measures the potential for a chemical to accumulate in living organisms relative to its concentration in the surrounding environment. BCF/BAF is estimated using calculations based on octanol-water partition coefficients (Kow), although data can also be provided from field or laboratory measurements (Spacie et al., 1995, see Unit IV.7. of this preamble). Chemical substances having a BCF or BAF > 1000 are characterized by a tendency to accumulate in organisms (Smrchek et al., 1998, Zeeman, 1995, Smrchek et al., 1993, see Unit IV.8., 9., and 10. of this preamble). The relationship between BCF/BAF and log Kow, which is a complex one above log Kow = 7, is discussed by several authors (Fisk et al., 1998, Bintein et al., 1993, Gobas et al., 1989, Mackay et al., 1996, see Unit IV.11., 12., 13., and 14. of this preamble).

Chemical substances meeting the persistence criterion of > 6 months and the bioaccumulation criterion of ≥ 5000 have properties consistent with substances widely acknowledged to be persistent, bioaccumulative, and toxic (e.g., DDT, PCBs, and other chemical substances identified as persistent organic pollutants during negotiations on LRTAP) and, as such, are accorded an appropriate level of concern. Other support for this higher tier can be found in the Chemical Manufacturers Association's (CMA's) product risk management guidance for PBT chemical substances (Chemical Manufacturers Association, 1996, see Unit IV.15. of this preamble). This guidance, which underscores CMA's commitment to the principles of the industry's Responsible Care® initiative, cites these P and B criteria as benchmarks in the screening process for PBT chemical substances.

Releases to all environmental media, such as air emissions from stacks, wastes disposed of in landfills or on land, and waste discharged into water, will be factored into the Agency's determination of potential risk posed by a given PMN chemical substance's total environmental load. In making this determination of potential risk the Agency may employ multimedia fate models, such as the Environmental Quality Criteria (EQC) model (Mackay, 1982, see Unit IV.16. of this preamble), in order to account for all potential sources and loadings, environmental transformation processes, and intermedia partitioning, in an integrated fashion. EPA solicits comments on this approach.

Chemical substances characterized as suspected persistent bioaccumulators may need to undergo testing on ''P'' and ''B'' endpoints which, if confirmed, would be followed by appropriate

toxicity testing to identify ''PBT chemical substances.'' Control action under TSCA section 5(e) may be needed in varying degrees, based upon level of risk concern. The ''ban'' criteria are equivalent to those that have been used internationally to identify PBT substances. Agency control actions taken under TSCA section 5(e) for chemical substances meeting these criteria would be based upon the level of certainty for the PBT properties of a PMN substance (e.g., measured vs. estimated values), the magnitude of Agency concerns, and conditions of expected use and release of the chemical. For example, new chemical substances meeting the PBT criteria listed under ''TSCA Section 5(e) Consent Order/Significant New Use Rule (SNUR)'' could be addressed via a negotiated consent agreement under which necessary testing is ''triggered'' by specific production limits. While the PMN submitter would be allowed to commercialize the substance, certain controls could be stipulated, including annual TRI-type reporting on environmental releases of the PMN substance and specific limits on exposures, releases, or uses. For the chemical substances meeting the criteria listed under ''Ban Pending Testing,'' the concern level is higher and the Agency would look carefully at any and all environmental releases. Because of the increased concern, more stringent control action would be a likely outcome, up to a ban on commercial production until data are submitted which allow the Agency to determine that the level of risk can be appropriately addressed by less restrictive measures. The described control actions represent just one body of possible decisions and should not be considered as exclusive of other risk management options.

C. Testing Strategy for PBT Chemical Substances

Where EPA is unable to adequately determine the potential for bioaccumulation, persistence in the environment, and toxicity which may result from exposure of humans and environmental organisms to a possible PBT chemical substance, the Agency may conclude pursuant to sections 5(e)(1)(A)(I) and 5(e)(1)(A)(ii)(I) and (II) of TSCA that the information available to the Agency is insufficient to permit a reasoned evaluation of the human health and environmental effects of that PMN substance. The manufacturing, processing, distribution in commerce, use, or disposal of the substance may present an unreasonable risk of injury to human health or the environment and/or that the PMN substance will be produced in substantial quantities and there may be significant or substantial human exposure to the substance, or the PMN substance may reasonably be anticipated to enter the environment in substantial quantities. Accordingly, the Agency may find it appropriate to prohibit a company from manufacturing, importing, processing, distributing in commerce, using, or disposing of the PMN substance in the United States pending the development of information necessary for a reasoned evaluation of these effects. The following testing strategy describes test data which, if not otherwise available, EPA believes are needed to evaluate the potential persistence, bioaccumulation, and toxicity of a PBT chemical substance for which EPA has made the described risk and/or exposure-based findings under section 5(e)(1)(A)(I) and (ii) of TSCA. The tests are tiered; depending upon the circumstances, such as magnitude of environmental releases, results of testing, or SAR, testing could begin above Tier 1 or additional, higher levels of testing may be required.

Tier 1. If, based upon SAR and professional judgment, the Agency identifies a new chemical substance as a possible PBT chemical substance, Log Kow should be determined experimentally, using either the liquid chromatography (OPPTS 830.7570 test guideline) or generator column (OPPTS 830.7560 test guideline) method. Ready biodegradability should be determined according to either one of the following test guidelines:

1. Ready biodegradability (OPPTS 835.3110 test guideline) 6 methods (choose one): DOC Die-Away, CO_2 Evolution, Modified MITI (I), Closed Bottle, Modified OECD Screening, Manometric Respirometry.

2. Sealed-vessel CO_2 production test (OPPTS 835.3120 test guideline).

3. Hydrolysis in water (OPPTS 835.2110 test guideline) should be determined if, based upon SAR, susceptibility to hydrolysis is suspected.

If the measured log Kow is < 3.5 or if the test chemical passes (pass criteria are described in the test guidelines) the ready biodegradability test (i.e., not persistent in the environment), no further PBT-related testing is required. If the measured log Kow is ≥ 3.5, the chemical does not pass the ready biodegradability test, and no further testing is deemed necessary in tier 1; the chemical would require tier 2 testing. If hydrolysis testing is conducted and results in a half-life of < 60 days, further testing may not be needed, but the need for testing must be determined after consideration of factors specific to the case, such as physical/chemical properties, persistence and bioaccumulative qualities of hydrolysis products, and the nature of the expected releases.

Tier 2. Biodegradability should be determined according to the Shake-flask die-away test (OPPTS 835.3170 test guideline) or an equivalent test. This test is based on the principle of aerobic incubation of the test chemical in natural water with and without suspended sediment, requires a chemical-specific analytical method, and allows for the development of a first-order rate constant and half-life. It provides information on persistence that is relevant to the natural environment and is intermediate in cost between ready biodegradability tests (tier 1) and aquatic microcosms (tier 3).

Bioaccumulation potential should be determined by experimental measurement of the bioconcentration factor (BCF), using the Fish bioconcentration test (OPPTS 850.1730 test guideline (public draft)). Measured BCF should be based on 100 percent active ingredient and measured concentration(s).

If the measured biodegradation half-life is > 60 days and measured BCF is > 1000, tier 3 testing will be required. If only one condition is met, releases and exposure are further considered to determine if additional testing is required.

Tier 3. Toxicity/advanced environmental fate testing. Human health hazards should be determined in the combined repeated dose oral toxicity with the reproductive/developmental toxicity screening test (Organization for Economic Cooperation and Development (OECD) guideline no. 422) in rats. Other health testing will be considered where appropriate.

Environmental fate testing should be conducted according to the Sediment/water microcosm biodegradation test (OPPTS 835.3180 test guideline). The principle of this method is the determination of the test chemical's fate, including transport and transformation, in core chambers containing intact benthic sediment and overlying site water. The method permits more accurate and reliable extrapolation to natural aquatic environments than is possible with lower tier test methods.

Chronic toxicity to fish (rainbow trout) and daphnids should be determined according to 40 CFR 797.1600 and 40 CFR 797.1330, respectively. Additional testing to evaluate other biota (e.g., avian, sediment dwelling organisms) or other effects (e.g., endocrine disrupting

potential) will be considered where appropriate.

IV. References

The OPPTS harmonized test guidelines referenced in this document are available on EPA's World Wide Web site (http://www.epa.gov/epahome/research.htm) under the heading ''Test Methods and Guidelines/OPPTS Harmonized Test Guidelines.''

1. USEPA. March, 1994. U.S. EPA/EC Joint Project on the Evaluation of (Quantitative) Structure Activity Relationships. EPA 743–R–94–001.
2. USEPA. 1988. Implementation Proposal; ''New Chemicals Exposure-Based Finding,'' letter from Charles L. Elkins to Geraldine V. Cox (Chemical Manufacturers Association). Office of Toxic Substances, USEPA (September 22, 1988).
3. USEPA. 1989. ''EPA's Exposure-Based Policies under Section 5 of TSCA,'' letter from Charles L. Elkins to Geraldine V. Cox (Chemical Manufacturers Association). Office of Toxic Substances, USEPA (August 31, 1989).
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List of Subjects

Environmental protection, Chemical, Hazardous substances, Reporting and recordkeeping requirements

Dated: September 24, 1998.

Lynn R. Goldman,

Assistant Administrator, Office of Prevention, Pesticides and Toxic Substances.

[FR Doc. 98–26630 Filed 10–5–98; 8:45 am]

BILLING CODE 6560–50–F

FARM CREDIT SYSTEM INSURANCE CORPORATION

Policy Statement on the Secure Base Amount and Allocated Insurance Reserve Accounts

AGENCY: Farm Credit System Insurance Corporation.

ACTION: Notice of policy statement; request for comments.

SUMMARY: The Farm Credit System Insurance Corporation (Corporation) is publishing for comment a Policy Statement on the Secure Base Amount and Allocated Insurance Reserve Accounts (AIRAs). This proposed Policy Statement establishes a framework for the periodic determination of the Farm Credit Insurance Fund's (Insurance Fund) secure base amount. It also implements the Corporation's authority to allocate excess Insurance Fund balances above the secure base amount into an account for each insured Farm Credit System Bank and one for the Farm Credit System Financial Assistance Corporation (FAC) stockholders.

DATES: Written comments must be submitted on or before January 4, 1999.

ADDRESSES: Comments should be mailed or delivered to Dorothy L. Nichols, General Counsel, Farm Credit System Insurance Corporation, 1501 Farm Credit Drive, McLean, Virginia 22102. Copies of all comments will be available for examination by interested parties in the offices of the Farm Credit System Insurance Corporation.

FOR FURTHER INFORMATION CONTACT: Dorothy L. Nichols, General Counsel, Farm Credit System Insurance Corporation, 1501 Farm Credit Drive, McLean, Virginia 22102. (703) 883–4380, TDD (703) 883–4444.

SUPPLEMENTARY INFORMATION: In 1987, Congress directed the Corporation to build and manage the Insurance Fund to achieve and maintain the secure base amount (SBA). For insurance premium purposes, the statute defines the SBA as 2 percent of the aggregate outstanding insured obligations of all insured banks (excluding a percentage of state and Federally guaranteed loans) or such other percentage of the aggregate amount as the Corporation in its sole discretion determines is ''actuarially sound.'' (12 U.S.C. 2277a–4(c)).

The statute specifies a limited form of risk-based premium assessments: 25 basis points for nonaccrual loans; 15 basis points for loans in accrual status (excluding certain state and Federally guaranteed loans); and a very modest premium for government-guaranteed loans. (12 U.S.C. 2277a–4(a)). This formula was designed as an incentive for the Farm Credit System to make quality loans and at the same time build the Insurance Fund to a level that Congress believed would prevent a default on System debt obligations. In the Farm Credit System Reform Act of 1996, Congress gave the Corporation the discretion to reduce premium assessments before reaching the SBA. (12 U.S.C. 2277a–4(a)(2)). The Board has

reduced the premiums, most recently in January 1998.

The Board reviews premium assessments at least semiannually to determine whether to adjust premiums in response to changing conditions. The Board will continue this review even though the Insurance Fund reached the SBA at the end of the first quarter of 1998, because the law requires the Corporation to maintain the SBA. During the second quarter, growth in System insured debt outstanding caused the Insurance Fund to drop slightly below the SBA.

I. Secure Base Amount Determination

The law sets out a formula for determining the SBA: ''2 percent of the aggregate outstanding insured obligations of all insured System banks.'' (12 U.S.C. 2277a–4). It also allows the Corporation to choose another percentage, if the Corporation determines that the risks warrant it. Thus far, the Corporation has used the statutory formula.

In the statute, an insured obligation is defined as any note, bond, debenture, or other obligation issued on behalf of an insured System bank under the appropriate subsection of section 4.2 of the Farm Credit Act (12 U.S.C. 2277a). The Policy Statement includes both principal and accrued interest in the definition of ''insured obligation'' because section 5.52 of the Act established the Corporation to ensure the timely payment of principal and *interest* to investors. Also, it is commonly understood that an issuer of bonds or notes has an obligation to pay a debt, which includes interest, when due.

After calculating the insured obligations, the Corporation will apply the deductions specified in the statute for the government guaranteed portion of the System loans to determine the SBA. This calculation will be done at the end of each quarter. After the end of the calendar year, using the December 31 balances, the Corporation will decide whether the Insurance Fund exceeds the SBA. The Policy Statement uses the December 31 balances for this calculation because the statute, in the premium section, contemplates using a point in time method in this context (12 U.S.C. 2277a4(c)). If the Insurance Fund exceeds the SBA, the Corporation's Board will determine whether to segregate excess insurance funds.

II. Allocated Insurance Reserve Accounts

1. Determining Whether There Are Excess Funds To Deposit in the AIRAs or Whether a Withdrawal Is Required

The Farm Credit System Reform Act of 1996 established a process for making partial distributions of the Insurance Fund's balance above the SBA. It established in the Insurance Fund an AIRA for the benefit of each insured System bank and one for the FAC stockholders. The AIRAs remain a part of the Insurance Fund and are available to the Corporation.

AIRA allocations would be made only at the end of any year in which the Insurance Fund, plus the accumulated excess balance after deducting expenses and insurance obligations for the next year, is greater than 2 percent. This is because the AIRAs are designed to absorb losses first, if necessary, or to capitalize growth to avoid the need to charge supplemental premiums.

If the Insurance Fund exceeds the SBA at the end of any calendar year (using December 31 balances), the statute requires the Corporation to determine whether any excess funds exist for allocation to the AIRAs. In determining whether excess funds exist, the statute calls for the Corporation to first calculate ''the average secure base amount for the calendar year (using average daily balances).''

a. Authorized Deductions

If the Insurance Fund exceeds the SBA, the statute requires that the Insurance Fund balance be adjusted downward by an estimate for the next calendar year of the:

1. Corporation's operating costs; and
2. Insurance obligations.

The Corporation will deduct the operating expenses it expects to incur for the next calendar year. Estimated insurance obligations are defined in the Policy Statement to include all anticipated allowances for insurance losses, claims, and other potential statutory uses of the Insurance Fund. They are also defined to include an estimate of the expected growth of insured System debt for the next 12 months and the money needed to maintain the SBA with that level of growth.

The Corporation prepares its financial statements on an accrual basis using generally accepted accounting principles (GAAP). GAAP requires the Corporation to recognize in its financial statements any probable loss that can be reasonably estimated. In the event of unanticipated bank failures, however, the Insurance Fund could drop below the SBA. Were the Insurance Fund to drop below the SBA, the Corporation would be required to collect insurance premiums to restore the Insurance Fund to the SBA. Because of the strong health of the Farm Credit System, the Insurance Fund is currently close to the SBA. However, there is no guarantee that the System or the economy will remain this healthy, particularly given the recent pressures on agriculture resulting from severe drought and the crisis in Asia. Thus, the Board has concluded that the Corporation should deduct probable losses estimated for the next year, recognizing that such a deduction could mean that no excess funds would be available for deposit in the AIRAs in a given year.

Because the statutory requirement for the Insurance Fund includes not only achieving but also maintaining the SBA, the Policy Statement defines insurance obligations to include an estimate of expected growth in insured debt for the prospective 12 months, using a 3-year average to determine the estimate. This will minimize the effect of any short-term periods of rapid growth, which might lead to an excessive prospective growth estimate.

In the event of faster than expected growth in insured obligations, the Insurance Fund could drop below the SBA. If it did, the Corporation would be required to collect insurance premiums to restore the Insurance Fund to the SBA.

b. Allocation Formula When Excess Funds Are Available

The Policy Statement includes the statutory formula for allocation of any excess Insurance Fund balances to FAC stockholders (10 percent) and to the insured System banks (90 percent). It also includes the 3-year average loan balance formula the statute mandates when the Corporation adds balances to each AIRA. The amount of funds in the accounts each year may fluctuate, depending upon the annual calculation of the SBA and any excess Insurance Fund balance. Exhibit 1 is a hypothetical example of how the AIRA program will operate, including determining the amount of excess Insurance Fund balances and allocating the balances to individual AIRA holders.

c. Use of Allocated Amounts When Reductions Are Required

The Policy Statement also interprets the statutory language governing use of the AIRAs when insurance obligations exceed estimated amounts. When actual expenses and insurance obligations exceed estimates from the previous

year end, the law requires the Corporation to reduce the balances in the AIRAs by proportional amounts. The statute, however, doesn't prescribe how the proportional amounts are to be determined.

The Board has concluded that the Corporation should use the same technique to calculate reductions to the AIRAs as the statute uses to calculate additions, i.e., the 3-year average loan balance formula. This weighted average allocation formula ensures that any reductions to AIRA balances are accomplished in the same manner as the allocations. The Corporation considered other approaches for making required reductions, including using equal proportions for each AIRA account. Using equal proportions, however, results in the holder of smaller AIRA balances receiving the same amount of any required AIRA reduction as the largest account holder.

2. AIRA Accumulation Cycle

The law authorizes payments of a portion of AIRA balances to the System banks and FAC stockholders ''as soon as practicable during each calendar year beginning more than 8 years after the date on which the aggregate of the amounts' in the Insurance Fund exceeds the SBA. (12 U.S.C. 2277a–4). While this language could be subject to varying interpretations, the Insurance Fund first attained the SBA in the first quarter of 1998, and thus payments could begin 8 years later. The Board has concluded that it is reasonable to consider making the first payment as soon as practicable after the first quarter in 2006. The proposed Policy Statement adopts the earliest possible payout date: 8 calendar years after the quarter-end when the SBA was initially attained.

An important corollary issue is how to address an interruption in the 8-year period. For example, if after establishing the AIRAs, the Corporation has to use them for an insurance action, or if the System experiences extraordinary growth in debt outstanding causing the AIRA balances to be depleted, does the accumulation cycle begin anew? If the Insurance Fund falls below the SBA for a brief time or dips below the SBA late in the 8-year cycle, should the accumulation cycle begin again?

The Corporation believes that Congress designed the accumulation period to serve as a minimum time horizon for the accumulation of excess Insurance Fund balances to allow for the creation of a secondary Insurance Reserve. The AIRA provision was included in lieu of providing the Corporation with the authority to collect supplemental insurance premiums. Congress decided that when supplemental insurance premiums were needed to strengthen the Insurance Fund during periods of stress in agriculture, the System might be unable to pay significant additional amounts and that might adversely affect System institutions' viability. The 1996 Act as proposed in the House included a 5-year accumulation period, which was subsequently increased to 8 years to reconcile with the Senate's budget scoring procedures.

The Policy Statement leaves the issue of selecting an alternative accumulation period open to decision on a case-by-case basis. This approach preserves maximum flexibility to tailor any alternative accumulation period to best fit the causes of a future shortfall in the Insurance Fund. For example, the circumstances where a period of rapid growth causes a temporary (or small) decline in the Insurance Fund below the SBA for one or more quarters are far less serious than a decline in the Insurance Fund caused by losses as a result of increased risk at System banks and associations.

III. Issues for Later Consideration

The statute authorizes initial payment of any balances in the AIRAs beginning more than 8 years after attainment of the SBA, which could be as early as 2006. As this date approaches, the Corporation's Board will have to consider the Corporation's authority to reduce or eliminate AIRA payments, and calculation of the initial AIRA payment components.

The Board believes that these issues can be better addressed after the Corporation obtains experience in administering the AIRA program over several years. Also, the likelihood of payment beginning in 2006 must be considered somewhat uncertain at this time. The uncertainty stems from factors that will determine whether and how much of any AIRA accumulations will occur. These factors are:

1. Future growth in the level of insured debt outstanding;

2. Possible insurance claims or losses; and

3. Level of investment earnings.

Because the Corporation can not predict any of these factors with certainty now, it seems prudent to gain more experience with excess Insurance Fund balances before making these decisions about future payments.

IV. Comments

The Corporation's Board is seeking public comment on the issues discussed in the proposed Policy Statement. After consideration of the comments, the Board will make its final determination and issue a Policy Statement setting out its decision.

BILLING CODE 6710–01–P

EXHIBIT 1

ALLOCATED INSURANCE RESERVE ACCOUNT PROGRAM

DETERMINATION OF EXCESS INSURANCE FUND BALANCE : HYPOTHETICAL EXAMPLE

			($ Millions)
Insurance Fund Balance at December 31, XXXX			$ 1,265.0
Less:	Est. FCSIC Operating Expenses for XXXY		$ (1.8)
	Est. FAC Provision for XXXY		$ (9.7)
	Est. Growth in Insured Debt Factor for XXXY (3.5%)		$ (42.7)
Adjusted Insurance Fund Balance			**$ 1,210.8**
Secure Base Amount Calculation (Using Average Daily Balances) :			
Insured Systemwide and Consolidated Debt Outstanding		Principal	$ 62,500.0
		Accrued Interest Payable	$ 600.0
	Total		$ 63,100.0
Less :	90% of guaranteed portions of Federal Government guaranteed loan principal		$ (3,500.0)
	80% of guaranteed portions of State government guaranteed loan principal		$ (8.0)
Adjusted Insured Debt Outstanding			$ 59,592.0
Secure Base Amount			**$ 1,191.8**
Excess Insurance Fund Balance (Adjusted Ins. Fund Balance less Secure Base Amount)			**$ 18.9**
Amount to be allocated to Banks and FAC AIRAs			$ 18.9

ALLOCATION FORMULA HYPOTHETICAL EXAMPLE

($ Millions)

FAC Stockholders in aggregate (10% of Allocable Amount) $ 1.9

Banks (90%) based on prior three years average accrual loan principal outstanding

	Average Daily Balances of Accrual Loan Principal				
	Prior Year	Prior Year -1	Prior Year -2	3 Year Avg.	
Bank 1	$ 2,150	$ 2,200	$ 2,300	$ 2,217	$ 0.7
Bank 2	$ 15,500	$ 15,600	$ 15,000	$ 15,367	$ 4.6
Bank 3	$ 4,000	$ 3,600	$ 3,500	$ 3,700	$ 1.1
Bank 4	$ 4,400	$ 3,950	$ 3,800	$ 4,050	$ 1.2
Bank 5	$ 4,500	$ 4,100	$ 3,950	$ 4,183	$ 1.3
Bank 6	$ 6,450	$ 6,100	$ 5,700	$ 6,083	$ 1.8
Bank 7	$ 8,200	$ 7,400	$ 7,100	$ 7,567	$ 2.3
Bank 8	$ 14,300	$ 13,500	$ 13,100	$ 13,633	$ 4.1
Totals	$ 59,500	$ 56,450	$ 54,450	$ 56,800	$ 17.0

BILLING CODE 6710–01–C

Farm Credit System Insurance Corporation Policy Statement on the Secure Base Amount and Allocated Insurance Reserve Account Program, NV 98–03

Adoption Date: September 23, 1998.

Effect on Previous Action: None.

Source of Authority: Section 5.55 of the Farm Credit Act of 1971, as amended (the Act); 12 U.S.C. 2277a–4.

Whereas, section 5.52 of the Act established the Farm Credit System Insurance Corporation (Corporation) to, among other things, insure the timely payment of principal and interest on Farm Credit System obligations (12 U.S.C. 2277a–1); and

Whereas, section 5.55 of the Act mandates that the Corporation will build and manage the Farm Credit Insurance Fund (Insurance Fund) to attain and maintain a secure base amount (SBA), defined as 2 percent of the aggregate outstanding insured obligations of all insured System banks (excluding a percentage of State and Federally guaranteed loans) or such other percentage of the aggregate amount as the Corporation determines is actuarially sound; and

Whereas, the Farm Credit System Reform Act of 1996, Pub. L. 104–105, 110 Stat. 162 (Feb. 10, 1996), amended section 5.55 of the Act to: (1) Establish in the Insurance Fund an Allocated Insurance Reserve Account (AIRA) for the benefit of each insured System bank and one for the Farm Credit System Financial Assistance Corporation (FAC) stockholders; (2) Allocate any excess balances to these AIRAs; and (3) Eventually make partial distributions of the excess funds in the AIRAs.

Now, therefore, the Corporation's Board of Directors (Board) adopts the following Policy Statement to govern the calculation of the secure base amount, the determination of any excess insurance reserves, the establishment of the AIRAs, and the method for allocating any excess insurance reserves to the AIRAs.

I. Secure Base Amount Determination

As stated in the Corporation's Policy Statement Concerning Adjustments to the Insurance Premiums (BM–11–JUL–96–02), the Board will review the premium assessments at least semiannually to determine whether to adjust premiums in response to changing conditions. The Board will continue this review even after the Insurance Fund achieves the SBA because the law requires the Corporation to maintain the SBA. Thus, the Corporation must ensure that as the Farm Credit System's insured debt grows, or if the Insurance Fund suffers a significant loss, the Insurance Fund remains at the SBA.

The Farm Credit Reform Act of 1996 established a process for making partial distributions of the Insurance Fund's balance above the SBA. If excess reserves accumulate, these distributions can begin at a point 8 years after the Insurance Fund reaches the SBA, but no sooner than 2006. To begin the process the Corporation must define ''the aggregate outstanding insured obligations'' of all the System banks. Then it must follow the steps in the statute to determine the SBA. Finally, at the end of any calendar year in which the Insurance Fund attains the secure base amount, the Corporation must determine whether any excess funds exist for allocation to the AIRAs.

The principal calculation for determining whether the Insurance Fund is at the SBA amount will be 2 percent of the aggregate adjusted insured obligations defined as follows:

1. ''Insured obligation'' means any note, bond, debenture, or other obligation issued under subsection (c) or (d) of section 4.2 of the Farm Credit Act on or before January 5, 1989, on behalf of any System bank; and after such date, which, when issued, is issued on behalf of any insured System bank and is outstanding at the quarter-end. The balance outstanding at the quarter-end shall include principal and accrued interest payable as reported by the banks in the call reports submitted to the Farm Credit Administration.

2. The balance of insured obligations determined in Number 1 shall be reduced by an amount equal to the sum of:

(a) 90 percent of the guaranteed portions of principal outstanding on Federal Government-guaranteed loans in accrual status at all System institutions; and

(b) 80 percent of the guaranteed portions of principal outstanding on State Government-guaranteed loans in accrual status at all System institutions.

At the end of any calendar year when the Insurance Fund balance exceeds the SBA, calculated using December 31, balances (point-in-time method), the Corporation will determine whether any excess insurance reserves exist for allocation to the AIRAs.

II. Allocated Insurance Reserve Accounts

1. Determination of Excess Insurance Fund Balances

An allocated insurance reserve account (AIRA) shall be established in the Insurance Fund for each insured System bank and for FAC stockholders. Amounts representing excess Insurance Fund balances may be allocated to the AIRAs. The AIRAs remain a part of the Insurance Fund and are available to the Corporation.

(a) Authorized Deductions

In determining whether there are any excess insurance reserves, the December 31, Insurance Fund balance will first be adjusted downward by:

(1) The Corporation's estimated operating expenses for the next 12 months; and

(2) The Corporation's estimated insurance obligations for the next 12 months.

The Corporation will budget for the next calendar year operating expenses and it will deduct the operating expenses it expects to incur. When determining estimated insurance obligations, the Corporation will include all anticipated allowances for insurance losses, claims, and other potential statutory uses of the Insurance Fund. Estimated insurance obligations shall also include an estimate of the expected growth of insured System debt for the next 12 months. This percentage will be the average annual growth in insured debt for the past three calendar years, using average daily balances. Using this growth estimate will result in retaining the amount of money necessary in the general Insurance Fund to capitalize growth in the SBA for the next year.

The adjusted aggregate yearend Insurance Fund balance will then be compared with the SBA calculated using an average daily balance method for the previous calendar year. The statute requires use of an average daily balance method for calculating the SBA *only* for purposes of determining the amount of any excess Insurance Fund balances.

When the aggregate adjusted Insurance Fund balance exceeds the SBA amount calculated using the average daily balance method, the excess Fund balance shall be allocated to the accounts of each insured System bank and to the FAC stockholders.

(b) Allocation Formula When Excess Funds Are Available

(1) Ten percent of the excess Insurance Fund balance shall be credited to the AIRA for all holders, in the aggregate, of Financial Assistance Corporation stock. The total amount that may be allocated to this AIRA is limited to $56 million.

(2) The remaining amount of the excess Insurance Fund balance shall be credited to the AIRAs for each insured System bank. The basis for crediting the

excess balance to each bank's AIRA shall be the ratio of its average daily accrual loan principal outstanding for the three prior years divided by the total average daily accrual loan principal outstanding for all System banks. System bank loan volume for making these allocations is defined in section 5.55(d) to include all retail loans made by direct lending associations, their insured System banks and other financing institutions (OFIs) being financed by insured System banks (12 U.S.C. 2277a–4(d)). The statute also requires that a reduction be made from each bank's ratio (numerator and denominator) for the guaranteed portions of government-guaranteed loans similarly on an average daily balance basis for the three-year period. An example of the allocation formula is shown in Exhibit 1.

(c) Use of Allocated Amounts When Reductions Are Required

When the Corporation's actual operating expenses and insurance obligations exceed the estimated amounts used to determine any year's AIRA balances, section 5.55(e)(5) requires AIRA balances to absorb such excess expenses before using other amounts in the Insurance Fund (12 U.S.C. 2277a–4(e)(5)). To the extent reductions are made in AIRA balances to absorb Corporation expenses and actual insurance obligations, each AIRA will be reduced by its proportional amount in accordance with the statute. The same formula used to make allocations of excess Insurance Fund balances shall be used to reduce AIRA balances when necessary. Ten percent of any necessary AIRA reduction will be applied to the FAC stockholder AIRA. The remaining 90 percent will be applied to the System insured banks' AIRAs on the basis of the ratio of each bank's average daily accrual loan principal outstanding for the three prior years divided by the total average daily accrual loan principal outstanding for all System banks.

2. AIRA Accumulation Cycle

Section 5.55(e)(6) permits the Insurance Corporation's Board at its discretion to make payments of AIRA balances to the account-holders after a minimum time period (12 U.S.C. 2277a-4(e)(6)). The minimum time period specified is more than 8 years after the date on which the aggregate amount in the Insurance Fund exceeds the secure base amount calculated using quarter-end balances.

The initial starting point for the 8-year period shall be the first calendar quarter-end when the Insurance Fund has attained or exceeded its SBA. The initial attainment occurred during the first quarter of 1998. The first payment would be in the second quarter of 2006.

Should the Insurance Fund drop below the secure base amount at any subsequent quarter-end during the 8-year period, the Corporation's Board may restart the accumulation period. For example, the Insurance Fund might drop below the SBA as a result of rapid growth in insured System debt outstanding, or incurring insurance claims or losses. The Board in its discretion may select an accumulation period, to begin at the next quarter-end when the aggregate in the Insurance Fund again attains the secure base amount. Any alternative accumulation period however, cannot result in any payment before April 2006. The Board will consider the following factors in determining selection of an alternative accumulation period:

(a) The reason that the Insurance Fund dropped below the SBA (i.e. as a result of growth in insured debt vs. an insurance expense at a troubled institution). The current level of the Insurance Fund and the amount of money and time needed to attain the SBA;

(b) The likelihood and probable amount of any losses to the Insurance Fund;

(c) The overall condition of the Farm Credit System, including the level and quality of capital, earnings, asset growth, asset quality, loss allowance levels, asset liability management, as well as the collateral ratios of the insured banks;

(d) The health and prospects for the agricultural economy, including the potential impact of governmental farm policy and the effect of the globalization of agriculture on opportunities and competition for U.S. producers; and

(e) The risks in the financial environment that may cause a problem, even when there is no imminent threat, such as volatility in the level of interest rates, the use of sophisticated investment securities and derivative instruments, and increasing competition from non-System financial institutions.

III. Issues for Later Consideration

Because of multiple factors (including rapid growth and the amount of any insurance obligations) which could affect future AIRA balances and the uncertainty of future payments, the Corporation has deferred consideration of several issues to a date closer to the year 2006. The Board anticipates gaining experience in the administration of the AIRA program over the next few years and expects to have a better basis for determining these issues, which include:

Board discretionary authority to limit or restrict AIRA payments; and

2. Calculation of the initial AIRA payment components.

Dated: September 30, 1998.

Floyd Fithian,

Secretary to the Board, Farm Credit System Insurance Corporation.

[FR Doc. 98–26620 Filed 10–2–98; 8:45 am]

BILLING CODE 6710–01–P

FEDERAL COMMUNICATIONS COMMISSION

Notice of Public Information Collection(s) Being Reviewed by the Federal Communications Commission

September 25, 1998.

SUMMARY: The Federal Communications Commission, as part of its continuing effort to reduce paperwork burden invites the general public and other Federal agencies to take this opportunity to comment on the following information collection, as required by the Paperwork Reduction Act of 1995, Pub. L. 104–13. An agency may not conduct or sponsor a collection of information unless it displays a currently valid control number. No person shall be subject to any penalty for failing to comply with a collection of information subject to the Paperwork Reduction Act (PRA) that does not display a valid control number. Comments are requested concerning (a) whether the proposed collection of information is necessary for the proper performance of the functions of the Commission, including whether the information shall have practical utility; (b) the accuracy of the Commission's burden estimate; (c) ways to enhance the quality, utility, and clarity of the information collected; and (d) ways to minimize the burden of the collection of information on the respondents, including the use of automated collection techniques or other forms of information technology.

DATES: Persons wishing to comment on this information collection should submit comments by December 4, 1998. If you anticipate that you will be submitting comments, but find it difficult to do so within the period of time allowed by this notice, you should advise the contact listed below as soon as possible.

ADDRESSES: Direct all comments to Les Smith, Federal Communications Commission, Room 234, 1919 M St., NW, Washington, DC 20554 or via internet to lesmith@fcc.gov.

FOR FURTHER INFORMATION CONTACT: For additional information or copies of the information collections contact Les Smith at 202–418–0217 or via internet at lesmith@fcc.gov.

SUPPLEMENTARY INFORMATION:

OMB Approval Number: 3060–0433.

Title: Basic Signal Leakage Performance Report.

Form Number: FCC Form 320.

Type of Review: Extension of a currently approved collection.

Respondents: Business and other for-profit entities.

Number of Respondents: 33,000.

Estimated Time Per Response: 20 hours.

Frequency of Response: Annually.

Total Annual Burden: 660,000 hours.

Estimated Cost to Respondents: $3,750.

Needs and Uses: Cable television system operators who use frequencies in the bands 108–137 and 225–400 MHz (aeronautical frequencies) are required to file a cumulative signal leakage index (CLI) derived under Section 76.611(a)(1) or the results of airspace measurements derived under Section 76.611(a)(2). This filing must include a description of the method by which compliance with basic signal leakage criteria is achieved and the method of calibrating the measurement equipment. This yearly filing is done in accordance with Section 76.615 with the use of FCC Form 320. The data collected on the FCC Form 320 are used by Commission staff to ensure the safe operation of aeronautical and marine radio services, and to monitor for compliance of cable aeronautical usage in order to minimize future interference to these safety of life services.

OMB Approval Number: 3060–0289.

Title: Section 76.601 Performance tests.

Form Number: N/A.

Type of Review: Extension of a currently approved collection.

Respondents: Business and other for-profit entities.

Number of Respondents: 10,838.

Estimated Time Per Response: 0.5–70 hours.

Frequency of Response: Performance tests conducted semi-annually; other aspects of this collection conducted on occasion.

Total Annual Burden: 328,379 hours.

Estimated Cost to Respondents: $2,759.50.

Needs and Uses: Section 76.601 requires every cable system operator to maintain a current listing of the cable television channels which that system delivers to its subscribers. Section 76.601(c) and (d) requires cable systems with over 1,000 subscribers to conduct semi-annual proof of performance tests and triennial proof of performance tests for color testing. Section 76.601 also states that prior to additional testing pursuant to Section 76.601(d), the local franchising authority shall notify the cable operator who will be allowed thirty days to come into compliance with any perceived signal quality problems which need to be corrected. The performance test data and channel listings are used in field inspections by Commission staff and franchise authorities to ensure that an acceptable quality signal is being provided to cable subscribers, and to ensure that there are no signal leakage problems which could cause interference with over-the-air radio frequencies involving safety-of-life functions (i.e., police, fire, forestry, aeronautical, amateur radio).

Federal Communications Commission.

Magalie Roman Salas,

Secretary.

[FR Doc. 98–26567 Filed 10–2–98; 8:45 am]

BILLING CODE 6712–01–P

FEDERAL COMMUNICATIONS COMMISSION

[Report No. AUC–9820–B (Auction No. 20); DA 98–1796]

Auction of 156–162 MHz VHF Public Coast Station Service Licenses

AGENCY: Federal Communications Commission.

ACTION: Notice.

SUMMARY: This Public Notice announces the procedures and minimum opening bids for the upcoming 156–162 MHz VHF Public Coast Station Service (''VHF Public Coast Service'') auction. On July 23, 1998, the Commission released a Public Notice, seeking comment on the establishment of reserve prices or minimum opening bids for the VHF Public Coast Service auction, in accordance with the Balanced Budget Act of 1997. In addition, the Commission also sought comment on a number of procedures to be used in the VHF Public Coast Service auction.

DATES: The auction is scheduled for December 3, 1998.

ADDRESSES: See the text of the Public Notice and attachments for information regarding important addresses.

FOR FURTHER INFORMATION CONTACT:

Media Contact: Meribeth McCarrick, 202–418–0654.

Auctions information: Jeff Garretson, Bob Reagle, or Anne Napoli, 202–418–0660.

VHF Public Coast Service information: Scot Stone, 202–418–0680.

SUPPLEMENTARY INFORMATION: This is a summary of a Public Notice released on September 4, 1998, and corrected by subsequent Public Notices released on September 8, 1998, and September 21, 1998. The complete text of this corrected Public Notice, including all attachments, is available for inspection and copying during normal business hours in the Wireless Telecommunications Bureau Reference Center (Room 5608), 2025 M Street, NW., Washington, DC 20554, or on the Commission's World Wide Web page, located at http://www.fcc.gov/wtb/auctions. Copies also may be purchased from the Commission's copy contractor, International Transcription Services, Inc. (ITS, Inc.), 1231 20th Street, NW., Washington, DC 20036, (202) 857–3800.

Synopsis of the Public Notice

I. Introduction

The VHF Public Coast Service Licenses to Be Auctioned:

1. The Federal Communications Commission (''FCC'' or ''Commission'') will hold an auction for 42 licenses to operate in the 156–162 MHz band. These licenses encompass the United States, the Northern Mariana Islands, Guam, American Samoa, the United States Virgin Islands and Puerto Rico. Specifically, the licenses include: (1) One license in each of nine geographic areas known as Maritime VHF Public Coast Station Service Areas (''VPCs''), and (2) one license in each of 33 geographic areas known as Inland VPCs. The licenses include the following channels:

	Channel pairs (total kHz available)
(1) *Maritime VPCs:*	
Maritime Border VPCs: VPCs 1, 5, 7	24, 25, 26, 27, 28, 84, 85, 86, 87, 88 (500 kHz).
Maritime Non-Border VPCs and Maritime Border VPC 9: VPCs 2, 3, 4, 6, 8, 9	24, 25, 26, 27, 28, 84, 85, 86, 87 (450 kHz).
(2) *Inland VPCs:*	

	Channel pairs (total kHz available)
Inland Border VPCs: VPCs 10, 11, 28, 29, 30	24, 26, 27, 28, 85, 86, 87 (350 kHz).
Inland Non-Border VPCs:	
VPCs 12–15, 23–27, 33–34, 36–39, 41–42	24, 26, 27, 28, 85, 86, 87 (350 kHz).
VPCs 16–22, 31–32, 35, 40	24, 26, 27, 28, 84, 86, 87 (350 kHz).

Auction Date: The auction will commence on December 3, 1998. The initial schedule for bidding will be announced by public notice at least one week before the start of the auction. Unless otherwise announced, bidding will be conducted on each business day until bidding has stopped on all licenses.

Bidding Methodology: Simultaneous multiple round bidding. Bidding will be permitted only from remote locations, either electronically (by computer) or telephonically.

Pre-Auction Deadlines:

—Auction Seminar: October 20, 1998
—Short Form Application (FCC Form 175): November 2, 1998; 5:30 p.m. ET
—Upfront Payments (via wire transfer): November 16, 1998; 6:00 p.m. ET
—Orders for Remote Bidding Software: November 17, 1998; 5:30 p.m. ET
—Mock Auction: December 1, 1998

Telephone Contacts:

—FCC National Call Center: (888) CALL–FCC ((888) 225–5322). For Bidder Information Packages, General Auction Information, and Seminar Registration, press option #2 at the prompt. Hours: 8 a.m.–5:30 p.m. ET.
—FCC Technical Support Hotline: (202) 414–1250 (voice), (202) 414–1255 (text telephone (TTY)); Hours of service: 8 a.m.–6 p.m. ET, Monday—Friday; 9 a.m.–5 p.m. ET, weekend of October 31–November 1.

List of Attachments:

Attachment A—Summary of 156–162 MHz VHF Public Coast Station Licenses to be Auctioned, Upfront Payments, Minimum Opening Bids
Attachment B—Guidelines for Completing FCC Forms 175 and 159 and Exhibits
Attachment C—Electronic Filing and Review of FCC Form 175
Attachment D—Summary Listing of Documents from the Commission and the Wireless Telecommunications Bureau Addressing Application of the Anti-Collusion Rules

II. Background

2. In July 1998, the Commission restructured the licensing framework that governs VHF Public Coast Stations. Pursuant to the *Third Report and Order and Memorandum Opinion and Order (''Public Coast Third Report and Order'')*, 63 FR 40059 (July 27, 1998), site-specific licensing has been replaced with a geographic-based system, which will be used in the upcoming auction. This geographic-based licensing methodology is similar to that used in other commercial mobile radio services (''CMRS''). The geographic areas for the inland VPC licenses were based upon Economic Areas (EAs), developed by the Bureau of Economic Analysis of the U.S. Department of Commerce, and the geographic areas for the maritime VPC licenses were roughly based on U.S. Coast Guard Districts. Service and operational requirements for VHF Public Coast Stations are contained in part 80 of the Commission's rules.

III. Due Diligence

3. Potential bidders are reminded that there are a number of incumbent VHF Public Coast Station licensees and Private Land Mobile Radio (PLMR) licensees already operating in the 156–162 MHz band. Such incumbents must be protected from harmful interference by VHF Public Coast Station geographic area licensees in accordance with the Commission's Rules. These limitations may restrict the ability of such VPC geographic area licensees to use certain portions of the electromagnetic spectrum or provide service to certain areas in their geographic license areas.

4. In addition, potential bidders seeking licenses for geographic areas that are near the Canadian border should be aware of agreements between the United States and Canada that affect the assignment and use of VHF frequencies in certain parts of maritime and inland border VPCs. Potential bidders are solely responsible for investigating and evaluating the degree to which these matters may affect spectrum availability in areas where they seek maritime or inland border VPC licenses.

5. Licensing information is contained in the Commission's licensing database, which is available for inspection in the Wireless Telecommunications Bureau's Public Reference Rooms, located at 2025 M Street, NW, Room 5608, Washington, DC 20554, and 1270 Fairfield Road, Gettysburg, PA 17325. In addition, potential bidders may search for information regarding incumbent VHF Public Coast station and PLMR licensees on the World Wide Web at http://www.fcc.gov/wtb. In particular, information can be accessed by downloading databases by selecting ''WTB Database Files'' (http://www.fcc.gov/wtb/databases.html), or searching on-line by selecting ''Search WTB Databases'' (http://gullfoss.fcc.gov:8080/cgi-bin/ws.exe/beta/genmen/index.hts). Any telephone inquires regarding these matters should be directed to the Technical Support Hotline at (202) 414–1250 (voice) or (202) 414–1255 (text telephone (TTY)).

IV. The Commission Makes No Representations or Guarantees Regarding the Accuracy or Completeness of Information That Has Been Provided by Incumbent Licensees and Incorporated Into the Database

Potential bidders are strongly encouraged to physically inspect any sites located in or near the geographic area for which they plan to bid.

6. Participation: Those wishing to participate in the auction must:

—Submit a short form application (FCC Form 175) by the above-listed deadline.
—Submit a sufficient upfront payment and an FCC Remittance Advice Form (FCC Form 159) by the above-listed deadline.
—Comply with all provisions outlined in this Public Notice.

7. Prohibition of Collusion: To ensure the competitiveness of the auction process, the Commission's Rules prohibit applicants for the same geographic license area from communicating with each other during the auction about bids, bidding strategies, or settlements. This prohibition begins with the filing of short-form applications, and ends on the down payment due date. In the VHF Public Coast Service auction, for example, the rule would apply to any applicants bidding for the same VPC. Therefore, applicants that apply to bid for ''all markets'' would be precluded from communicating with all other applicants after filing the FCC Form 175. However, applicants may enter into bidding agreements before filing their FCC Form 175 short-form applications, as long as they disclose the existence of the agreement(s) in their Form 175 short-form applications. *See* 47 CFR

1.2105(c). By signing their FCC Form 175 short form applications, applicants are certifying their compliance with § 1.2105(c). In addition, § 1.65 of the Commission's Rules requires an applicant to maintain the accuracy and completeness of information furnished in its pending application and to notify the Commission within 30 days of any substantial change that may be of decisional significance to that application. *See* 47 CFR 1.65. Thus, § 1.65 requires an auction applicant to notify the Commission of any violation of the anti-collusion rules upon learning of such violation. Bidders are therefore required to make such notification to the Commission immediately upon discovery.

8. Bidder Information Package: More complete details about this auction are contained in a Bidder Information Package. The Commission will provide one copy to each company free of charge. Additional copies may be ordered at a cost of $16.00 each, including postage, payable by Visa or Master Card, or by check payable to ''Federal Communications Commission'' or ''FCC.'' To place an order, contact the FCC National Call Center at (888) CALL-FCC ((888) 225–5322, press option #2 at the prompt). Prospective bidders that have already contacted the FCC at this number expressing an interest in this auction will receive a Bidder Information Package in approximately four weeks, and need not call again unless they wish to order additional copies.

9. Relevant Authority: Prospective bidders must familiarize themselves thoroughly with the Commission's rules relating to the VHF Public Coast Service, contained in Title 47, part 80 of the Code of Federal Regulations, and those relating to application and auction procedures, contained in Title 47, part 1 of the Code of Federal Regulations.

10. Prospective bidders must also be thoroughly familiar with the procedures, terms and conditions contained in the *Public Coast Third Report and Order*, and in Sections I through III of Amendment of part 80 of the Commission's rules Concerning Maritime Communications, *Second Report and Order and Second Further Notice of Proposed Rulemaking*, PR Docket No. 92–257, RM–7956, 8031, 8352, FCC 97–217, 12 FCC Rcd 16949 (1997) 62 FR 40281 (July 28, 1997), 62 FR 37533 (July 14, 1997) (''*Public Coast Second Report and Order*'').

11. The terms contained in the Commission's Rules, relevant orders, public notices and bidder information package are not negotiable. The Commission may amend or supplement the information contained in its public notices or the bidder information package at any time, and will issue public notices to convey any new or supplemental information to bidders. It is the responsibility of all prospective bidders to remain current with all Commission Rules and with all public notices pertaining to this auction. Copies of most Commission documents, including public notices, can be retrieved from the FCC Internet node via anonymous ftp @ftp.fcc.gov or the FCC World Wide Web site at http://www.fcc.gov/wtb/auctions. Additionally, documents may be obtained for a fee by calling the Commission's copy contractor, International Transcription Service, Inc. (ITS), at (202) 857–3800. When ordering documents from ITS, please provide the appropriate FCC number (e.g., FCC 98–151 for the *Public Coast Third Report and Order* and FCC 97–217 for the *Public Coast Second Report and Order*).

12. Bidder Alerts: All applicants must certify on their FCC Form 175 applications under penalty of perjury that they are legally, technically, financially and otherwise qualified to hold a license, and not in default on any payment for Commission licenses (including down payments) or delinquent on any non-tax debt owed to any Federal agency. Prospective bidders are reminded that submission of a false certification to the Commission is a serious matter that may result in severe penalties, including monetary forfeitures, license revocations, exclusion from participation in future auctions, and/or criminal prosecution.

V. The Commission Makes No Representations or Warranties About the Use of This Spectrum for Particular Services

Applicants should be aware that an FCC auction represents an opportunity to become an FCC licensee in this service, subject to certain conditions and regulations. An FCC auction does not constitute an endorsement by the FCC of any particular services, technologies or products, nor does an FCC license constitute a guarantee of business success. Applicants should perform their individual due diligence before proceeding as they would with any new business venture.

13. As is the case with many business investment opportunities, some unscrupulous entrepreneurs may attempt to use the VHF Public Coast Service auction to deceive and defraud unsuspecting investors. Common warning signals of fraud include the following:

—The first contact is a ''cold call'' from a telemarketer, or is made in response to an inquiry prompted by a radio or television infomercial.

—The offering materials used to invest in the venture appear to be targeted at IRA funds, for example by including all documents and papers needed for the transfer of funds maintained in IRA accounts.

—The amount of the minimum investment is less than $25,000.

—The sales representative makes verbal representations that: (a) The Internal Revenue Service (''IRS''), Federal Trade Commission (''FTC''), Securities and Exchange Commission (''SEC''), FCC, or other government agency has approved the investment; (b) the investment is not subject to state or federal securities laws; or (c) the investment will yield unrealistically high short-term profits. The offering materials often include copies of actual FCC releases, or quotes from FCC personnel, giving the false appearance of FCC knowledge or approval of the solicitation.

14. Information about deceptive telemarketing investment schemes is available from the FTC at (202) 326–2222 and from the SEC at (202) 942–7040. Complaints about specific deceptive telemarketing investment schemes should be directed to the FTC, the SEC, or the National Fraud Information Center at (800) 876–7060. Consumers who have concerns about specific VHF Public Coast Service proposals may also call the FCC National Call Center at (888) CALL-FCC ((888) 225–5322).

VI. National Environmental Policy Act (NEPA) Requirements

15. Licensees must comply with the Commission's rules regarding the National Environmental Policy Act (NEPA). The construction of a wireless antenna facility is a federal action and licensees must comply with the Commission's NEPA rules for each wireless facility. *See* 47 CFR 1.1305–1.1319. The Commission's NEPA rules require that, among other things, licensees consult with expert agencies having NEPA responsibilities including the U.S. Fish and Wildlife Service, the State Historic Preservation Office, the Army Corp of Engineers and the Federal Emergency Management Agency (through the local authority with jurisdiction over floodplains). Licensees must prepare environmental assessments for wireless facilities that may have a significant impact in or on wilderness areas, wildlife preserves, threatened or endangered species or designated critical habitats, historical or

archaeologic sites, Indian religious sites, floodplains, and surface features. Licensees must also prepare environmental assessments for wireless facilities that include high intensity white lights in residential neighborhoods or excessive radiofrequency emission.

VII. Eligibility for Very Small and Small Business Provisions

A. General Eligibility Criteria

16. As described above, this auction offers one license in each of nine geographic areas known as Maritime VPCs, and one license in each of 33 geographic areas known as Inland VPCs. The Commission's goal in adopting special small business provisions is to promote and facilitate the participation of small businesses in the VHF Public Coast Service auction and in the provision of this and other CMRS services.

(1) Determination of Revenues

17. For purposes of determining which entities qualify as very small businesses or small businesses, the Commission will consider the gross revenues of the applicant, its controlling interests, and the affiliates of the applicant and its controlling interests. Therefore, the gross revenues of all of the above entities must be disclosed separately and in the aggregate as Exhibit C to an applicant's FCC Form 175. The Commission does not impose specific equity requirements on controlling interests. Once principals or entities with a controlling interest are determined, only the revenues of those principals or entities will be counted in determining small business eligibility. The term ''controlling interest'' includes both de facto and de jure control of the applicant. Typically, de jure control is evidenced by ownership of at least 50.1 percent of an entity's voting stock. De facto control is determined on a case-by-case basis. The following are some common indicia of control:

—The entity constitutes or appoints more than 50 percent of the board of directors or management committee;
—The entity has authority to appoint, promote, demote, and fire senior executives that control the day-to-day activities of the licensee; or
—The entity plays an integral role in management decisions.

(2) Very Small or Small Business Consortiums

18. A consortium of small businesses or very small businesses is a conglomerate organization formed as a joint venture between or among mutually independent business firms, each of which individually satisfies the definition of very small or small business in § 80.1252(b)(1) or (2). Thus, each consortium member must disclose its gross revenues along with those of its affiliates, controlling interests, and controlling interests' affiliates. The Commission notes that although the gross revenues of the consortium members will not be aggregated for purposes of determining eligibility for very small or small business credits, this information must be provided to ensure that each individual consortium member qualifies for any bidding credit awarded to the consortium.

(3) Application Showing

19. Applicants should note that they will be required to file supporting documentation as Exhibit C to their FCC Form 175 short form applications to establish that they satisfy the eligibility requirements to qualify as a very small business or small business (or consortiums of very small or small businesses) for this auction. *See* 47 CFR 80.1252 and 1.2105. Specifically, for the VHF Public Coast Service auction, applicants applying to bid as very small or small businesses (or consortiums of very small or small businesses) will be required to file as Exhibit C to their FCC Form 175 short form applications, all information required under §§ 1.2105(a) and 1.2112(a). In addition, these applicants must disclose, separately and in the aggregate, the gross revenues for the preceding three years of each of the following: (1) The applicant; (2) the applicant's affiliates; (3) the applicant's attributable investors; and (4) the affiliates of the applicant's attributable investors. Certification that the average gross revenues for the preceding three years do not exceed the applicable limit is not sufficient. A statement of the total gross revenues for the preceding three years is also insufficient. The applicant must provide a schedule of gross revenues for each of the preceding three years, as well as a statement of total average gross revenues for the three-year period. If the applicant is applying as a consortium of very small or small businesses, each consortium member must provide this information.

B. Bidding Credits

20. Qualifying VHF Public Coast Service applicants are eligible for bidding credits. The size of a VHF Public Coast Service bidding credit depends on the average gross revenues for the preceding three years of the bidder and its controlling interests and affiliates:

—A bidder with average gross revenues not to exceed $15 million for the preceding three years receives a 25 percent discount on its winning bids for VHF Public Coast Service licenses; and,
—A bidder with average gross revenues not to exceed $3 million for the preceding three years receives a 35 percent discount on its winning bids for VHF Public Coast Service licenses.

21. Bidding credits are not cumulative: qualifying applicants receive either the 25 percent or the 35 percent bidding credit, but not both. The definitions of very small business and small business (or consortiums of very small or small businesses) (including calculation of gross annual revenue) are set forth in 47 CFR 80.1252(b)(1)(2) and (5).

22. VHF Public Coast Service bidders should note that unjust enrichment provisions apply to winning bidders that use bidding credits and subsequently assign or transfer control of their licenses to an entity not qualifying for the same levels of bidding credits. *See* 47 CFR 1.2111. Finally, VHF Public Coast Service bidders should also note that there are no installment payment plans in the VHF Public Coast Service auction.

VIII. Pre-Auction Procedures

A. Short-Form Application (FCC Form 175)—Due November 2, 1998

23. In order to be eligible to bid in this auction, applicants must first submit an FCC Form 175 application. This application must be received at the Commission by 5:30 p.m. ET on November 2, 1998. Late applications will not be accepted.

24. There is no application fee required when filing an FCC Form 175. However, to be eligible to bid, an applicant must submit an upfront payment.

(1) Filing Options

25. Auction applicants are strongly encouraged to file their applications electronically in order to take full advantage of the greater efficiencies and convenience of electronic filing, bidding and access to bidding data. For example, electronic filing enables the applicant to: (a) Receive interactive feedback while completing the application; and (b) receive immediate acknowledgment that the FCC Form 175 has been submitted for filing. In addition, only those applicants that file electronically will have the option of bidding electronically. However, manual filing (via hard copy) is also permitted. Please note that manual filers will not be

permitted to bid electronically and must bid telephonically, unless the FCC Form 175 is amended electronically prior to the resubmission date for incomplete or deficient applications. The following is a brief description of each filing method.

(a) Electronic Filing

26. Applicants wishing to file electronically may generally do so on a 24-hour basis beginning October 12, 1998. The window for filing the FCC Form 175 electronically will remain open until 5:30 p.m. ET on November 2, 1998. Applicants are strongly encouraged to file early, and applicants are responsible for allowing adequate time for filing their applications. Applicants may update or amend their electronic applications until the filing deadline of November 2, 1998. Applicants who file electronically must press the ''Submit Form 175'' button on the ''Submit'' page to successfully submit their FCC Form 175s. Information about installing and running the FCC Form 175 application software is included in Attachment D to this Public Notice. Technical support is available at (202) 414–1250 (voice) or (202) 414–1255 (text telephone (TTY)); the hours of service are 8 a.m.–6 p.m. ET, Monday–Friday, and 9 a.m.–5 p.m. ET, the weekend of October 31–November 1.

(b) Manual Filing

27. Auction applicants will be permitted to file their FCC Form 175 applications in hard copy. When any manually filed FCC Form 175 and 175–S exceeds five pages in length, the FCC requires that all attachments be submitted on a 3.5-inch diskette, or the entire application be filed in a microfiche version. Manual filers must use the August 1998 version of FCC Form 175 and FCC Form 175–S (if necessary). Earlier versions of the FCC Form 175 will not be accepted for filing. Copies of the FCC Form 175 can be obtained by calling the Commission's Forms Distribution Center at (800) 418–FORM ((800) 418–3676) (outside Washington, DC) or (202) 418–FORM ((202) 418–3676) (in the Washington area). Copies of the FCC Form 175 can also be obtained via Fax-On-Demand at (202) 418–0177 (the document retrieval number for the FCC Form 175 is 000175, and 001751 for the FCC Form 175–S), or downloaded from the Commission's World Wide Web site at http://www.fcc.gov/formpage.html. If applicants have any questions concerning availability of the FCC Form 175, they should call the FCC Records Management Branch at (202) 418–0210.

28. Manual applications may be submitted by hand delivery (including private ''overnight'' courier) or by U.S. mail (certified mail with return receipt recommended), addressed to: FCC Form 175 Filing, Auction No. 20, Federal Communications Commission, Wireless Telecommunications Bureau, Auctions & Industry Analysis Division, 1270 Fairfield Road, Gettysburg, PA 17325–7245. NOTE: Manual applications delivered to any other location will not be accepted.

(2) Completion of the FCC Form 175

29. Applicants should carefully review 47 CFR 1.2105, and must complete all items on the FCC Form 175 (and Form 175–S, if applicable). Instructions for completing the FCC Form 175 are in Attachment B of this Public Notice. Applicants who file electronically must press the ''Submit Form 175'' button on the ''Submit'' page to successfully submit their FCC Form 175.

30. Failure to sign a manually filed FCC Form 175 will result in dismissal of the application and loss of the ability to participate in the auction. Only original signatures will be accepted for manually filed applications.

(3) Electronic Review of FCC Form 175

The FCC Form 175 review software may be used to review and print applicants' FCC Form 175 applications. In other words, applicants that file electronically may review their own completed FCC Form 175. Applicants may also view other applicants' completed FCC Form 175s after the filing deadline has passed and the FCC has issued a public notice explaining the status of the applications. For this reason, it is important that applicants do not include their Taxpayer Identification Numbers (TINs) on any Exhibits to their FCC Form 175 applications. There is a fee of $2.30 per minute for accessing this system. *See* Attachment C for details.

B. Application Processing and Minor Corrections

32. After the deadline for filing the FCC Form 175 applications has passed, the FCC will process all timely applications to determine which are acceptable for filing, and subsequently will issue a public notice identifying: (1) Those applications accepted for filing (including FCC account numbers and the licenses for which they applied); (2) those applications rejected; and (3) those applications which have minor defects that may be corrected, and the deadline for filing such corrected applications.

33. As described more fully in the Commission's Rules, after the November 2, 1998, short form filing deadline, applicants may make only minor corrections to their FCC Form 175 applications. Applicants will not be permitted to make major modifications to their applications (e.g., change their license selections, change the certifying official or change control of the applicant). *See* 47 CFR 1.2105.

C. Upfront Payments—Due November 16, 1998

34. To be eligible to bid in the auction, applicants must submit an upfront payment accompanied by FCC Remittance Advice Form (FCC Form 159). Manual filers must use the July 1997 version of FCC Form 159. Electronic filers of the FCC Form 175 will have access to an electronic version of Form 159 after completing the FCC Form 175. Earlier versions of this form will not be accepted. Upfront payments must be received at Mellon Bank in Pittsburgh, PA, by 6 p.m. ET on November 16, 1998.

Please note that:

—All payments must be made in U.S. dollars.
—All payments must be made by wire transfer.
—Upfront payments for Auction No. 20 go to a lockbox number different from the ones used in previous FCC auctions, and different from the lockbox number to be used for post-auction payments.
—Failure to deliver the upfront payment by the November 16, 1998 deadline will result in dismissal of the application and disqualification from participation in the auction.

(1) Making Auction Payments by Wire Transfer

35. Wire transfer payments must be received by 6 p.m. ET on November 16, 1998. To avoid untimely payments, applicants should discuss arrangements (including bank closing schedules) with their banker several days before they plan to make the wire transfer, and allow sufficient time for the transfer to be initiated and completed before the deadline. Applicants will need the following information:

ABA Routing Number: 043000261.

Receiving Bank: Mellon Pittsburgh.

BNF: FCC/AC 911–6878.

OBI Field: (Skip one space between each information item) ''Auctionpay''.

Taxpayer Identification no. (Same as FCC Form 159, block 26).

Payment Type Code (Enter ''APWU'').

Fcc Code 1 (Same as FCC Form 159, block 23A: ''20'').

Payer Name (Same as FCC Form 159, block 2).

Lockbox No.: #358400

Note: The BNF and Lockbox number are specific to the upfront payments for this auction; do not use BNF or Lockbox numbers from previous auctions.

36. Applicants must fax a completed FCC Form 159 to Mellon Bank at (412) 236–5702 at least one hour before placing the order for the wire transfer (but on the same business day). On the cover sheet of the fax, write ''Wire Transfer—Auction Payment for Auction Event No. 20.'' Bidders may confirm receipt of their upfront payment at Mellon Bank by contacting their sending financial institution.

(2) FCC Form 159

37. Each upfront payment must be accompanied by a completed FCC Remittance Advice Form (FCC Form 159). Proper completion of FCC Form 159 is critical to ensuring correct credit of upfront payments. Detailed instructions for completion of FCC Form 159 are included in Attachment B to this Public Notice and will also be included in the Bidder Information Package.

(3) Amount of Upfront Payment

38. The following upfront payment amounts will apply in the VHF Public Coast Service auction. For Maritime VPC licenses, an upfront payment of $.0007 * MHz * Pop (rounded up to the next dollar and with a minimum upfront payment of $2,500); and for Inland VPC licenses, an upfront payment of $.0075 * MHz * Pop (rounded up to the next dollar and with a minimum upfront payment of $2,500).

39. Upfront payments are not attributed to specific licenses, but instead will be translated to bidding units to define the bidder's maximum bidding eligibility. The amount of the upfront payment will be translated into bidding units on a one-to-one basis, *e.g.*, a $25,000 upfront payment provides the bidder with 25,000 bidding units. The total upfront payment defines the maximum amount of bidding units on which the applicant will be permitted to bid (including standing high bids) in any single round of bidding. Thus, an applicant does not have to make an upfront payment to cover all licenses for which the applicant has applied, but rather to cover the maximum number of bidding units associated with licenses the bidder wishes to place bids on and hold high bids on at any given time. In order to be able to place a bid on a license, in addition to having specified that license on the FCC Form 175, a bidder must have an eligibility level that meets or exceeds the number of bidding units assigned to that license. At a minimum, an applicant's total upfront payment must be enough to establish eligibility to bid on at least one of the licenses applied for on the FCC Form 175, or else the applicant will not be eligible to participate in the auction.

40. In calculating the upfront payment amount, an applicant should determine the maximum number of bidding units it may wish to bid on in any single round, and submit an upfront payment covering that number of bidding units. Bidders should check their calculations carefully as there is no provision for increasing a bidder's maximum eligibility after the upfront payment deadline.

Note: An applicant may, on its FCC Form 175, apply for every license being offered, but its actual bidding in any round will be limited by the bidding units reflected in its upfront payment.

(4) Applicant's Wire Transfer Information for Purposes of Refunds

41. The Commission will use wire transfers for all Auction No. 20 refunds. To avoid delays in processing refunds, applicants should include wire transfer instructions with any refund request they file; they may also provide this information in advance by faxing it to the FCC Billings and Collections Branch, ATTN: Linwood Jenkins or Geoffrey Idika, at (202) 418–2843. Please include the following information:

Name of Bank
ABA Number
Account Number to Credit
Correspondent Bank (if applicable)
ABA Number
Account Number
Contact and Phone Number

(Applicants should also note that implementation of the Debt Collection Improvement Act of 1996 requires the FCC to obtain a Taxpayer Identification Number (TIN) before it can disburse refunds.)

D. Auction Registration

42. Approximately ten days before the auction, the FCC will issue a public notice announcing all qualified bidders for the auction. Qualified bidders are those applicants whose FCC Form 175 applications have been accepted for filing and that have timely submitted upfront payments sufficient to make them eligible to bid on at least one of the licenses for which they applied.

43. All qualified bidders are automatically registered for the auction. Registration materials will be distributed prior to the auction by two separate overnight mailings, each containing part of the confidential identification codes required to place bids. These mailings will be sent only to the contact person at the applicant address listed in the FCC Form 175.

44. Applicants that do not receive both registration mailings will not be able to submit bids. Therefore, any qualified applicant that has not received both mailings by noon on Wednesday, November 25, 1998 should contact the FCC National Call Center at (888) CALL–FCC ((888) 225–5322, press option #2 at the prompt). Receipt of both registration mailings is critical to participating in the auction and each applicant is responsible for ensuring it has received all of the registration material. Qualified bidders should note that lost login codes, passwords or bidder identification numbers can be replaced only by appearing in person at the FCC Auction Headquarters located at 2 Massachusetts Avenue, NE, Washington, DC 20002. Only an authorized representative or certifying official, as designated on an applicant's FCC Form 175, may appear in person with two forms of identification (one of which must be a photo identification) in order to receive replacement codes.

E. Remote Electronic Bidding Software

45. Qualified bidders that file or amend the FCC Form 175 electronically are allowed to bid electronically, but must purchase remote electronic bidding software for $175.00 by November 17, 1998. (Auction software is tailored to a specific auction, so software from prior auctions will not work for Auction No. 20.) A software order form is included in the Bidder Information Package.

F. Auction Seminar

46. On October 20, 1998, the FCC will sponsor a seminar for the VHF Public Coast Service auction in Washington, DC. The seminar will provide attendees with information about pre-auction procedures, conduct of the auction, FCC remote bidding software, and the VHF Public Coast service and auction rules.

47. To register, complete the registration form to be included in the upcoming Bidder Information Package. The registration form will include details about the time and location of the seminar. Registrations are accepted on a first-come, first-served basis.

G. Mock Auction

48. All applicants whose FCC Form 175 and 175–S have been accepted for filing will be eligible to participate in a mock auction beginning December 1, 1998. The mock auction will enable applicants to become familiar with the

electronic software prior to the auction. Free demonstration software will be available for use in the mock auction. Participation by all bidders is strongly recommended. Details will be announced by public notice.

IX. Auction Event

49. The first round of the auction will begin on December 3, 1998. The initial round schedule will be announced in a Public Notice listing the qualified bidders, to be released approximately 10 days before the start of the auction.

A. Auction Structure

(1) Simultaneous Multiple Round Auction

50. The 42 VHF Public Coast Service licenses, including Maritime and Inland VPC licenses, will be awarded through a single, simultaneous multiple round auction. Unless otherwise announced, bids will be accepted on all licenses in each auction round.

(2) Maximum Eligibility and Activity Rules

51. For the VHF Public Coast Service auction, the amount of the upfront payment submitted by a bidder determines the initial maximum eligibility (in bidding units) for each bidder. Upfront payments are not attributed to specific licenses, but instead will be translated into bidding units to define a bidder's initial maximum eligibility. The total upfront payment defines the maximum number of bidding units on which the applicant will initially be permitted to bid. The Commission notes that there is no provision for increasing a bidder's maximum eligibility during the course of an auction.

52. In order to ensure that the auction closes within a reasonable period of time, an activity rule requires bidders to bid actively throughout the auction, rather than wait until the end before participating. Bidders are required to be active on a specific percentage of their maximum eligibility during each round of the auction.

53. A bidder is considered active on a license in the current round if it is either the high bidder at the end of the previous bidding round and does not withdraw the high bid in the current round, or if it submits an acceptable bid in the current round. A bidder's activity level in a round is the sum of the bidding units associated with licenses on which the bidder is active. The minimum required activity level is expressed as a percentage of the bidder's maximum bidding eligibility, and increases as the auction progresses.

(3) Activity Rule Waivers and Reducing Eligibility

54. Each bidder will be provided five activity rule waivers that may be used in any round during the course of the auction. Use of an activity rule waiver preserves the bidder's current bidding eligibility despite the bidder's activity in the current round being below the required minimum level. An activity rule waiver applies to an entire round of bidding and not to a particular license.

55. The FCC auction system assumes that bidders with insufficient activity would prefer to use an activity rule waiver (if available) rather than lose bidding eligibility. Therefore, the system will automatically apply a waiver (known as an ''automatic waiver'') at the end of any round where a bidder's activity level is below the minimum required unless: (1) There are no activity rule waivers available; or (2) the bidder overrides the automatic application of a waiver by reducing eligibility, thereby meeting the minimum requirements.

56. A bidder with insufficient activity that wants to reduce its bidding eligibility rather than use an activity rule waiver must affirmatively override the automatic waiver mechanism during the round by using the reduce eligibility function in the software. In this case, the bidder's eligibility is permanently reduced to bring the bidder into compliance with the activity rules. Once eligibility has been reduced, a bidder will not be permitted to regain its lost bidding eligibility.

57. Finally, a bidder may proactively use an activity rule waiver as a means to keep the auction open without placing a bid. If a bidder submits a proactive waiver (using the proactive waiver function in the bidding software) during a round in which no bids are submitted, the auction will remain open and the bidder's eligibility will be preserved. An automatic waiver invoked in a round in which there are no new valid bids or withdrawals will not keep the auction open.

(4) Auction Stages

58. The VHF Public Coast Service auction will be composed of three stages, each defined by an increasing activity rule. Below are the proposed activity levels for each stage of the auction. The FCC reserves the discretion to further alter the activity percentages before and/or during the auction.

59. Stage One: In each round of the first stage of the auction, a bidder desiring to maintain its current eligibility is required to be active on licenses encompassing at least 80 percent of its current bidding eligibility. Failure to maintain the requisite activity level will result in a reduction in the bidder's bidding eligibility in the next round of bidding (unless an activity rule waiver is used). During Stage One, reduced eligibility for the next round will be calculated by multiplying the current round activity by five-fourths ($5/4$).

60. Stage Two: In each round of the second stage, a bidder desiring to maintain its current eligibility is required to be active on 90 percent of its current bidding eligibility. During Stage Two, reduced eligibility for the next round will be calculated by multiplying the current round activity by ten-ninths ($10/9$).

61. Stage Three: In each round of the third stage, a bidder desiring to maintain its current eligibility is required to be active on 98 percent of its current bidding eligibility. In this final stage, reduced eligibility for the next round will be calculated by multiplying the current round activity by fifty-fortyninths ($50/49$). CAUTION: Since activity requirements increase in each auction stage, bidders must carefully check their current activity during the bidding round of the first round following a stage transition. This is especially critical for bidders that have standing high bids and do not plan to submit new bids. In past auctions, some bidders have inadvertently lost bidding eligibility or used an activity rule waiver because they did not reverify their activity status at stage transitions. Bidders may check their activity against the required minimum activity level by using the bidding software's bidding module.

(5) Stage Transitions

62. The auction will start in Stage One. Under the FCC's general guidelines it will advance to the next stage (i.e., from Stage One to Stage Two, and from Stage Two to Stage Three) when, in each of three consecutive rounds of bidding, the high bid has increased on 10 percent or less of the licenses being auctioned (as measured in bidding units). However, the Bureau will retain the discretion to regulate the pace of the auction by announcement. This determination will be based on a variety of measures of bidder activity, including, but not limited to, the auction activity level, the percentages of licenses (as measured in bidding units) on which there are new bids, the number of new bids, and the percentage increase in revenue.

(6) Auction Stopping Rules

63. Barring extraordinary circumstances, bidding will remain open on all licenses until bidding stops on every license. Thus, the auction will close for all licenses when one round passes during which no bidder submits a new acceptable bid on any license, applies a proactive waiver, or withdraws a previous high bid.

64. The Bureau retains the discretion, however, to keep an auction open even if no new acceptable bids or proactive waivers are submitted, and no previous high bids are withdrawn. In this event, the effect will be the same as if a bidder had submitted a proactive waiver. Thus, the activity rule will apply as usual, and a bidder with insufficient activity will either lose bidding eligibility or use an activity rule waiver (if it has any left).

65. Further, in its discretion, the Bureau reserves the right to declare that the auction will end after a specified number of additional rounds (''special stopping rule''). If the FCC invokes this special stopping rule, it will accept bids in the final round(s) only for licenses on which the high bid increased in at least one of the preceding specified number of rounds. The FCC intends to exercise this option only in extreme circumstances, such as where the auction is proceeding very slowly, where there is minimal overall bidding activity, or where it appears likely that the auction will not close within a reasonable period of time. Before exercising this option, the FCC is likely to attempt to increase the pace of the auction by, for example, moving the auction into the next stage (where bidders would be required to maintain a higher level of bidding activity), increasing the number of bidding rounds per day, and/or increasing the amount of the minimum bid increments for the limited number of licenses where there is still a high level of bidding activity.

(7) Auction Delay, Suspension, or Cancellation

66. By public notice or by announcement during the auction, the Bureau may delay, suspend or cancel the auction in the event of natural disaster, technical obstacle, evidence of an auction security breach, unlawful bidding activity, administrative or weather necessity, or for any other reason that affects the fair and competitive conduct of competitive bidding. In such cases, the Bureau, in its sole discretion, may elect to: resume the auction starting from the beginning of the current round; resume the auction starting from some previous round; or cancel the auction in its entirety. Network interruption may cause the Bureau to delay or suspend the auction. The Commission emphasizes that exercise of this authority is solely within the discretion of the Bureau, and its use is not intended to be a substitute for situations in which bidders may wish to apply their activity rule waivers.

B. Bidding Procedures

(1) Round Structure

67. The initial bidding schedule will be announced by public notice at least one week before the start of the auction, and will be included in the registration mailings. The round structure for each bidding round contains a single bidding round followed by the release of the round results.

68. The FCC has discretion to change the bidding schedule in order to foster an auction pace that reasonably balances speed with the bidders' need to study round results and adjust their bidding strategies. The FCC may increase or decrease the amount of time for the bidding rounds and review periods, or the number of rounds per day, depending upon the bidding activity level and other factors.

(2) Reserve Price or Minimum Opening Bid

69. The Commission adopts minimum opening bids for each of the licenses in the VHF Public Coast Service auction that are reducible at the discretion of the Bureau. During the course of the auction, the Bureau will not entertain any bidder requests to reduce the minimum opening bid on specific licenses. The formulae for calculating minimum opening bids is as follows:

1. Maritime VPC Licenses: $.001 * MHz * Pop (rounded up to the next dollar) with a minimum of no less than $2,500 per license.
2. Inland VPC Licenses: $.011 * MHz * Pop (rounded up to the next dollar) with a minimum of no less than $2,500 per license.

(3) Minimum Accepted Bids

70. Once there is a standing high bid on a license, a bid increment will be applied to that license to establish a minimum acceptable bid for the following round. For the VHF Public Coast Service auction, the Commission will utilize, as described immediately below, an exponential smoothing methodology to calculate minimum bid increments. The Bureau retains the discretion to change the minimum bid increment if it determines that circumstances so dictate. The exponential smoothing methodology has been used in previous auctions.

Exponential Smoothing

71. The exponential smoothing formula calculates the bid increment based on a weighted average of the activity received on each license in the current and all previous rounds. This methodology will tailor the bid increment for each license based on activity, rather than setting a global increment for all licenses. For every license that receives a bid, the bid increment for the next round for that license will be established as a percentage increment that is determined using the exponential smoothing formula.

72. Using exponential smoothing, the calculation of the percentage bid increment for each license will be based on an activity index, which is calculated as the weighted average of the current activity and the activity index from the previous round. The activity index at the start of the auction (round 0) will be set at 0. The current activity index is equal to a weighting factor times the number of new bids received on the license in the current bidding period plus one minus the weighting factor times the activity index from the previous round. The activity index is then used to calculate a percentage increment by multiplying a minimum percentage increment by one plus the activity index with that result being subject to a maximum percentage increment. The Commission will initially set the weighting factor at 0.5, the minimum percentage increment at 0.1, and the maximum percentage increment at 0.2. Equations

$A_i=(C * B_i) + ((1–C) * A_{i-1})$

I_i=smaller of $((1 + A_i) * N)$ and M

Where,

A_i=activity index for the current round (round i)

C=activity weight factor

B_i=number of bids in the current round (round i)

A_{i-1}=activity index from previous round (round i-1), A_0 is 0

I_i=percentage bid increment for the current round (round i)

N=minimum percentage increment

M=maximum percentage increment

Under the exponential smoothing methodology, once a bid has been received on a license, the minimum acceptable bid for that license in the following round will be the new high bid plus the dollar amount associated with the percentage increment (variable I_i from above times the high bid). This result will be rounded to the nearest thousand if it is over 10,000 or to the nearest hundred if it is under 10,000.

Examples

License 1

C=0.5, N=0.1, M=0.2

Round 1 (2 New Bids, High Bid = $1,000,000)

1. Calculation of percentage increment using exponential smoothing:
   A_1=(0.5 * 2) + (0.5 * 0)=1
   The smaller of I_1=(1 + 1) * 0.1=0.2 or 0.2 (the maximum percentage increment)
2. Minimum bid increment using the percentage increment (I_1 from above) 0.2 * $1,000,000=$200,000
3. Minimum acceptable bid for round 2=1,200,000

Round 2 (3 New Bids, High Bid = $2,000,000)

1. Calculation of percentage increment using exponential smoothing:
   A_2=(0.5 * 3) + (0.5 * 1)=2
   The smaller of I_2=(1 + 2) * 0.1=0.3 or 0.2 (the maximum percentage increment)
2. Minimum bid increment using the percentage increment is (I_2 from above) 0.2 * $2,000,000=$400,000
3. Minimum acceptable bid for round 3 = $2,400,000

Round 3 (1 New Bid, High Bid = $2,400,000)

1. Calculation of percentage increment using exponential smoothing:
   A_3=(0.5 * 1) + (0.5 * 2)=1.5
   The smaller of I_3=(1 + 1.5) * 0.1=0.25 or 0.2 (the maximum percentage increment)
2. Minimum bid increment using the percentage increment (I_3 from above) 0.2 * $2,400,000=$480,000
3. Minimum acceptable bid for round 4 = $2,880,000

(4) High Bids

73. Each bid will be date-and time-stamped when it is entered into the computer system. In the event of tie bids, the Commission will identify the high bidder on the basis of the order in which bids are received by the Commission, starting with the earliest bid. The bidding software allows bidders to make multiple submissions in a round. As each bid is individually date and time-stamped according to when it was submitted, bids submitted by a bidder earlier in a round will have an earlier date-and time-stamp than bids submitted later in a round.

(5) Bidding

74. During a bidding round, a bidder may submit bids for as many licenses for which it is eligible, as well as withdraw high bids from previous bidding rounds, remove bids placed in the same bidding round, or permanently reduce eligibility. Bidders also have the option of making multiple submissions and withdrawals in each bidding round. If a bidder submits multiple bids for a single license in the same round, the system takes the last bid entered as that bidder's bid for the round, and the date-and time-stamp of that bid reflect the latest time the bid was submitted.

75. Please note that all bidding will take place either through the automated bidding software or by telephonic bidding. (Telephonic bid assistants are required to use a script when handling bids placed by telephone. Telephonic bidders are therefore reminded to allow sufficient time to bid, by placing their calls well in advance of the close of a round, because four to five minutes are necessary to complete a bid submission.) There will be no on-site bidding during Auction No. 20.

76. A bidder's ability to bid on specific licenses in the first round of the auction is determined by two factors: (1) the licenses applied for on FCC Form 175; and (2) the upfront payment amount deposited. The bid submission screens will be tailored for each bidder to include only those licenses for which the bidder applied on its FCC Form 175. A bidder also has the option to further tailor its bid submission screens to call up specified groups of licenses.

77. The bidding software requires each bidder to login to the FCC auction system during the bidding round using the FCC account number, bidder identification number, and the confidential security codes provided in the registration materials. Bidders are encouraged to download and print bid confirmations after they submit their bids.

78. The bid entry screen of the Automated Auction System software for the VHF Public Coast Service auction allows bidders to place multiple increment bids which will let bidders increase high bids from one to nine bid increments. A single bid increment is defined as the difference between the standing high bid and the minimum acceptable bid for a license. To place a bid on a license, the bidder must enter a whole number between 1 and 9 in the bid increment multiplier (Bid Mult) field. This value will determine the amount of the bid (Amount Bid) by multiplying the bid increment multiplier by the bid increment and adding the result to the high bid amount according to the following formula:

Amount Bid = High Bid + (Bid Mult * Bid Increment)

Thus, bidders may place a bid that exceeds the standing high bid by between one and nine times the bid increment. For example, to bid the minimum acceptable bid, which is equal to one bid increment, a bidder will enter ''1'' in the bid increment multiplier column and press submit.

79. For any license on which the FCC is designated as the high bidder (i.e., a license that has not yet received a bid in the auction or where the high bid was withdrawn and a new bid has not yet been placed), bidders will be limited to bidding only the minimum acceptable bid. In both of these cases no increment exists for the licenses, and bidders should enter ''1'' in the Bid Mult field. Note that any whole number between 1 and 9 entered in the multiplier column will result in a bid value at the minimum acceptable bid amount. Finally, bidders are cautioned in entering numbers in the Bid Mult field because, as explained in the following section, a high bidder that withdraws its standing high bid from a previous round, even if mistakenly or erroneously made, is subject to bid withdrawal payments.

(6) Bid Removal and Bid Withdrawal

80. Before the close of a bidding round, a bidder has the option of removing any bids placed in that round. By using the remove bid function in the software, a bidder may effectively ''unsubmit'' any bid placed within that round. A bidder removing a bid placed in the same round is not subject to withdrawal payments. Removing a bid will affect a bidder's activity for the round in which it is removed. This procedure will enhance bidder flexibility and, the Commission believes, may serve to expedite the course of the auction.

81. Once a round closes, a bidder may no longer remove a bid. However, in the next round, a bidder may withdraw standing high bids from previous rounds using the withdraw bid function (assuming that the bidder has not exhausted its withdrawal allowance). A high bidder that withdraws its standing high bid from a previous round is subject to the bid withdrawal payments specified in 47 CFR 1.2104(g) and 1.2109.

82. In previous auctions, the Commission detected bidder conduct that, arguably, may have constituted strategic bidding through the use of bid withdrawals. While the Commission continues to recognize the important role that bid withdrawals play in an auction, i.e., reducing risk associated with efforts to secure various geographic area licenses in combination, the

Commission concludes that, for the VHF Public Coast Service auction, adoption of a limit on their use to two rounds is the most appropriate outcome. By doing so the Commission believes it strikes a reasonable compromise that will allow bidders to use withdrawals. The Commission's decision on this issue is based upon its experience in prior auctions, particularly the PCS D, E and F block auction, 800 MHz SIR auction, and LADS auction, and is in no way a reflection of its view regarding the likelihood of any speculation or ''gaming'' in the VHF Public Coast Service auction.

83. The Bureau will therefore limit the number of rounds in which bidders may place withdrawals to two rounds. These rounds will be at the bidder's discretion and there will be no limit on the number of bids that may be withdrawn in either of these rounds. Withdrawals will still be subject to the bid withdrawal payments specified in 47 CFR 1.2104(g), and 1.2109. Bidders should note that abuse of the Commission's bid withdrawal procedures could result in the denial of the ability to bid on a market.

84. If a high bid is withdrawn, the license will be offered in the next round at the second highest bid price, which may be less than, or equal to, in the case of tie bids, the amount of the withdrawn bid, without any bid increment. The FCC will serve as a ''place holder'' on the license until a new acceptable bid is submitted on that license.

85. Generally, a bidder that withdraws a standing high bid during the course of an auction will be subject to a payment equal to the lower of: (1) The difference between the net withdrawn bid and the subsequent net winning bid; or (2) the difference between the gross withdrawn bid and the subsequent gross winning bid for that license. See 47 CFR 1.2104(g), and 1.2109. No withdrawal payment will be assessed if the subsequent winning bid exceeds the withdrawn bid.

(7) Round Results

86. The bids placed during a round are not published until the conclusion of that bidding period. After a round closes, the FCC will compile reports of all bids placed, bids withdrawn, current high bids, new minimum accepted bids, and bidder eligibility status (bidding eligibility and activity rule waivers), and post the reports for public access.

87. Reports reflecting bidders' identities and bidder identification numbers for Auction No. 20 will be available before and during the auction. Thus, bidders will know in advance the identities of the bidders against which they are bidding.

(8) Auction Announcements

88. The FCC will use auction announcements to announce items such as schedule changes and stage transitions. All FCC auction announcements will be available on the FCC remote electronic bidding system, as well as the Internet and the FCC Bulletin Board System.

(9) Other Matters

89. After the short-form filing deadline, applicants may make only minor changes to their FCC Form 175 applications. For example, permissible minor changes include deletion and addition of authorized bidders (to a maximum of three) and revision of exhibits. Filers should make these changes on-line, and submit a letter to Amy Zoslov, Chief, Auctions and Industry Analysis Division, Wireless Telecommunications Bureau, Federal Communications Commission, 2025 M Street, NW., Room 5202, Washington, DC 20554 (and mail a separate copy to Anne Napoli, Auctions and Industry Analysis Division), briefly summarizing the changes. Questions about other changes should be directed to Anne Napoli of the FCC Auctions and Industry Analysis Division at (202) 418–0660.

X. Post-Auction Procedures

A. Down Payments and Withdrawn Bid Payments

90. After bidding has ended, the Commission will issue a public notice declaring the auction closed, identifying the winning bids and bidders for each license, and listing withdrawn bid payments due.

91. Within ten business days after release of the auction closing notice, each winning bidder must submit sufficient funds (in addition to its upfront payment) to bring its total amount of money on deposit with the Government to 20 percent of its net winning bids (actual bids less any applicable bidding credits). See 47 CFR 1.2107(b). In addition, by the same deadline all bidders must pay any withdrawn bid amounts due under 47 CFR 1.2104(g). Upfront payments are applied first to satisfy any withdrawn bid liability, before being applied toward down payments.

B. Long-Form Application

92. Within ten business days after release of the auction closing notice, winning bidders must submit a properly completed long-form application and required exhibits for each VHF Public Coast Service license won through the auction. Winning bidders that are small businesses or very small businesses must include an exhibit demonstrating their eligibility for bidding credits. See 47 CFR 1.2112(b). Further filing instructions will be provided to auction winners at the close of the auction.

C. Default and Disqualification

93. Any high bidder that defaults or is disqualified after the close of the auction (i.e., fails to remit the required down payment within the prescribed period of time, fails to submit a timely long-form application, fails to make full payment, or is otherwise disqualified) will be subject to the payments described in 47 CFR 1.2104(g)(2). In such event the Commission may re-auction the license or offer it to the next highest bidders (in descending order) at their final bids. *See* 47 CFR 1.2109(b) and (c). In addition, if a default or disqualification involves gross misconduct, misrepresentation, or bad faith by an applicant, the Commission may declare the applicant and its principals ineligible to bid in future auctions, and may take any other action that it deems necessary, including institution of proceedings to revoke any existing licenses held by the applicant. *See* 47 CFR 1.2109(d).

D. Refund of Remaining Upfront Payment Balance

94. All applicants that submitted upfront payments but were not winning bidders for a VHF Public Coast Service license may be entitled to a refund of their remaining upfront payment balance after the conclusion of the auction. No refund will be made unless there are excess funds on deposit from that applicant after any applicable bid withdrawal payments have been paid.

95. Bidders that drop out of the auction completely may be eligible for a refund of their upfront payments before the close of the auction. However, bidders that reduce their eligibility and remain in the auction are not eligible for partial refunds of upfront payments until the close of the auction. Qualified bidders that have exhausted all of their activity rule waivers, have no remaining bidding eligibility, and have not withdrawn a high bid during the auction must submit a written refund request which includes wire transfer instructions, a Taxpayer Identification Number (''TIN''), and a copy of their bidding eligibility screen print, to: Federal Communications Commission, Billings and Collections Branch, Attn: Regina Dorsey or Linwood Jenkins, 1919 M Street, NW., Room 452, Washington, D.C. 20554.

96. Bidders can also fax their request to the Billings and Collections Branch at (202) 418–2843. Once the request has been approved, a refund will be sent to the address provided on the FCC Form 159. Refund processing generally takes up to two weeks to complete. Questions about refunds should be directed to Linwood Jenkins or Geoffrey Idika at (202) 418–1995.

Federal Communications Commission.

Amy J. Zoslov,

Chief, Auctions and Industry Analysis Division, Wireless Telecommunications Bureau.

[FR Doc. 98–26407 Filed 10–1–98; 8:45 am]

BILLING CODE 6712–01–P

FEDERAL EMERGENCY MANAGEMENT AGENCY

Agency Information Collection Activities: Submission for OMB Review; Comment Request

ACTION: Notice and request for comments.

SUMMARY: The Federal Emergency Management Agency has submitted the following proposed information collection to the Office of Management and Budget for review and clearance in accordance with the requirements of the Paperwork Reduction Act of 1995 (44 U.S.C. 3507).

Title: Emergency Management Institute Follow-up Evaluation Survey.

Type of Information Collection: Extension of a currently approved collection.

OMB Number: 3067–0273.

Abstract: The purpose of this survey is to determine the extent to which knowledge and/or skills participants obtained at EMI have been beneficial and applicable to the conduct of their present position or emergency management assignment. Feedback will be used in our ongoing course review and revision process. Information will also be used in responding to the Government Performance and Results Act (GPRA) requirements.

Affected Public: State, Local or Tribal Government.

Number of Respondents: 4,000.

Estimated Time per Respondent: 15 minutes.

Estimated Total Annual Burden Hours: 1,000.

Frequency of Response: Students are expected to complete a survey for each course.

Comments

Interested persons are invited to submit written comments on the proposed information collection to Victoria Wassmer, Desk Officer for the Federal Emergency Management Agency, Office of Information and Regulatory Affairs, Office of Management and Budget, Washington, DC 20503 within 30 days of the date of this notice.

FOR FURTHER INFORMATION CONTACT: Requests for additional information or copies of the information collection should be made to Muriel B. Anderson, FEMA Information Collections Officer, Federal Emergency Management Agency, 500 C Street, SW, Room 316, Washington, DC 20472. Telephone number (202) 646–2625. FAX number (202) 646–3524 or email muriel.anderson@fema.gov.

Dated: September 28, 1998.

Reginald Trujillo,

Director, Program Services Division, Operations Support Directorate.

[FR Doc. 98–26582 Filed 10–2–98; 8:45 am]

BILLING CODE 6718–02–P

FEDERAL EMERGENCY MANAGEMENT AGENCY

[FEMA–1246–DR]

Louisiana; Major Disaster and Related Determinations

AGENCY: Federal Emergency Management Agency (FEMA).

ACTION: Notice.

SUMMARY: This is a notice of the Presidential declaration of a major disaster for the State of Louisiana (FEMA–1246–DR), dated September 23, 1998, and related determinations.

EFFECTIVE DATE: September 23, 1998.

FOR FURTHER INFORMATION CONTACT: Madge Dale, Response and Recovery Directorate, Federal Emergency Management Agency, Washington, DC 20472, (202) 646–3260.

SUPPLEMENTARY INFORMATION: Notice is hereby given that, in a letter dated September 23, 1998, the President declared a major disaster under the authority of the Robert T. Stafford Disaster Relief and Emergency Assistance Act (42 U.S.C. 5121 *et seq.*), as follows:

I have determined that the damage in certain areas of the State of Louisiana, resulting from Tropical Storm Frances on September 9, 1998, and continuing, is of sufficient severity and magnitude to warrant a major disaster declaration under the Robert T. Stafford Disaster Relief and Emergency Assistance Act, P.L. 93–288, as amended (''the Stafford Act''). I, therefore, declare that such a major disaster exists in the State of Louisiana.

In order to provide Federal assistance, you are hereby authorized to allocate from funds available for these purposes, such amounts as you find necessary for Federal disaster assistance and administrative expenses.

You are authorized to provide Individual Assistance, Public Assistance, and Hazard Mitigation in the designated areas. Consistent with the requirement that Federal assistance be supplemental, any Federal funds provided under the Stafford Act for Public Assistance or Hazard Mitigation will be limited to 75 percent of the total eligible costs.

The time period prescribed for the implementation of section 310(a), Priority to Certain Applications for Public Facility and Public Housing Assistance, 42 U.S.C. 5153, shall be for a period not to exceed six months after the date of this declaration.

Notice is hereby given that pursuant to the authority vested in the Director of the Federal Emergency Management Agency under Executive Order 12148, I hereby appoint Graham Nance of the Federal Emergency Management Agency to act as the Federal Coordinating Officer for this declared disaster.

I do hereby determine the following areas of the State of Louisiana to have been affected adversely by this declared major disaster:

Cameron, Jefferson, Lafourche, and Terrebone Parishes for Individual Assistance.

Acadia, Cameron, Jefferson, and Lafourche Parishes for Public Assistance.

All counties within the State of Louisiana are eligible to apply for assistance under the Hazard Mitigation Grant Program.

(The following Catalog of Federal Domestic Assistance Numbers (CFDA) are to be used for reporting and drawing funds: 83.537, Community Disaster Loans; 83.538, Cora Brown Fund Program; 83.539, Crisis Counseling; 83.540, Disaster Legal Services Program; 83.541, Disaster Unemployment Assistance (DUA); 83.542, Fire Suppression Assistance; 83.543, Individual and Family Grant (IFG) Program; 83.544, Public Assistance Grants; 83.545, Disaster Housing Program; 83.548, Hazard Mitigation Grant Program.)

James L. Witt,

Director.

[FR Doc. 98–26584 Filed 10–2–98; 8:45 am]

BILLING CODE 6718–01–P

FEDERAL EMERGENCY MANAGEMENT AGENCY

[FEMA–1244–DR]

New York; Amendment No. 4 to Notice of a Major Disaster Declaration

AGENCY: Federal Emergency Management Agency (FEMA).

ACTION: Notice.

SUMMARY: This notice amends the notice of a major disaster for the State of New York, (FEMA–1244–DR), dated September 11, 1998, and related determinations.

EFFECTIVE DATE: September 25, 1998.

FOR FURTHER INFORMATION CONTACT: Madge Dale, Response and Recovery Directorate, Federal Emergency Management Agency, Washington, DC 20472, (202) 646–3260.

SUPPLEMENTARY INFORMATION: The notice of a major disaster for the State of New York, is hereby amended to include the following areas among those areas determined to have been adversely affected by the catastrophe declared a major disaster by the President in his declaration of September 11, 1998.

Nassau County for Public Assistance.

(The following Catalog of Federal Domestic Assistance Numbers (CFDA) are to be used for reporting and drawing funds: 83.537, Community Disaster Loans; 83.538, Cora Brown Fund Program; 83.539, Crisis Counseling; 83.540, Disaster Legal Services Program; 83.541, Disaster Unemployment Assistance (DUA); 83.542, Fire Suppression Assistance; 83.543, Individual and Family Grant (IFG) Program; 83.544, Public Assistance Grants; 83.545, Disaster Housing Program; 83.548, Hazard Mitigation Grant Program).

Lacy E. Suiter,

Executive Associate Director, Response and Recovery Directorate.

[FR Doc. 98–26585 Filed 10–2–98; 8:45 am]

BILLING CODE 6718–01–P

FEDERAL EMERGENCY MANAGEMENT AGENCY

[FEMA–3130–EM]

Commonwealth of Puerto Rico; Amendment No. 2 to Notice of an Emergency

AGENCY: Federal Emergency Management Agency (FEMA).

ACTION: Notice.

SUMMARY: This notice amends the notice of an emergency for the Commonwealth of Puerto Rico, (FEMA–3130–EM), dated September 21, 1998, and related determinations.

EFFECTIVE DATE: September 25, 1998.

FOR FURTHER INFORMATION CONTACT: Madge Dale, Response and Recovery Directorate, Federal Emergency Management Agency, Washington, DC 20472, (202) 646–3260.

SUPPLEMENTARY INFORMATION: The notice of an emergency for the Commonwealth of Puerto Rico, is hereby amended to extend direct Federal assistance at 100 percent Federal funding through September 28, 1998.

(The following Catalog of Federal Domestic Assistance Numbers (CFDA) are to be used for reporting and drawing funds: 83.537, Community Disaster Loans; 83.538, Cora Brown Fund Program; 83.539, Crisis Counseling; 83.540, Disaster Legal Services Program; 83.541, Disaster Unemployment Assistance (DUA); 83.542, Fire Suppression Assistance; 83.543, Individual and Family Grant (IFG) Program; 83.544, Public Assistance Grants; 83.545, Disaster Housing Program; 83.548, Hazard Mitigation Grant Program.)

Lacy E. Suiter,

Executive Associate Director, Response and Recovery Directorate.

[FR Doc. 98–26587 Filed 10–2–98; 8:45 am]

BILLING CODE 6718–02–P

FEDERAL EMERGENCY MANAGEMENT AGENCY

[FEMA–3130–EM]

Commonwealth of Puerto Rico; Amendment No. 1 to Notice of an Emergency

AGENCY: Federal Emergency Management Agency (FEMA).

ACTION: Notice.

SUMMARY: This notice amends the notice of an emergency for the Commonwealth of Puerto Rico, (FEMA–3130–EM), dated September 21, 1998, and related determinations.

EFFECTIVE DATE: September 23, 1998.

FOR FURTHER INFORMATION CONTACT: Madge Dale, Response and Recovery Directorate, Federal Emergency Management Agency, Washington, DC 20472, (202) 646–3260.

SUPPLEMENTARY INFORMATION: The notice of an emergency for the Commonwealth of Puerto Rico, is hereby amended to extend direct Federal assistance at 100 percent Federal funding through September 25, 1998 (an additional 24 hours).

(The following Catalog of Federal Domestic Assistance Numbers (CFDA) are to be used for reporting and drawing funds: 83.537, Community Disaster Loans; 83.538, Cora Brown Fund Program; 83.539, Crisis Counseling; 83.540, Disaster Legal Services Program; 83.541, Disaster Unemployment Assistance (DUA); 83.542, Fire Suppression Assistance; 83.543, Individual and Family Grant (IFG) Program; 83.544, Public Assistance Grants; 83.545, Disaster Housing Program; 83.548, Hazard Mitigation Grant Program.)

Dennis H. Kwiatkowski,

Deputy Associate Director, Response and Recovery Directorate.

[FR Doc. 98–26589 Filed 10–2–98; 8:45 am]

BILLING CODE 6718–02–P

FEDERAL EMERGENCY MANAGEMENT AGENCY

[FEMA–3130–EM]

Puerto Rico; Emergency and Related Determinations

AGENCY: Federal Emergency Management Agency (FEMA).

ACTION: Notice.

SUMMARY: This is a notice of the Presidential declaration of a emergency for the Commonwealth of Puerto Rico (FEMA–3130–DR), dated September 21, 1998, and related determinations.

EFFECTIVE DATE: September 21, 1998.

FOR FURTHER INFORMATION CONTACT: Madge Dale, Response and Recovery Directorate, Federal Emergency Management Agency, Washington, DC 20472, (202) 646–3260.

SUPPLEMENTARY INFORMATION: Notice is hereby given that, in a letter dated September 21, 1998, the President declared a emergency under the authority of the Robert T. Stafford Disaster Relief and Emergency Assistance Act (42 U.S.C. 5121 *et seq.*), as follows:

I have determined that the damage in the Commonwealth of Puerto Rico, resulting from Hurricane Georges on September 21, 1998, and continuing is of sufficient severity and magnitude to warrant an emergency declaration under the Robert T. Stafford Disaster Relief and Emergency Assistance Act, P.L. 93–288, as amended (''the Stafford Act''). I, therefore, declare that such an emergency exists in the Commonwealth of Puerto Rico.

You are authorized to coordinate all disaster relief efforts which have the purpose of alleviating the hardship and suffering caused by the emergency on the local population, and to provide appropriate assistance for required emergency measures, authorized under Title V of the Stafford Act to save lives, protect property and public health and safety, and lessen or avert the threat of a catastrophe in the designated areas. Specifically, you are authorized to identify, mobilize, and provide at your discretion, equipment and resources necessary to alleviate the impacts of the disaster. I have further authorized direct Federal assistance for the first 72 hours at 100 percent Federal funding, if deemed necessary. The time period for this direct Federal assistance funding may be extended by FEMA, if warranted.

In order to provide Federal assistance, you are hereby authorized to allocate from funds available for these purposes, such amounts as you find necessary for Federal disaster assistance and administrative expenses.

Notice is hereby given that pursuant to the authority vested in the Director of the Federal Emergency Management Agency under Executive Order 12148, I hereby appoint Jose A. Brovo of the

Federal Emergency Management Agency to act as the Federal Coordinating Officer for this declared emergency.

I do hereby determine the Commonwealth of Puerto Rico to have been affected adversely by this declared emergency:

The Commonwealth of Puerto Rico for assistance as follows: FEMA is authorized to provide appropriate assistance for required emergency measures, authorized under Title V of the Stafford Act to save lives, protect property and public health and safety, and lessen or avert the threat of a catastrophe in the Commonwealth of Puerto Rico. Specifically, FEMA is authorized to identify, mobilize, and provide at its discretion, equipment and resources necessary to alleviate the impacts of the disaster. Direct Federal assistance is authorized for the first 72 hours at 100 percent Federal funding.

(The following Catalog of Federal Domestic Assistance Numbers (CFDA) are to be used for reporting and drawing funds: 83.537, Community Disaster Loans; 83.538, Cora Brown Fund Program; 83.539, Crisis Counseling; 83.540, Disaster Legal Services Program; 83.541, Disaster Unemployment Assistance (DUA); 83.542, Fire Suppression Assistance; 83.543, Individual and Family Grant (IFG) Program; 83.544, Public Assistance Grants; 83.545, Disaster Housing Program; 83.548, Hazard Mitigation Grant Program.)

James L. Witt,

Director.

[FR Doc. 98–26590 Filed 10–2–98; 8:45 am]

BILLING CODE 6718–02–P

FEDERAL EMERGENCY MANAGEMENT AGENCY

[FEMA–1245–DR]

Texas; Amendment No. 2 to Notice of a Major Disaster Declaration

AGENCY: Federal Emergency Management Agency (FEMA).

ACTION: Notice.

SUMMARY: This notice amends the notice of a major disaster for the State of Texas, (FEMA–1245–DR), dated September 23, 1998, and related determinations.

EFFECTIVE DATE: September 28, 1998.

FOR FURTHER INFORMATION CONTACT: Madge Dale, Response and Recovery Directorate, Federal Emergency Management Agency, Washington, DC 20472, (202) 646–3260.

SUPPLEMENTARY INFORMATION: The notice of a major disaster for the State of Texas, is hereby amended to include Public Assistance in the following areas among those areas determined to have been adversely affected by the catastrophe declared a major disaster by the President in his declaration of September 23, 1998:

Brazoria, Galveston and Matagorda Counties for Public Assistance (already designated for Individual Assistance).

(The following Catalog of Federal Domestic Assistance Numbers (CFDA) are to be used for reporting and drawing funds: 83.537, Community Disaster Loans; 83.538, Cora Brown Fund Program; 83.539, Crisis Counseling; 83.540, Disaster Legal Services Program; 83.541, Disaster Unemployment Assistance (DUA); 83.542, Fire Suppression Assistance; 83.543, Individual and Family Grant (IFG) Program; 83.544, Public Assistance Grants; 83.545, Disaster Housing Program; 83.548, Hazard Mitigation Grant Program.)

Lacy E. Suiter,

Executive Associate Director, Response and Recovery Directorate.

[FR Doc. 98–26583 Filed 10–2–98; 8:45 am]

BILLING CODE 6718–02–P

FEDERAL EMERGENCY MANAGEMENT AGENCY

[FEMA–1245–DR]

Texas; Amendment No. 1 to Notice of a Major Disaster Declaration

AGENCY: Federal Emergency Management Agency (FEMA).

ACTION: Notice.

SUMMARY: This notice amends the notice of a major disaster for the State of Texas, (FEMA–1245–DR), dated September 23, 1998, and related determinations.

EFFECTIVE DATE: September 25, 1998.

FOR FURTHER INFORMATION CONTACT: Madge Dale, Response and Recovery Directorate, Federal Emergency Management Agency, Washington, DC 20472, (202) 646–3260.

SUPPLEMENTARY INFORMATION: The notice of a major disaster for the State of Texas, is hereby amended to include the following areas among those areas determined to have been adversely affected by the catastrophe declared a major disaster by the President in his declaration of September 23, 1998:

Matagorda County for Individual Assistance.

(The following Catalog of Federal Domestic Assistance Numbers (CFDA) are to be used for reporting and drawing funds: 83.537, Community Disaster Loans; 83.538, Cora Brown Fund Program; 83.539, Crisis Counseling; 83.540, Disaster Legal Services Program; 83.541, Disaster Unemployment Assistance (DUA); 83.542, Fire Suppression Assistance; 83.543, Individual and Family Grant (IFG) Program; 83.544, Public Assistance Grants; 83.545, Disaster Housing Program; 83.548, Hazard Mitigation Grant Program.)

Lacy E. Suiter,

Executive Associate Director, Response and Recovery Directorate.

[FR Doc. 98–26586 Filed 10–2–98; 8:45 am]

BILLING CODE 6718–02–P

FEDERAL EMERGENCY MANAGEMENT AGENCY

[FEMA–1239–DR]

Texas; Amendment No. 8 to Notice of a Major Disaster Declaration

AGENCY: Federal Emergency Management Agency (FEMA).

ACTION: Notice.

SUMMARY: This notice amends the notice of a major disaster for the State of Texas, (FEMA–1239–DR), dated August 26, 1998, and related determinations.

EFFECTIVE DATE: September 23, 1998.

FOR FURTHER INFORMATION CONTACT: Madge Dale, Response and Recovery Directorate, Federal Emergency Management Agency, Washington, DC 20472, (202) 646–3260.

SUPPLEMENTARY INFORMATION: The notice of a major disaster for the State of Texas, is hereby amended to include the following areas among those areas determined to have been adversely affected by the catastrophe declared a major disaster by the President in his declaration of August 26, 1998.

Kimble County for Public Assistance.

(The following Catalog of Federal Domestic Assistance Numbers (CFDA) are to be used for reporting and drawing funds: 83.537, Community Disaster Loans; 83.538, Cora Brown Fund Program; 83.539, Crisis Counseling; 83.540, Disaster Legal Services Program; 83.541, Disaster Unemployment Assistance (DUA); 83.542, Fire Suppression Assistance; 83.543, Individual and Family Grant (IFG) Program; 83.544, Public Assistance Grants; 83.545, Disaster Housing Program; 83.548, Hazard Mitigation Grant Program.)

Lacy E. Suiter,

Executive Associate Director, Response and Recovery Directorate.

[FR Doc. 98–26591 Filed 10–2–98; 8:45 am]

BILLING CODE 6718–02–P

FEDERAL EMERGENCY MANAGEMENT AGENCY

[FEMA–3129–EM]

U.S. Virgin Islands; Emergency and Related Determinations

AGENCY: Federal Emergency Management Agency (FEMA).

ACTION: Notice.

SUMMARY: This is a notice of the Presidential declaration of an emergency for the U.S. Virgin Islands (FEMA–3129–EM), dated September 21, 1998, and related determinations.

EFFECTIVE DATE: September 21, 1998.

FOR FURTHER INFORMATION CONTACT: Madge Dale, Response and Recovery Directorate, Federal Emergency Management Agency, Washington, DC 20472, (202) 646–3260.

SUPPLEMENTARY INFORMATION: Notice is hereby given that, in a letter dated September 21, 1998, the President declared an emergency under the authority of the Robert T. Stafford Disaster Relief and Emergency Assistance Act (42 U.S.C. 5121 *et seq.*), as follows:

I have determined that the damage in the U.S. Virgin Islands, resulting from Hurricane Georges on September 21, 1998, and continuing is of sufficient severity and magnitude to warrant an emergency declaration under the Robert T. Stafford Disaster Relief and Emergency Assistance Act, Pub. L. 93–288, as amended (''the Stafford Act''). I, therefore, declare that such an emergency exists in the U.S. Virgin Islands.

You are authorized to coordinate all disaster relief efforts which have the purpose of alleviating the hardship and suffering caused by the emergency on the local population, and to provide appropriate assistance for required emergency measures, authorized under Title V of the Stafford Act to save lives, protect property and public health and safety, and lessen or avert the threat of a catastrophe in the designated areas. Specifically, you are authorized to identify, mobilize, and provide at your discretion, equipment and resources necessary to alleviate the impacts of the disaster. I have further authorized direct Federal assistance for the first 72 hours at 100 percent Federal funding, if deemed necessary. The time period for this direct Federal assistance funding may be extended by FEMA, if warranted.

In order to provide Federal assistance, you are hereby authorized to allocate from funds available for these purposes, such amounts as you find necessary for Federal disaster assistance and administrative expenses.

Notice is hereby given that pursuant to the authority vested in the Director of the Federal Emergency Management Agency under Executive Order 12148, I hereby appoint Barbara T. Russell of the Federal Emergency Management Agency to act as the Federal Coordinating Officer for this declared emergency.

I do hereby determine the U.S. Virgin Islands to have been affected adversely by this declared emergency:

The U.S. Virgin Islands for assistance as follows: FEMA is authorized to provide appropriate assistance for required emergency measures, authorized under Title V of the Stafford Act to save lives, protect property and public health and safety, and lessen or avert the threat of a catastrophe in the U.S. Virgin Islands. Specifically, FEMA is authorized to identify, mobilize, and provide at its discretion, equipment and resources necessary to alleviate the impacts of the disaster. Direct Federal assistance is authorized for the first 72 hours at 100 percent Federal funding.

(The following Catalog of Federal Domestic Assistance Numbers (CFDA) are to be used for reporting and drawing funds: 83.537, Community Disaster Loans; 83.538, Cora Brown Fund Program; 83.539, Crisis Counseling; 83.540, Disaster Legal Services Program; 83.541, Disaster Unemployment Assistance (DUA); 83.542, Fire Suppression Assistance; 83.543, Individual and Family Grant (IFG) Program; 83.544, Public Assistance Grants; 83.545, Disaster Housing Program; 83.548, Hazard Mitigation Grant Program.)

James L. Witt,

Director.

[FR Doc. 98–26588 Filed 10–2–98; 8:45 am]

BILLING CODE 6718–02–P

FEDERAL EMERGENCY MANAGEMENT AGENCY

Open Meeting, Board of Visitors for the Emergency Management Institute

AGENCY: Federal Emergency Management Agency (FEMA).

ACTION: Notice of open meeting.

SUMMARY: In accordance with section 10(a)(2) of the Federal Advisory Committee Act, 5 U.S.C. App. 2, FEMA announces the following committee meeting.

NAME: Board of Visitors for the Emergency Management Institute.

DATES OF MEETING: October 26–27, 1998.

PLACE: Federal Emergency Management Agency, National Emergency Training Center, Emergency Management Institute, Conference Room, Building N, Room 408, Emmitsburg, Maryland 21727.

TIME: Monday, October 26, 1998, 8:30 a.m.–5:00 p.m.; Tuesday, October 27, 1998, 8:30 a.m.–5:00 p.m.

PROPOSED AGENDA: Status reports on training in response and recovery, planning, mitigation, and simulation and exercises; informal working sessions regarding EMI activities; expansion of the Independent Study program and EMI's Higher Education Program.

SUPPLEMENTARY INFORMATION: The meeting will be open to the public with approximately 10 seats available on a first-come, first-serve basis. Members of the general public who plan to attend the meeting should contact the Office of the Superintendent, Emergency Management Institute, 16825 South Seton Avenue, Emmitsburg, MD 21727, (301) 447–1286.

Minutes of the meeting will be prepared and will be available for public viewing in the Office of the Superintendent, Emergency Management Institute, Federal Emergency Management Agency, Building N, National Emergency Training Center, Emmitsburg, MD 21727. Copies of the minutes will be available upon request 30 days after the meeting.

Dated: September 15, 1998.

Kay C. Goss,

Associate Director, Preparedness, Training, and Exercises Directorate.

[FR Doc. 98–26581 Filed 10–2–98; 8:45 am]

BILLING CODE 6718–01–P

FEDERAL MARITIME COMMISSION

Notice of Agreement(s) Filed

The Commission hereby gives notice of the filing of the following agreement(s) under the Shipping Act of 1984.

Interested parties can review or obtain copies of agreements at the Washington, DC offices of the Commission, 800 North Capitol Street, NW, Room 962, Interested parties may submit comments on an agreement to the Secretary, Federal Maritime Commission, Washington, DC 20573, within 10 days of the date this notice appears in the **Federal Register**.

Agreement No.: 217–011634
Title: Australia-New Zealand Direct Line/APL Space Charter Agreement
Parties:
Australia-New Zealand Direct Line (''ANZDL'')
APL Co. Ltd. (''APL'')
Synopsis: The proposed agreement authorizes ANZDL to charter up to 100 TEUs of space each week from APL in the trade between United States ports, and U.S. points served via those ports, and ports and points in Australia and New Zealand.

Agreement No.: 207–011635
Title: The TMM/CP Ships Agreement
Parties:
Transportacion Maritima Mexicana, S.A. de C.V.
Transportacion Maritima Grancolombiana, S.A.
Tecomar Limited
Mexican Line Limited
CP Ships Holdings, Inc.
Lykes Lines Limited, LLC
Ivaran Lines Limited
Contship Containerlines Limited
TMC Lines Limited

Synopsis: The proposed Agreement would establish a joint venture among the parties which would operate vessel operating common carrier services in the trades between United States ports, and inland U.S. points, and ports and points in Europe, the Mediterranean, Mexico, Canada, India, Pakistan, Central and South America, the Caribbean, Africa and Southwest Asia.

Dated: September 29, 1998.

By order of the Federal Maritime Commission.

Joseph C. Polking,

Secretary.

[FR Doc. 98–26526 Filed 10–2–98; 8:45 am]

BILLING CODE 6730–01–M

FEDERAL RESERVE SYSTEM

Sunshine Act Meeting

AGENCY HOLDING THE MEETING: Board of Governors of the Federal Reserve System.

FEDERAL REGISTER CITATION OF PREVIOUS ANNOUNCEMENT: 63 FR 51579, September 28, 1998.

PREVIOUSLY ANNOUNCED TIME AND DATE OF THE MEETING: 10:00 a.m., Thursday, October 1, 1998.

CHANGES IN THE MEETING: The open meeting has been canceled, and the scheduled item was handled via notation voting.

CONTACT PERSON FOR MORE INFORMATION: Lynn S. Fox, Assistant to the Board; 202–452–3204.

SUPPLEMENTARY INFORMATION: You may call 202–452–3206 for a recorded announcement of this meeting; or you may contact the Board's Web site at http://www.federalreserve.gov for an electronic announcement. (The Web site also includes procedural and other information about the open meeting.)

Dated: October 1, 1998.

Robert deV. Frierson,

Associate Secretary of the Board.

[FR Doc. 98–26700 Filed 10–1–98; 10:27 am]

BILLING CODE 6210–01–P

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Food and Drug Administration

[Docket No. 96N–0512]

Hoechst Marion Roussel, Inc., and Baker Norton Pharmaceuticals, Inc.; Terfenadine; Withdrawal of Approval of Two New Drug Applications and One Abbreviated New Drug Application

AGENCY: Food and Drug Administration, HHS.

ACTION: Notice.

SUMMARY: The Food and Drug Administration (FDA) is withdrawing approval of two new drug applications (NDA's) and one abbreviated new drug application (ANDA) for drug products containing terfenadine. NDA 18–949 (Seldane) and NDA 19–664 (Seldane-D) are held by Hoechst Marion Roussel, Inc. (HMR), 10236 Marion Park Dr., Kansas City, MO 64134. ANDA 74–475 is held by Baker Norton Pharmaceuticals, Inc. (Baker Norton), 4400 Biscayne Blvd., Miami, FL 33137. The basis for the action is a finding that terfenadine is not shown to be safe for use in the treatment of seasonal allergic rhinitis. HMR and Baker Norton waived their opportunity for a hearing. No other party has requested a hearing.

EFFECTIVE DATE: NOVEMBER 4, 1998.

FOR FURTHER INFORMATION CONTACT: Andrea C. Masciale, Center for Drug Evaluation and Research (HFD–7), Food and Drug Administration, 5600 Fishers Lane, Rockville, MD 20857, 301–594–5648.

SUPPLEMENTARY INFORMATION: In a notice published in the **Federal Register** of January 14, 1997 (62 FR 1889), the Director of FDA's Center for Drug Evaluation and Research (the Director) offered an opportunity for a hearing on a proposal to issue an order under section 505(e) of the Federal Food, Drug, and Cosmetic Act (the act) (21 U.S.C. 355(e)) withdrawing approval of NDA 18–949 and NDA 19–664, and all amendments and supplements thereto, and under section 505(j) of the act, withdrawing approval of ANDA 74–475, and all amendments and supplements thereto. The Director based the proposed action on: (1) A finding that new evidence of clinical experience, not contained in NDA 18–949 and NDA 19–664 or not available to the Director until after the applications were approved, evaluated together with the evidence available to the Director when the applications were approved, demonstrates that terfenadine is not shown to be safe for use under the conditions of use that formed the basis upon which the applications were approved; and (2) a finding that ANDA 74–475 refers to NDA 18–949 as the listed drug. HMR requested a hearing on the proposed action by letter dated February 11, 1997, and Baker Norton requested a hearing by letter dated February 12, 1997. Subsequently, HMR and Baker Norton, by letters dated June 30, 1998, and July 9, 1998, respectively, withdrew their hearing requests and waived their opportunity for a hearing. No other party filed a request for a hearing within the 30 days following publication of the notice in the **Federal Register**.

Accordingly, for the reasons discussed in the notice, the Director, under section 505(e) of the act and under authority delegated to her (21 CFR 5.82), finds that new evidence of clinical experience not contained in the applications for Seldane and Seldane-D and not available at the time of approval, evaluated together with the evidence available at the time the applications were approved, shows that terfenadine is not shown to be safe for use under the conditions of use that formed the basis upon which the applications were approved (21 U.S.C. 355(e)(2)). Therefore, approval of NDA 18–949 and NDA 19–664, is hereby withdrawn, effective November 4, 1998. Furthermore, the Director finds that ANDA 74–475 refers to the drug that is the subject of NDA 18–949 (Seldane, 60-milligram terfenadine oral tablets). Therefore, under section 505(j) of the act, the approval of ANDA 74–475 is also withdrawn, effective November 4, 1998.

Under 21 CFR 314.161 and 314.162(a)(1), the products containing terfenadine named previously will be removed from the list of drug products with effective approvals published in FDA's publication entitled ''Approved Drug Products with Therapeutic Equivalence Evaluations.'' FDA will not approve or accept ANDA's that refer to these drug products.

Dated: September 14, 1998.

Janet Woodcock,

Director, Center for Drug Evaluation and Research.

[FR Doc. 98–26522 Filed 10–2–98; 8:45 am]

BILLING CODE 4160–01–F

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Food and Drug Administration

Circulatory System Devices Panel of the Medical Devices Advisory Committee; Notice of Meeting

AGENCY: Food and Drug Administration, HHS.

ACTION: Notice.

This notice announces a forthcoming meeting of a public advisory committee of the Food and Drug Administration (FDA).The meeting will be open to the public.

Name of Committee: Circulatory System Devices Panel of the Medical Devices Advisory Committee.

General Function of the Committee: To provide advice and recommendations to the agency on FDA's regulatory issues.

Date and Time: The meeting will be held on October 27, 1998, 8 a.m. to 5 p.m.

Location: Hilton Hotel, Salons C, D, and E, 620 Perry Pkwy., Gaithersburg, MD.

Contact Person: John E. Stuhlmuller, Center for Devices and Radiological Health (HFZ–450), Food and Drug Administration, 9200 Corporate Blvd., Rockville, MD 20850, 301–443–8243, ext. 157, or FDA Advisory Committee Information Line, 1–800–741–8138 (301–443–0572 in the Washington, DC area), code 12625. Please call the Information Line for up-to-date information on this meeting.

Agenda: The committee will discuss, make recommendations, and vote on a premarket approval application for a transmyocardial revascularization device.

Procedure: Interested persons may present data, information, or views, orally or in writing, on issues pending before the committee. Written submissions may be made to the contact person by October 16, 1998. Oral presentations from the public will be scheduled between approximately 8 a.m. and 8:30 a.m. Near the end of committee deliberations, a 30-minute open public hearing will be conducted for interested persons to address issues specific to the topics before the committee. Time allotted for each presentation may be limited. Those desiring to make formal oral presentations should notify the contact person before October 16, 1998, and submit a brief statement of the general nature of the evidence or arguments they wish to present, the names and addresses of proposed participants, and an indication of the approximate time requested to make their presentation.

Notice of this meeting is given under the Federal Advisory Committee Act (5 U.S.C. app. 2).

Dated: September 28, 1998.

Michael A. Friedman,

Deputy Commissioner for Operations.

[FR Doc. 98–26571 Filed 10–2–98; 8:45 am]

BILLING CODE 4160–01–F

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Food and Drug Administration

Ophthalmic Devices Panel of the Medical Devices Advisory Committee; Notice of Meeting

AGENCY: Food and Drug Administration, HHS.

ACTION: Notice.

This notice announces a forthcoming meeting of a public advisory committee of the Food and Drug Administration (FDA). At least one portion of the meeting will be closed to the public.

Name of Committee: Ophthalmic Devices Panel of the Medical Devices Advisory Committee.

General Function of the Committee: To provide advice and recommendations to the agency on FDA's regulatory issues.

Date and Time: The meeting will be held on October 22, 1998, 10:30 a.m. to 5:30 p.m., and October 23, 1998, 9 a.m. to 5 p.m.

Location: Holiday Inn Silver Spring, Lincoln Ballroom, 8777 Georgia Ave., Silver Spring, MD.

Contact Person: Sara M. Thornton, Center for Devices and Radiological Health (HFZ–460), Food and Drug Administration, 9200 Corporate Blvd., Rockville, MD 20850, 301–594–2053, or FDA Advisory Committee Information Line, 1–800–741–8138 (301–443–0572 in the Washington, DC area), code 12396. Please call the Information Line for up-to-date information on this meeting.

Agenda: On October 22, 1998, the committee will discuss issues related to the development of extensions to the guidance document for refractive surgical lasers, entitled ''Discussion Points for Expansion of the Checklist of Information Usually Submitted in an Investigational Device Exemption (IDE) Application for Refractive Surgery Lasers'' to include the clinical criteria for the determination of safety and effectiveness for photorefractive keratectomy (PRK) and laser in-situ keratomileusis (LASIK) for myopia and hyperopia with and without astigmatism, presbyopia, and other refractive indications. Single copies of the guidance document are available to the public by contacting the Division of Small Manufacturers Assistance, Center for Devices and Radiological Health, Food and Drug Administration, 5600 Fishers Lane, Rockville, MD 20857, 1–800–638–2041 or 301–443–6597 and requesting the document by shelf number 093, or by FAX 1–800–899–0381 or 301–827–0111 and requesting facts-on-demand number 2093, or on the Internet using the World Wide Web (WWW) (http://www.fda.gov/cdrh/ode/ed__op.html). On October 23, 1998, the committee will discuss issues related to the preliminary development of guidance for refractive implants (phakic intraocular lenses and corneal implants) to include clinical protocol design and development.

Procedure: On October 22, 1998, from 1:30 p.m. to 5:30 p.m., and on October 23, 1998, from 9 a.m. to 5 p.m., the meeting will be open to the public. Interested persons may present data, information, or views, orally or in writing, on issues pending before the committee. Written submissions may be made to the contact person by October 15, 1998. Oral presentations from the public will be scheduled between approximately 1:30 p.m. and 2 p.m. on October 22, 1998 and between approximately 9 a.m. and 9:30 a.m. on October 23, 1998. Time allotted for each presentation may be limited. Those desiring to make formal oral presentations should notify the contact person before October 15, 1998, and submit a brief statement of the general nature of the evidence or arguments they wish to present, the names and addresses of proposed participants, and an indication of the approximate time requested to make their presentation.

Closed Committee Deliberations: On October 22, 1998, from 10:30 a.m. to 1:30 p.m., the meeting will be closed to permit FDA to present to the committee trade secret and/or confidential commercial information (5 U.S.C. 552b(c)(4)) regarding pending issues and applications.

Notice of this meeting is given under the Federal Advisory Committee Act (5 U.S.C. app. 2).

Dated: September 24, 1998.

Michael A. Friedman,

Deputy Commissioner for Operations.

[FR Doc. 98–26572 Filed 10–2–98; 8:45 am]

BILLING CODE 4160–01–F

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Health Care Financing Administration

[HCFA–1039–N]

RIN 0938–AI87

Medicare Program; Hospice Wage Index

AGENCY: Health Care Financing Administration (HCFA), HHS.

ACTION: Notice.

SUMMARY: This notice announces the annual update to the hospice wage index as required by 42 CFR 418.306(c). This update is effective October 1, 1998. The wage index is used to reflect local differences in wage levels. The hospice wage index methodology and values are based on recommendations of a negotiated rulemaking advisory committee and were originally published in the **Federal Register** on August 8, 1997. This update is the second year of a 3-year transition period. The second transition year begins October 1, 1998 and ends September 30, 1999.

EFFECTIVE DATE: This notice is effective on October 1, 1998.

FOR FURTHER INFORMATION CONTACT: Carol Blackford, (410) 786–5909.

SUPPLEMENTARY INFORMATION:

I. Background

A. Statute and Regulations

Hospice Care is an approach to treatment that recognizes that the impending death of an individual warrants a change in the focus from curative care to palliative care (relief of pain and other uncomfortable symptoms). The goal of hospice care is to help terminally ill individuals continue life with minimal disruption to normal activities while remaining primarily in the home environment. A hospice uses an interdisciplinary approach to deliver medical, social, psychological, emotional, and spiritual services through use of a broad spectrum of professional and other caregivers, with the goal of making the individual as physically and emotionally comfortable as possible. Counseling and respite services are available to the family of the hospice patient. Hospice programs consider both the patient and the family as a unit of care.

Section 1861(dd) of the Social Security Act (the Act) provides for coverage of hospice care for terminally ill Medicare beneficiaries who elect to receive care from a participating hospice. The statutory authority for payment to hospices participating in the Medicare program is contained in section 1814(i) of the Act.

Our existing regulations under 42 CFR Part 418 (issued on December 16, 1983, effective for hospice services furnished on or after November 1, 1983) establish eligibility requirements and payment standards and procedures, define covered services, and delineate the conditions a hospice must meet to be approved for participation in the Medicare program. Subpart G of Part 418 provides for payment to hospices based on one of four prospectively determined rates for each day in which a qualified Medicare beneficiary is under the care of a hospice. The four rate categories are routine home care, continuous home care, inpatient respite care, and general inpatient care. Payment rates are established for each category.

The regulations at § 418.306(c), which require the rates to be adjusted by a wage index, were revised on August 8, 1997, through publication of a final rule in the **Federal Register** (62 FR 42860). This rule implemented a new methodology for calculating the hospice wage index that was based on the recommendations of a negotiated rulemaking committee. The committee reached consensus on a methodology and the resulting committee statement, describing that consensus, was included as an attachment to the August 8, 1997 final hospice wage index rule. The provisions of the final hospice wage index rule are as follows:

- The revised hospice wage index will be phased in over a 3-year transition period. For the first year of the transition period, a blended index was calculated by adding two-thirds of the 1983 index value for an area to one-third of the revised wage index value for that area. During the second year of the transition period, the calculation is similar, except that the blend is one-third of the 1983 index value and two-thirds of the revised wage index value for that area. During the third transition year the revised wage index will be fully implemented. The first transition year occurred October 1, 1997 through September 30, 1998.
- All hospice wage index values of 0.8 or greater are subject to a budget neutrality adjustment to ensure that Medicare does not pay any more in the aggregate than it would with the previous wage index. The budget neutrality adjustment is calculated by multiplying the hospice wage index for a given area by the budget neutrality adjustment factor. The budget neutrality adjustment is to be applied annually, both during and after the transition period.
- All hospice wage index values below 0.8 receive the greater of the following adjustments: the wage index floor, a 15 percent increase, subject to a maximum wage index value of 0.8; or, the budget neutrality adjustment.
- The wage index is to be updated annually, in the **Federal Register**, based on the most current available hospital wage data.
- Because the Virgin Islands is not an area designated under the Prospective Payment System for hospitals, and does not have a hospital wage index, the hospice wage index for the Virgin Islands will be calculated by gathering information from the hospital cost report and comparing hourly wages of the hospital located in the Virgin Islands to the national average, as described in step 9 of item III(A) (computation of the hospice wage index) in the proposed hospice wage index rule published in the **Federal Register** on September 4, 1996 (61 FR 46583).

Section 4442 of the Balanced Budget Act of 1997 requires payment for routine and continuous home care to be made based on the geographic location at which the service is furnished. The site of service provision, as it is commonly referred to, was effective October 1, 1997 and was implemented through a Program Memorandum issued in September of 1997. This notice does not address implementation of the site of service provision but merely takes this change into account when analyzing the impact of the annual hospice wage index update.

B. Update to the Hospice Wage Index

The second year of the 3-year transition period begins October 1, 1998 and ends September 30, 1999. In accordance with the agreement signed by HCFA and all other members of the Hospice Wage Index Negotiated Rulemaking Committee, we are using the most current HCFA hospital data available, including any changes to the definitions of MSAs, that allow us to publish this notice at least 4 months in advance of the October 1, 1998 effective date. We will be using the 1997 hospital area wage index. Updated wage index values have been calculated by adding one-third of the 1983 index value for each area to two-thirds of the new wage index value. All wage index values are adjusted by a budget neutrality factor of 1.04662 and are subject to the wage index floor adjustment, if applicable. All of the calculations described above have been completed by HCFA and are built into the wage index values

reflected in both Tables A and B below. At this time, there are no Medicare certified hospices located in the Virgin Islands. Therefore, a wage index value for the Virgin Islands has not been calculated.

C. Tables

TABLE A.—HOSPICE WAGE INDEX FOR URBAN AREAS

MSA code number	Urban area (constituent counties or county equivalents)	Wage index [1]
0040	Abilene, TX	0.9066
	Taylor, TX	
0060	Aguadilla, PR	0.5905
	Aguada, PR	
	Aguadilla, PR	
	Moca, PR	
0080	Akron, OH	1.0563
	Portage, OH	
	Summit, OH	
0120	Albany, GA	0.8629
	Dougherty, GA	
	Lee, GA	
0160	Albany-Schenectady-Troy, NY.	0.9030
	Albany, NY	
	Montgomery, NY	
	Rensselaer, NY	
	Saratoga, NY	
	Schenectady, NY	
	Schoharie, NY	
01606 ..	Albany-Schenectady-Troy, NY.	0.8958
	Schoharie, NY	
0200	Albuquerque, NM	0.9737
	Sandoval, NM	
	Valencia, NM	
02006 ..	Albuquerque, NM	1.0186
	Bernalillo, NM	
0220	Alexandria, LA	0.9091
	Rapides, LA	
0240	Allentown-Bethlehem-Easton, PA.	1.0707
	Carbon, PA	
	Lehigh, PA	
	Northampton, PA	
0280	Altoona, PA	0.9951
	Blair, PA	
0320	Amarillo, TX	0.9959
	Potter, TX	
	Randall, TX	
0380	Anchorage, AK	1.4074
	Anchorage, AK	
0440	Ann Arbor, MI	1.1528
	Lenawee, MI	
04406 ..	Ann Arbor, MI	1.2441
	Washtenaw, MI	
04407 ..	Ann Arbor, MI	1.2406
	Livingston, MI	
0450	Anniston, AL	0.8776
	Calhoun, AL	
0460	Appleton-Oshkosh-Neenah, WI.	0.9662
	Calumet, WI	
	Outagamie, WI	
	Winnebago, WI	
0470	Arecibo, PR	0.5905
	Arecibo, PR	
	Camuy, PR	
	Hatillo, PR	
0480	Asheville, NC	0.9296

TABLE A.—HOSPICE WAGE INDEX FOR URBAN AREAS—Continued

MSA code number	Urban area (constituent counties or county equivalents)	Wage index [1]
	Madison, NC	
04806 ..	Asheville, NC	0.9647
	Buncombe, NC	
0500	Athens, GA	0.9416
	Clarke, GA	
	Madison, GA	
	Oconee, GA	
0520	Atlanta, GA	1.0139
	Barrow, GA	
	Cherokee, GA	
	Clayton, GA	
	Cobb, GA	
	Coweta, GA	
	DeKalb, GA	
	Douglas, GA	
	Fayette, GA	
	Forsyth, GA	
	Fulton, GA	
	Gwinnett, GA	
	Henry, GA	
	Newton, GA	
	Paulding, GA	
	Rockdale, GA	
	Spalding, GA	
	Walton, GA	
05206 ..	Atlanta, GA	0.9820
	Bartow, GA	
	Carroll, GA	
	Pickens, GA	
0560	Atlantic-Cape May, NJ ..	1.1498
	Atlantic City, NJ	
	Cape May, NJ	
0600	Augusta-Aiken, GA–SC	0.9866
	Columbia, GA	
	McDuffie, GA	
	Richmond, GA	
	Aiken, SC	
06006 ..	Augusta-Aiken, GA–SC	0.9333
	Edgefield, SC	
0640	Austin-San Marcos, TX	0.9206
	Bastrop, TX	
	Caldwell, TX	
06406 ..	Austin-San Marcos, TX	1.0067
	Hays, TX	
	Travis, TX	
	Williamson, TX	
0680	Bakersfield, CA	1.1268
	Kern, CA	
0720	Baltimore, MD	1.0549
	Anne Arundel, MD	
	Baltimore, MD	
	Baltimore City, MD	
	Carroll, MD	
	Harford, MD	
	Howard, MD	
	Queen Anne's, MD	
0733	Bangor, ME	0.9847
	Penobscot, ME	
0743	Barnstable-Yarmouth, MA.	1.3359
	Barnstable, MA	
0760	Baton Rouge, LA	0.9398
	Ascension, LA	
	East Baton Rouge, LA	
	Livingston, LA	
	West Baton Rouge, LA	
0840	Beaumont-Port Arthur, TX.	0.9440
	Hardin, TX	

TABLE A.—HOSPICE WAGE INDEX FOR URBAN AREAS—Continued

MSA code number	Urban area (constituent counties or county equivalents)	Wage index [1]
	Jefferson, TX	
	Orange, TX	
0860	Bellingham, WA	1.1508
	Whatcom, WA	
0870	Benton Harbor, MI	0.9273
	Berrien, NJ	
0875	Bergen-Passaic, NJ	1.2072
	Bergen, NJ	
	Passaic, NJ	
0880	Billings, MT	1.0192
	Yellowstone, MT	
0920	Biloxi-Gulfport-Pascagoula, MS.	0.8910
	Hancock, MS	
	Harrison, MS	
09206 ..	Biloxi-Gulfport-Pascagoula, MS.	0.9409
	Jackson, MS	
0960	Binghamton, NY	0.9543
	Broome, NY	
	Tioga, NY	
1000	Birmingham, AL	0.9788
	Blount, AL	
	Jefferson, AL	
	St. Clair, AL	
	Shelby, AL	
1010	Bismarck, ND	0.8893
	Burleigh, ND	
	Morton, ND	
1020	Bloomington, IN	0.9559
	Monroe, IN	
1040	Bloomington-Normal, IL	0.9630
	McLean, IL	
1080	Boise City, ID	0.9320
	Canyon, ID	
10806 ..	Boise City, ID	0.9931
	Ada, ID	
1123	Boston-Worcester-Lawrence-Lowell-Brockton, MA–NH.	1.1805
	Essex, MA	
	Middlesex, MA	
	Norfolk, MA	
	Plymouth, MA	
	Suffolk, MA	
11236 ..	Boston-Worcester-Lawrence-Lowell-Brockton, MA–NH.	1.1246
	Hillsborough, NH	
	Merrimack, NH	
11237 ..	Boston-Worcester-Lawrence-Lowell-Brockton, MA–NH.	1.1356
	Bristol, MA	
11238 ..	Boston-Worcester-Lawrence-Lowell-Brockton, MA–NH.	1.0935
	Rockingham, NH	
	Strafford, NH	
11239 ..	Boston-Worcester-Lawrence-Lowell-Brockton, MA–NH.	1.1394
	Worcester, MA	
1125	Boulder-Longmont, CO	1.0470
	Boulder, CO	
1145	Brazoria, TX	0.9451
	Brazoria, TX	
1150	Bremerton, WA	1.0810
	Kitsap, WA	

TABLE A.—HOSPICE WAGE INDEX FOR URBAN AREAS—Continued

MSA code number	Urban area (constituent counties or county equivalents)	Wage index [1]
1240	Brownsville-Harlingen-San Benito, TX.	0.9314
	Cameron, TX	
1260	Bryan-College Station, TX.	0.9147
	Brazos, TX	
1280	Buffalo-Niagara Falls, NY.	0.9884
	Erie, NY	
12806 ..	Buffalo-Niagara Falls, NY.	0.9519
	Niagara, NY	
1303	Burlington, VT	1.1037
	Franklin, VT	
13036 ..	Burlington, VT	1.0444
	Chittenden, VT	
	Grand Isle, VT	
1310	Caguas, PR	0.6085
	Caguas, PR	
	Cayey, PR	
	Cidra, PR	
	Gurabo, PR	
	San Lorenzo, PR	
1320	Canton-Massillon, OH ...	0.9670
	Carroll, OH	
	Stark, OH	
1350	Casper, WY	0.9866
	Natrona, WY	
1360	Cedar Rapids, IA	0.9223
	Linn, IA	
1400	Champaign-Urbana, IL ..	0.9731
	Champaign, IL	
1440	Charleston-North Charleston, SC.	0.9725
	Berkeley, SC	
	Charleston, SC	
	Dorchester, SC	
1480	Charleston, WV	1.0228
	Kanawha, WV	
	Putnam, WV	
1520	Charlotte-Gastonia-Rock Hill, NC–SC.	1.0186
	Cabarrus, NC	
	Gaston, NC	
	Lincoln, NC	
	Mecklenburg, NC	
	Rowan, NC	
	Stanly, NC	
	Union, NC	
	York, SC	
1540	Charlottesville, VA	1.0824
	Albemarle, VA	
	Charlottesville City, VA	
	Fluvanna, VA	
	Greene, VA	
1560	Chattanooga, TN–GA	0.9415
	Catoosa, GA	
	Dade, GA	
	Walker, GA	
	Hamilton, TN	
	Marion, TN	
1580	Cheyenne, WY	0.9091
	Laramie, WY	
1600	Chicago, IL	1.0607
	DeKalb, IL	
16006 ..	Chicago, IL	1.1051
	Kane, IL	
	Kendall, IL	
16007 ..	Chicago, IL	1.1832
	Cook, IL	
	Du Page, IL	
	McHenry, IL	
16008 ..	Chicago, IL	1.1378
	Grundy, IL	
	Will, IL	
16009 ..	Chicago, IL	1.1445
	Lake, IL	
1620	Chico-Paradise, CA	1.0960
	Butte, CA	
1640	Cincinnati, OH–KY–IN ...	0.9617
	Ohio, IN	
16406 ..	Cincinnati, OH–KY–IN ...	0.9455
	Gallatin, KY	
	Grant, KY	
	Pendleton, KY	
16407 ..	Cincinnati, OH–KY–IN ...	0.9801
	Brown, OH	
16408 ..	Cincinnati, OH–KY–IN ...	1.0294
	Dearborn, IN	
	Boone, KY	
	Campbell, KY	
	Kenton, KY	
	Clermont, OH	
	Hamilton, OH	
	Warren, OH	
1660	Clarksville-Hopkinsville, TN–KY.	0.8389
	Christian, KY	
	Montgomery, TN	
1680	Cleveland-Lorain-Elyria, OH.	1.0031
	Ashtabula, OH	
16806 ..	Cleveland-Lorain-Elyria, OH.	1.1037
	Cuyahoga, OH	
	Geauga, OH	
	Lake, OH	
	Medina, OH	
16807 ..	Cleveland-Lorain-Elyria, OH.	1.0521
	Lorain, OH	
1720	Colorado Springs, CO ...	1.0362
	El Paso, CO	
1740	Columbia, MO	1.0242
	Boone, MO	
1760	Columbia, SC	0.9764
	Lexington, SC	
	Richland, SC	
1800	Harris, GA	0.8749
18006 ..	Columbus, GA–AL	0.8992
	Russell, AL	
	Chattahoochee, GA	
	Muscogee, GA	
1840	Columbus, OH	1.0469
	Delaware, OH	
	Fairfield, OH	
	Franklin, OH	
	Licking, OH	
	Madison, OH	
	Pickaway, OH	
1880	Corpus Christi, TX	0.9607
	Nueces, TX	
	San Patricio, TX	
1900	Cumberland, MD–WV ...	0.9456
	Allegany, MD	
	Mineral, WV	
1920	Dallas, TX	1.0529
	Collin, TX	
	Dallas, TX	
	Denton, TX	
	Ellis, TX	
	Kaufman, TX	
	Rockwall, TX	
19206 ..	Dallas, TX	0.9604
	Henderson, TX	
	Hunt, TX	
1950	Danville, VA	0.8719
	Danville City, VA	
	Pittsylvania, VA	
1960	Davenport-Moline-Rock Island, IA–IL.	0.9291
	Scott, IA	
	Henry, IL	
	Rock Island, IL	
2000	Dayton-Springfield, OH	1.0565
	Clark, OH	
	Greene, OH	
	Miami, OH	
	Montgomery, OH	
2020	Daytona Beach, FL	0.9209
	Flagler, FL	
20206 ..	Daytona Beach, FL	0.9548
	Volusia, FL	
2030	Decatur, AL	0.8572
	Lawrence, AL	
	Morgan, AL	
2040	Decatur, IL	0.8952
	Macon, IL	
2080	Denver, CO	1.1482
	Adams, CO	
	Arapahoe, CO	
	Denver, CO	
	Douglas, CO	
	Jefferson, CO	
2120	Des Moines, IA	0.9902
	Dallas, IA	
	Polk, IA	
	Warren, IA	
2160	Detroit, MI	1.1737
	Lapeer, MI	
	Macomb, MI	
	Monroe, MI	
	Oakland, MI	
	St. Clair, MI	
	Wayne, MI	
2180	Dothan, AL	0.8717
	Dale, AL	
	Houston, AL	
2190	Dover, DE	0.9636
	Kent, DE	
2200	Dubuque, IA	0.9230
	Dubuque, IA	
2240	Duluth-Superior, MN–WI	1.0017
	St. Louis, MN	
	Douglas, WI	
2281	Dutchess County, NY	1.1228
	Dutchess, NY	
2290	Eau Claire, WI	0.9500
	Chippewa, WI	
	Eau Claire, WI	
2320	El Paso, TX	1.0200
	El Paso, TX	
2330	Elkhart-Goshen, IN	0.9443
	Elkhart, IN	
2335	Elmira, NY	0.9440
	Chemung, NY	
2340	Enid, OK	0.8701

TABLE A.—HOSPICE WAGE INDEX FOR URBAN AREAS—Continued

MSA code number	Urban area (constituent counties or county equivalents)	Wage index [1]
	Garfield, OK	
2360	Erie, PA	0.9647
	Erie, PA	
2400	Eugene-Springfield, OR	1.1426
	Lane, OR	
2440	Evansville-Henderson, IN–KY.	0.9550
	Posey, IN	
	Vanderburgh, IN	
	Warrick, IN	
	Henderson, KY	
2520	Fargo-Moorhead, ND–MN.	0.9672
	Clay, MN	
	Cass, ND	
2560	Fayetteville, NC	0.9347
	Cumberland, NC	
2580	Fayetteville-Springdale-Rogers, AR.	0.8000
	Benton, AR	
2580	Fayetteville-Springdale-Rogers, AR.	0.8102
	Washington, AR	
2620	Flagstaff, AZ–UT	0.9482
	Coconino, AZ	
26206 ..	Flagstaff, AZ–UT	0.9242
	Kane, UT	
2640	Flint, MI	1.1814
	Genesee, MI	
2650	Florence, AL	0.8029
	Colbert, AL	
	Lauderdale, AL	
2655	Florence, SC	0.8894
	Florence, SC	
2670	Fort Collins-Loveland, CO.	1.0387
	Larimer, CO	
2680	Ft. Lauderdale, FL	1.1164
	Broward, FL	
2700	Fort Myers-Cape Coral, FL.	0.9391
	Lee, FL	
2710	Fort Pierce-Port St. Lucie, FL.	1.0625
	Martin, FL	
	St. Lucie, FL	
2720	Fort Smith, AR–OK	0.8806
	Crawford, AR	
	Sebastian, AR	
	Sequoyah, OK	
2750	Fort Walton Beach, FL ..	0.8958
	Okaloosa, FL	
2760	Fort Wayne, IN	0.9217
	Adams, IN	
	Huntington, IN	
	Wells, IN	
2760	Fort Wayne, IN	0.9506
	Allen, IN	
	De Kalb, IN	
	Whitley, IN	
2800	Forth Worth-Arlington, TX.	0.9797
	Hood, TX	
28006 ..	Forth Worth-Arlington, TX.	1.0201
	Johnson, TX	
	Parker, TX	
	Tarrant, TX	
2840	Fresno, CA	1.0927

TABLE A.—HOSPICE WAGE INDEX FOR URBAN AREAS—Continued

MSA code number	Urban area (constituent counties or county equivalents)	Wage index [1]
	Madera, CA	
28406 ..	Fresno, CA	1.1570
	Fresno, CA	
2880	Gadsden, AL	0.9372
	Etowah, AL	
2900	Gainesville, FL	1.0097
	Alachua, FL	
2920	Galveston-Texas City, TX.	1.1495
	Galveston, TX	
2960	Gary, IN	1.0636
	Lake, IN	
	Porter, IN	
2975	Glens Falls, NY	0.8936
	Warren, NY	
	Washington, NY	
2980	Goldsboro, NC	0.8857
	Wayne, NC	
2985	Grand Forks, ND–MN ...	0.9098
	Polk, MN	
29856 ..	Grand Forks, ND–MN ...	0.9507
	Grand Forks, ND	
2995	Grand Junction, CO	0.9246
	Mesa, CO	
3000	Grand Rapids-Muskegon-Holland, MI.	1.0385
	Allegan, MI	
30006 ..	Grand Rapids-Muskegon-Holland, MI.	1.0568
	Kent, MI	
	Ottawa, MI	
30007 ..	Grand Rapids-Muskegon-Holland, MI.	1.0333
	Muskegon, MI	
3040	Great Falls, MT	0.9738
	Cascade, MT	
3060	Greeley, CO	1.0823
	Weld, CO	
3080	Green Bay, WI	0.9827
	Brown, WI	
3120	Greensboro-Winston-Salem-High Point, NC.	0.9866
	Davidson, NC	
	Davie, NC	
	Forsyth, NC	
	Guilford, NC	
	Randolph, NC	
	Stokes, NC	
	Yadkin, NC	
31206 ..	Greensboro-Winston-Salem-High Point, NC.	0.9483
	Alamance, NC	
3150	Greenville, NC	0.9291
	Pitt, NC	
3160	Greenville-Spartanburg-Anderson, SC.	0.9142
	Cherokee, SC	
31606 ..	Greenville-Spartanburg-Anderson, SC.	0.9372
	Anderson, SC	
31607 ..	Greenville-Spartanburg-Anderson, SC.	0.9626
	Greenville, SC	
	Pickens, SC	
	Spartanburg, SC	
3180	Hagerstown, MD	1.0275
	Washington, MD	
3200	Hamilton-Middletown, OH.	0.9757

TABLE A.—HOSPICE WAGE INDEX FOR URBAN AREAS—Continued

MSA code number	Urban area (constituent counties or county equivalents)	Wage index [1]
	Butler, OH	
3240	Harrisburg-Lebanon-Carlisle, PA.	1.0721
	Cumberland, PA	
	Dauphin, PA	
	Lebanon, PA	
	Perry, PA	
3283	Hartford, CT	1.2533
	Hartford, CT	
	Litchfield, CT	
	Middlesex, CT	
	Tolland, CT	
3285	Hattiesburg, MS	0.8007
	Forrest, MS	
	Lamar, MS	
3290	Hickory-Morganton-Lenoir, NC.	0.9027
	Caldwell, NC	
32906 ..	Hickory-Morganton-Lenoir, NC.	0.9376
	Alexander, NC	
	Burke, NC	
	Catawba, NC	
3320	Honolulu, HI	1.2246
	Honolulu, HI	
3350	Houma, LA	0.8894
	Lafourche, LA	
	Terrebonne, LA	
3360	Houston, TX	1.0755
	Fort Bend, TX	
	Harris, TX	
	Liberty, TX	
	Montgomery, TX	
	Waller, TX	
33606 ..	Houston, TX	0.9710
	Chambers, TX	
3400	Huntington-Ashland, WV–KY–OH.	0.9813
	Boyd, KY	
	Carter, KY	
	Greenup, KY	
	Lawrence, OH	
	Cabell, WV	
	Wayne, WV	
3440	Huntsville, AL	0.8711
	Limestone, AL	
34406 ..	Huntsville, AL	0.9057
	Madison, AL	
3480	Indianapolis, IN	1.0554
	Boone, IN	
	Hamilton, IN	
	Hancock, IN	
	Hendricks, IN	
	Johnson, IN	
	Marion, IN	
	Morgan, IN	
	Shelby, IN	
34806 ..	Indianapolis, IN	1.0252
	Madison, IN	
3500	Iowa City, IA	1.0545
	Johnson, IA	
3520	Jackson, MI	0.9903
	Jackson, MI	
3560	Jackson, MS	0.8593
	Hinds, MS	
	Madison, MS	
	Rankin, MS	
3580	Jackson, TN	0.8737
	Madison, TN	

TABLE A.—HOSPICE WAGE INDEX FOR URBAN AREAS—Continued

MSA code number	Urban area (constituent counties or county equivalents)	Wage index [1]
	Chester, TN	
3600	Jacksonville, FL	0.9717
	Clay, FL	
	Duval, FL	
	Nassau, FL	
	St. Johns, FL	
3605	Jacksonville, NC	0.8625
	Onslow, NC	
3610	Jamestown, NY	0.8902
	Chautauqua, NY	
3620	Janesville-Beloit, WI	0.9264
	Rock, WI	
3640	Jersey City, NJ	1.1770
	Hudson, NJ	
3660	Johnson City-Kingsport-Bristol, TN–VA.	0.9583
	Carter, TN	
	Hawkins, TN	
	Sullivan, TN	
	Unicoi, TN	
	Washington, TN	
	Bristol City, VA	
	Scott, VA	
	Washington, VA	
3680	Johnstown, PA	0.9463
	Cambria, PA	
	Somerset, PA	
3700	Jonesboro, AR	0.8000
	Craighead, AR	
3710	Joplin, MO	0.8526
	Jasper, MO	
	Newton, MO	
3720	Kalamazoo-Battlecreek, MI.	1.0749
	Van Buren, MI	
37206 ..	Kalamazoo-Battlecreek, MI.	1.1141
	Calhoun, MI	
37207 ..	Kalamazoo-Battlecreek, MI.	1.1724
	Kalamazoo, MI	
3740	Kankakee, IL	0.9227
	Kankakee, IL	
3760	Kansas City, KS–MO	0.9568
	Clinton, MO	
37606 ..	Kansas City, KS–MO	1.0086
	Johnson, KS	
	Leavenworth, KS	
	Miami, KS	
	Wyandotte, KS	
37607 ..	Kansas City, KS–MO	1.0130
	Cass, MO	
	Clay, MO	
	Jackson, MO	
	Lafayette, MO	
	Platte, MO	
	Ray, MO	
3800	Kenosha, WI	1.0224
	Kenosha, WI	
3810	Killeen-Temple, TX	1.0433
	Bell, TX	
	Coryell, TX	
3840	Knoxville, TN	0.9366
	Anderson, TN	
	Blount, TN	
	Knox, TN	
	Sevier, TN	
	Union, TN	
38406 ..	Knoxville, TN	0.8953

TABLE A.—HOSPICE WAGE INDEX FOR URBAN AREAS—Continued

MSA code number	Urban area (constituent counties or county equivalents)	Wage index [1]
	Loudon, TN	
3850	Kokomo, IN	0.9225
	Howard, IN	
	Tipton, IN	
3870	La Crosse, WI–MN	0.9101
	Houston, MN	
	La Crosse, WI	
38706 ..	La Crosse, WI–MN	0.9385
	La Crosse, WI	
3880	Lafayette, LA	0.8641
	Acadia, LA	
	St. Landry, LA	
38806 ..	Lafayette, LA	0.9271
	Lafayette, LA	
	St. Martin, LA	
3920	Lafayette, IN	0.9407
	Clinton, IN	
39206 ..	Lafayette, IN	0.9580
	Tippecanoe, IN	
3960	Lake Charles, LA	0.8894
	Calcasieu, LA	
3980	Lakeland-Winter Haven, FL.	0.9403
	Polk, FL	
4000	Lancaster, PA	1.0234
	Lancaster, PA	
4040	Lansing-East Lansing, MI.	1.0707
	Clinton, MI	
	Eaton, MI	
	Ingham, MI	
4080	Laredo, TX	0.8187
	Webb, TX	
4100	Las Cruces, NM	0.8982
	Dona Ana, NM	
4120	Las Vegas, NV–AZ	1.0512
	Mohave, AZ	
41206 ..	Las Vegas, NV–AZ	1.0941
	Nye, NV	
41207 ..	Las Vegas, NV–AZ	1.1643
	Clark, NV	
4150	Lawrence, KS	0.9424
	Douglas, KS	
4200	Lawton, OK	0.9547
	Comanche, OK	
4243	Lewiston-Auburn, ME	0.9855
	Androscoggin, ME	
4280	Lexington, KY	0.9194
	Bourbon, KY	
	Clark, KY	
	Fayette, KY	
	Jessamine, KY	
	Scott, KY	
	Woodford, KY	
42806 ..	Lexington, KY	0.8699
	Madison, KY	
4320	Lima, OH	0.9893
	Allen, OH	
	Auglaize, OH	
4360	Lincoln, NE	0.9465
	Lancaster, NE	
4400	Little Rock-North Little Rock, AR.	0.9476
	Faulkner, AR	
	Lonoke, AR	
	Pulaski, AR	
	Saline, AR	
4420	Longview-Marshall, TX ..	0.8843
	Upshur, TX	

TABLE A.—HOSPICE WAGE INDEX FOR URBAN AREAS—Continued

MSA code number	Urban area (constituent counties or county equivalents)	Wage index [1]
44206 ..	Longview-Marshall, TX ..	0.8996
	Gregg, TX	
	Harrison, TX	
4480	Los Angeles-Long Beach, CA.	1.3083
	Los Angeles, CA	
4520	Louisville, KY–IN	1.0420
	Clark, IN	
	Floyd, IN	
	Harrison, IN	
	Bullitt, KY	
	Jefferson, KY	
	Oldham, KY	
45206 ..	Louisville, KY–IN	0.9640
	Scott, IN	
4600	Lubbock, TX	0.9380
	Lubbock, TX	
4640	Lynchburg, VA	0.8713
	Bedford, VA	
	Bedford City, VA	
46406 ..	Lynchburg, VA	0.8964
	Amherst, VA	
	Campbell, VA	
	Lynchburg City, VA	
4680	Macon, GA	0.9874
	Bibb, GA	
	Houston, GA	
	Jones, GA	
	Peach, GA	
46806 ..	Macon, GA	0.9404
	Twiggs, GA	
4720	Madison, WI	1.0595
	Dane, WI	
4800	Mansfield, OH	0.9218
	Crawford, OH	
48006 ..	Mansfield, OH	0.9229
	Richland, OH	
4840	Mayaguez, PR	0.6098
	Anasco, PR	
	Cabo Rojo, PR	
	Hormigueros, PR	
	Mayaguez, PR	
	Sabana Grande, PR	
	San German, PR	
4880	McAllen-Edinburg-Mission, TX.	0.8764
	Hidalgo, TX	
4890	Medford-Ashland, OR ...	1.0662
	Jackson, OR	
4900	Melbourne-Titusville-Palm Bay, FL.	0.9423
	Brevard, Fl	
4920	Memphis, TN–AR–MS ..	0.9748
	Crittenden, AR	
	DeSoto, MS	
	Shelby, TN	
	Tipton, TN	
49206 ..	Memphis, TN–AR–MS ..	0.8784
	Fayette, TN	
4940	Merced, CA	1.1164
	Merced, CA	
5000	Miami, FL	1.0888
	Dade, FL	
5015	Middlesex-Somerset-Hunterdon, NJ.	1.1426
	Hunterdon, NJ	
	Middlesex, NJ	
	Somerset, NJ	

TABLE A.—HOSPICE WAGE INDEX FOR URBAN AREAS—Continued

MSA code number	Urban area (constituent counties or county equivalents)	Wage index [1]
5080	Milwaukee-Waukesha, WI.	1.0522
	Milwaukee, WI	
	Ozaukee, WI	
	Washington, WI	
	Waukesha, WI	
5120	Minneapolis-St. Paul, MN–WI.	1.0385
	Pierce, WI	
51206 ..	Minneapolis-St. Paul, MN–WI.	1.1072
	Anoka, MN	
	Carver, MN	
	Chisago, MN	
	Dakota, MN	
	Hennepin, MN	
	Isanti, MN	
	Ramsey, MN	
	Scott, MN	
	Washington, MN	
	Wright, MN	
	St. Croix, WI	
51207 ..	Minneapolis-St. Paul, MN–WI.	1.0561
	Sherburne, MN	
5160	Mobile, AL	0.9154
	Baldwin, AL	
	Mobile, AL	
5170	Modesto, CA	1.1297
	Stanislaus, CA	
5190	Monmouth-Ocean, NJ	1.1070
	Monmouth, NJ	
	Ocean, NJ	
5200	Monroe, LA	0.9202
	Ouachita, LA	
5240	Montgomery, AL	0.8745
	Autauga, AL	
	Elmore, AL	
	Montgomery, AL	
5280	Muncie, IN	0.9813
	Delaware, IN	
5330	Myrtle Beach, SC	0.8453
	Horry, SC	
5345	Naples, FL	1.0096
	Collier, FL	
5360	Nashville, TN	1.0693
	Cheatham, TN	
	Davidson, TN	
	Dickson, TN	
	Robertson, TN	
	Rutherford, TN	
	Sumner, TN	
	Williamson, TN	
	Wilson, TN	
5380	Nassau-Suffolk, NY	1.3852
	Nassau, NY	
	Suffolk, NY	
5483	New Haven-Bridgeport-Stamford-Waterbury-Danbury, CT.	1.2841
	Fairfield, CT	
54836 ..	New Haven-Bridgeport-Stamford-Waterbury-Danbury, CT.	1.2525
	New Haven, CT	
5523	New London-Norwich, CT.	1.2525
	New London, CT	
5560	New Orleans, LA	1.0220
	Jefferson, LA	
	Orleans, LA	
	St. Bernard, LA	
	St. Charles, LA	
	St. John The Baptist, LA	
	St. Tammany, LA	
55606 ..	New Orleans, LA	0.9590
	Plaquemines, LA	
	St. James, LA	
5600	New York, NY	1.4545
	Bronx, NY	
	Kings, NY	
	New York, NY	
	Putnam, NY	
	Queens, NY	
	Richmond, NY	
	Rockland, NY	
	Westchester, NY	
5640	Newark, NJ	1.2297
	Essex, NJ	
	Morris, NJ	
	Sussex, NJ	
	Union, NJ	
5640	Newark, NJ	1.2028
	Warren, NJ	
5660	Newburgh, NY–PA	1.1476
	Pike, PA	
56606 ..	Newburgh, NY–PA	1.1382
	Orange, NY	
5720	Norfolk-Virginia Beach-Newport News, VA–NC.	0.9215
	Chesapeake City, VA	
	Gloucester, VA	
	Hampton City, VA	
	James City, VA	
	Newport News City, VA	
	Norfolk City, VA	
	Poquoson City, VA	
	Portsmouth City, VA	
	Suffolk City, VA	
	Virginia Beach City, VA	
	Williamsburg City, VA	
	York, VA	
57206 ..	Norfolk-Virginia Beach-Newport News, VA–NC.	0.8774
	Isle of Wight, VA	
	Mathews, VA	
57207 ..	Norfolk-Virginia Beach-Newport News, VA–NC.	0.8769
	Currituck, NC	
5775	Oakland, CA	1.4914
	Alameda, CA	
	Contra Costa, CA	
5790	Ocala, FL	0.9825
	Marion, FL	
5800	Odessa-Midland, TX	0.9804
	Midland, TX	
58006 ..	Odessa-Midland, TX	0.9453
	Ector, TX	
5880	Oklahoma City, OK	0.9606
	Canadian, OK	
	Cleveland, OK	
	Logan, OK	
	McClain, OK	
	Oklahoma, OK	
	Pottawatomie, OK	
5910	Olympia, WA	1.1295
	Thurston, WA	
5920	Omaha, NE–IA	0.9694
	Pottawattamie, IA	
	Douglas, NE	
	Sarpy, NE	
	Washington, NE	
59206 ..	Omaha, NE–IA	0.9364
	Cass, NE	
5945	Orange County, CA	1.2439
	Orange, CA	
5960	Orlando, FL	1.0096
	Orange, FL	
	Osceola, FL	
	Seminole, FL	
59606 ..	Orlando, FL	0.9599
	Lake, FL	
5990	Owensboro, KY	0.8510
	Daviess, KY	
6015	Panama City, FL	0.9333
	Bay, FL	
6020	Parkersburg-Marietta, WV–OH.	0.9357
	Washington, OH	
	Wood, WV	
6080	Pensacola, FL	0.9345
	Escambia, FL	
	Santa Rosa, FL	
6120	Peoria-Pekin, IL	0.9883
	Peoria, IL	
	Tazewell, IL	
	Woodford, IL	
6160	Philadelphia, PA–NJ	1.2042
	Burlington, NJ	
	Camden, NJ	
	Gloucester, NJ	
	Bucks, PA	
	Chester, PA	
	Delaware, PA	
	Montgomery, PA	
	Philadelphia, PA	
61606 ..	Philadelphia, PA–NJ	1.1740
	Salem, NJ	
6200	Phoenix-Mesa, AZ	0.9824
	Pinal, AZ	
62006 ..	Phoenix-Mesa, AZ	1.0583
	Maricopa, AZ	
6240	Pine Bluff, AR	0.8521
	Jefferson, AR	
6280	Pittsburgh, PA	1.0758
	Allegheny, PA	
	Fayette, PA	
	Washington, PA	
	Westmoreland, PA	
62806 ..	Pittsburgh, PA	1.0575
	Beaver, PA	
62807 ..	Pittsburgh, PA	1.0389
	Butler, PA	
6323	Pittsfield, MA	1.1071
	Berkshire, MA	
6340	Pocatello, ID	0.9829
	Bannock, ID	
6360	Ponce, PR	0.6185
	Guayanilla, PR	
	Juana Diaz, PR	
	Penuelas, PR	
	Ponce, PR	
	Villalba, PR	
	Yauco, PR	

TABLE A.—HOSPICE WAGE INDEX FOR URBAN AREAS—Continued

MSA code number	Urban area (constituent counties or county equivalents)	Wage index [1]
6403	Portland, ME	1.0085
	Cumberland, ME	
	Sagadahoc, ME	
	York, ME	
6440	Portland-Vancouver, OR–WA.	1.1251
	Columbia, OR	
64406 ..	Portland-Vancouver, OR–WA.	1.1820
	Clackamas, OR	
	Multnomah, OR	
	Washington, OR	
	Yamhill, OR	
64407 ..	Portland-Vancouver, OR–WA.	1.1693
	Clark, WA	
6483	Providence-Warwick-Pawtucket, RI.	1.1119
	Bristol, RI	
	Kent, RI	
	Newport, RI	
	Providence, RI	
	Washington, RI	
6520	Provo-Orem, UT	1.0332
	Utah, UT	
6560	Pueblo, CO	0.9943
	Pueblo, CO	
6580	Punta Gorda, FL	0.9209
	Charlotte, FL	
6600	Racine, WI	0.9727
	Racine, WI	
6640	Raleigh-Durham-Chapel Hill, NC.	0.9817
	Chatham, NC	
	Johnston, NC	
66406 ..	Raleigh-Durham-Chapel Hill, NC.	1.0388
	Durham, NC	
	Franklin, NC	
	Orange, NC	
	Wake, NC	
6660	Rapid City, SD	0.8614
	Pennington, SD	
6680	Reading, PA	1.0228
	Berks, PA	
6690	Redding, CA	1.1905
	Shasta, CA	
6720	Reno, NV	1.2044
	Washoe, NV	
6740	Richland-Kennewick-Pasco, WA.	1.0462
	Benton, WA	
	Franklin, WA	
6760	Richmond-Petersburg, VA.	0.9479
	Charles City County, VA	
	Chesterfield, VA	
	Colonial Heights City, VA	
	Dinwiddie, VA	
	Goochland, VA	
	Hanover, VA	
	Henrico, VA	
	Hopewell City, VA	
	New Kent, VA	
	Petersburg City, VA	
	Powhatan, VA	
	Prince George, VA	
	Richmond City, VA	

TABLE A.—HOSPICE WAGE INDEX FOR URBAN AREAS—Continued

MSA code number	Urban area (constituent counties or county equivalents)	Wage index [1]
6780	Riverside-San Bernardino, CA.	1.1990
	Riverside, CA	
	San Bernardino, CA	
6800	Roanoke, VA	0.9358
	Botetourt, VA	
	Roanoke, VA	
	Roanoke City, VA	
	Salem City, VA	
6820	Rochester, MN	1.0905
	Olmsted, MN	
6840	Rochester, NY	1.0266
	Livingston, NY	
	Monroe, NY	
	Ontario, NY	
	Orleans, NY	
	Wayne, NY	
68406 ..	Rochester, NY	0.9686
	Genesee, NY	
6880	Rockford, IL	0.9365
	Ogle, IL	
68806 ..	Rockford, IL	0.9976
	Boone, IL	
	Winnebago, IL	
6895	Rocky Mount, NC	0.9266
	Edgecombe, NC	
	Nash, NC	
6920	Sacramento, CA	1.2499
	El Dorado, CA	
	Placer, CA	
	Sacramento, CA	
6960	Saginaw-Bay City-Midland, MI.	1.0493
	Bay, MI	
	Midland, MI	
	Saginaw, MI	
6980	St. Cloud, MN	0.9731
	Benton, MN	
	Stearns, MN	
7000	St. Joseph, MO	0.8732
	Andrew, MO	
70006 ..	St. Joseph, MO	0.9283
	Buchanan, MO	
7040	St. Louis, MO–IL	0.9265
	Lincoln, MO	
	Warren, MO	
70406 ..	St. Louis, MO–IL	0.9715
	Jersey, IL	
	Madison, IL	
70407 ..	St. Louis, MO–IL	0.9760
	Clinton, IL	
	St. Clair, IL	
70408 ..	St. Louis, MO–IL	1.0109
	Franklin, MO	
	Jefferson, MO	
	Monore, IL	
	St. Charles, MO	
	St. Louis City, MO	
7080	Salem, OR	1.0651
	Marion, OR	
	Polk, OR	
7120	Salinas, CA	1.4579
	Monterey, CA	
7160	Salt Lake City-Ogden, UT.	1.0251
	Davis, UT	
	Salt Lake, UT	
	Weber, UT	
7200	San Angelo, TX	0.8669

TABLE A.—HOSPICE WAGE INDEX FOR URBAN AREAS—Continued

MSA code number	Urban area (constituent counties or county equivalents)	Wage index [1]
	Tom Green, TX	
7240	San Antonio, TX	0.8764
	Wilson, TX	
72406 ..	San Antonio, TX	0.9599
	Bexar, TX	
	Comal, TX	
	Guadalupe, TX	
7320	San Diego, CA	1.2658
	San Diego, CA	
7360	San Francisco, CA	1.4769
	Marin, CA	
	San Francisco, CA	
	San Mateo, CA	
7400	San Jose, CA	1.4519
	Santa Clara, CA	
7440	San Juan-Bayamon, PR	0.6207
	Aguas Buenas, PR	
	Barceloneta, PR	
	Bayamon, PR	
	Canovanas, PR	
	Carolina, PR	
	Catano, PR	
	Ceiba, PR	
	Comerio, PR	
	Corozal, PR	
	Dorado, PR	
	Fajardo, PR	
	Florida, PR	
	Guaynabo, PR	
	Humacao, PR	
	Juncos, PR	
	Los Piedras, PR	
	Loiza, PR	
	Luguillo, PR	
	Manati, PR	
	Morovis, PR	
	Naguabo, PR	
	Naranjito, PR	
	Rio Grande, PR	
	San Juan, PR	
	Toa Alta, PR	
	Toa Baja, PR	
	Trujillo Alto, PR	
	Vega Alta, PR	
	Vega Baja, PR	
	Yabucoa, PR	
7460	San Luis Obispo-Atascadero-Paso Robles, CA.	1.1462
	San Luis Obispo, CA	
7480	Santa Barbara-Santa Maria-Lompoc, CA.	1.1336
	Santa Barbara, CA	
7485	Santa Cruz-Watsonville, CA.	1.3871
	Santa Cruz, CA	
7490	Santa Fe, NM	1.0451
	Los Alamos, NM	
	Santa Fe, NM	
7500	Santa Rosa, CA	1.3069
	Sonoma, CA	
7510	Sarasota-Bradenton, FL	1.0255
	Sarasota, FL	
75106 ..	Sarasota-Bradenton, FL	1.0017
	Manatee, FL	
7520	Savannah, GA	0.8993
	Bryan, GA	
75206 ..	Savannah, GA	0.9349
	Chatham, GA	

TABLE A.—HOSPICE WAGE INDEX FOR URBAN AREAS—Continued

MSA code number	Urban area (constituent counties or county equivalents)	Wage index [1]
	Effingham, GA	
7560	Scranton—Wilkes-Barre—Hazleton, PA.	0.9364
	Columbia, PA	
	Lackawanna, PA	
	Luzerne, PA	
	Wyoming, PA	
7600	Seattle-Bellevue-Everett, WA.	1.1225
	Island, WA	
76006 ..	Seattle-Bellevue-Everett, WA.	1.1708
	King, WA	
	Snohomish, WA	
7610	Sharon, PA	0.9498
	Mercer, PA	
7620	Sheboygan, WI	0.9000
	Sheboygan, WI	
7640	Sherman-Denison, TX	0.9075
	Grayson, TX	
7680	Shreveport-Bossier City, LA.	0.9461
	Webster, LA	
76806 ..	Shreveport-Bossier City, LA.	1.0263
	Bossier, LA	
	Caddo, LA	
7720	Sioux City, IA–NE	0.9205
	Woodbury, IA	
	Dakota, NE	
7760	Sioux Falls, SD	0.8870
	Lincoln, SD	
77606 ..	Sioux Falls, SD	0.9375
	Minnehaha, SD	
7800	South Bend, IN	1.0021
	St. Joseph, IN	
7840	Spokane, WA	1.1221
	Spokane, WA	
7880	Springfield, IL	1.0062
	Menard, IL	
	Sangamon, IL	
7920	Springfield, MO	0.8469
	Webster, MO	
79206 ..	Springfield, MO	0.8901
	Christian, MO	
	Greene, MO	
8003	Springfield, MA	1.0923
	Hampden, MA	
	Hampshire, MA	
8050	State College, PA	1.0411
	Centre, PA	
8080	Steubenville-Weirton, OH–WV.	0.9438
	Jefferson, OH	
	Brooke, WV	
	Hancock, WV	
8120	Stockton-Lodi, CA	1.2084
	San Joaquin, CA	
8140	Sumter, SC	0.8348
	Sumter, SC	
8160	Syracuse, NY	0.9644
	Cayuga, NY	
81606 ..	Syracuse, NY	1.1682
	Madison, NY	
	Onondaga, NY	
	Oswego, NY	
8200	Tacoma, WA	1.1330
	Pierce, WA	
8240	Tallahassee, FL	0.9401

TABLE A.—HOSPICE WAGE INDEX FOR URBAN AREAS—Continued

MSA code number	Urban area (constituent counties or county equivalents)	Wage index [1]
	Gadsden, FL	
	Leon, FL	
8280	Tampa-St. Petersburg-Clearwater, FL.	0.9834
	Hernando, FL	
	Hillsborough, FL	
	Pasco, FL	
	Pinellas, FL	
8320	Terre Haute, IN	0.9016
	Vermillion, IN	
83206 ..	Terre Haute, IN	0.9106
	Clay, IN	
	Vigo, IN	
8360	Texarkana, AR-Texarkana, TX.	0.9919
	Miller, AR	
	Bowie, TX	
8400	Toledo, OH	1.1202
	Fulton, OH	
	Lucas, OH	
	Wood, OH	
8440	Topeka, KS	1.0468
	Shawnee, KS	
8480	Trenton, NJ	1.0866
	Mercer, NJ	
8520	Tucson, AZ	0.9950
	Pima, AZ	
8560	Tulsa, OK	0.9259
	Creek, OK	
	Osage, OK	
	Rogers, OK	
	Tulsa, OK	
	Wagoner, OK	
8600	Tuscaloosa, AL	0.9266
	Tuscaloosa, AL	
8640	Tyler, TX	1.0174
	Smith, TX	
8680	Utica-Rome, NY	0.9124
	Herkimer, NY	
	Oneida, NY	
8720	Vallejo-Fairfield-Napa, CA.	1.4234
	Napa, CA	
	Solano, CA	
8735	Ventura, CA	1.1819
	Ventura, CA	
8750	Victoria, TX	0.8925
	Victoria, TX	
8760	Vineland-Millville-Bridgeton, NJ.	1.0368
	Cumberland, NJ	
8780	Visalia-Tulare-Portersville, CA.	1.0922
	Tulare, CA	
8800	Waco, TX	0.8276
	McLennan, TX	
8840	Washington, DC–MD–VA–WV.	1.1581
	District of Columbia, DC	
	Calvert, MD	
	Charles, MD	
	Frederick, MD	
	Montgomery, MD	
	Prince Georges, MD	
	Alexandria City, VA	
	Arlington, VA	
	Fairfax, VA	
	Fairfax City, VA	
	Falls Church City, VA	

TABLE A.—HOSPICE WAGE INDEX FOR URBAN AREAS—Continued

MSA code number	Urban area (constituent counties or county equivalents)	Wage index [1]
	Loudoun, VA	
	Manassas City, VA	
	Manassas Park City, VA	
	Prince William, VA	
	Stafford, VA	
88406 ..	Washington, DC–MD–VA–WV.	1.0725
	Berkeley, WV	
	Jefferson, WV	
88407 ..	Washington, DC–MD–VA–WV.	1.0494
	Clarke, VA	
	Culpeper, VA	
	Fauquier, VA	
	Fredericksburg City, VA	
	King George, VA	
	Spotsylvania, VA	
	Warren, VA	
8920	Waterloo-Cedar Falls, IA	0.9203
	Black Hawk, IA	
8940	Wausau, WI	1.0607
	Marathon, WI	
8960	West Palm Beach-Boca Raton, FL.	1.0658
	Palm Beach, FL	
9000	Wheeling, WV–OH	0.9314
	Belmont, OH	
	Marshall, WV	
	Ohio, WV	
9040	Wichita, KS	0.9399
	Harvey, KS	
90406 ..	Wichita, KS	1.0473
	Butler, KS	
	Sedgwick, KS	
9080	Wichita Falls, TX	0.8169
	Archer, TX	
90806 ..	Wichita Falls, TX	0.8376
	Wichita, TX	
9140	Williamsport, PA	0.9544
	Lycoming, PA	
9160	Wilmington-Newark, DE–MD.	1.1851
	New Castle, DE	
	Cecil, MD	
9200	Wilmington, NC	0.9471
	Brunswick, NC	
92006 ..	Wilmington, NC	0.9649
	New Hanover, NC	
9260	Yakima, WA	1.0634
	Yakima, WA	
9270	Yolo, CA	1.1961
	Yolo, CA	
9280	York, PA	1.0165
	York, PA	
9320	Youngstown-Warren, OH.	1.0124
	Columbiana, OH	
93206 ..	Youngstown-Warren, OH.	1.0785
	Mahoning, OH	
	Trumbull, OH	
9340	Yuba City, CA	1.0981
	Sutter, CA	
	Yuba, CA	
9360	Yuma, AZ	0.9912

TABLE A.—HOSPICE WAGE INDEX FOR URBAN AREAS—Continued

MSA code number	Urban area (constituent counties or county equivalents)	Wage index [1]
	Yuma, AZ	

[1] Wage index values are based on FY 1997 hospital cost report data prior to reclassification. This wage index is further adjusted. Wage index values greater than 0.8 are subject to a budget neutrality adjustment of 1.04662. Wage index values below 0.8 are adjusted to be the greater of a 15 percent increase, subject to a maximum wage index value of 0.8, or an adjustment by multiplying the hospital wage index value for a given area by the budget neutrality adjustment. All of these adjustments have been completed by HCFA and are built into the wage index values reflected in this table.

TABLE B.—WAGE INDEX FOR RURAL AREAS

MSA code number	Nonurban area	Wage index [2]
9901	Alabama	0.8000
99016	Alabama Walker, AL	0.8682
9902	Alaska	1.3387
9903	Arizona	0.8696
9904	Arkansas	0.8000
9905	California	1.0488
9906	Colorado	0.8575
9907	Connecticut Windham, CT	1.2283
9908	Delaware Sussex, DE	0.9372
9910	Florida	0.9209
99106	Florida Bradford, FL	0.9554
9911	Georgia	0.8381
99116	Georgia Butts, GA	0.8700
99117	Georgia Jackson, GA	0.8491
9912	Hawaii	1.1244
9913	Idaho	0.8877
9914	Illinois	0.8363
9915	Indiana	0.8700
9916	Iowa	0.8058
99166	Iowa Bremer, IA	0.8367
9917	Kansas	0.8045
9918	Kentucky	0.8267
99186	Kentucky Shelby, KY	0.9209
9919	Louisiana	0.8119
9920	Maine	0.8934
9921	Maryland	0.9262
9922	Massachusetts	1.0866
9923	Michigan	0.9531
9924	Minnesota	0.8703
9925	Mississippi	0.7972
9926	Missouri	0.8099
9927	Montana	0.8828
9928	Nebraska	0.8000
9929	Nevada	0.9770
9930	New Hampshire	1.0380
9931	New Jersey [1]	.....
9932	New Mexico	0.8873
9933	New York	0.8902

TABLE B.—WAGE INDEX FOR RURAL AREAS—Continued

MSA code number	Nonurban area	Wage index [2]
99336	New York Greene, NY	0.8975
9934	North Carolina	0.8504
9935	North Dakota	0.8109
9936	Ohio	0.9075
99366	Ohio Union, OH	0.9521
9937	Oklahoma	0.8197
9938	Oregon	1.0296
9939	Pennsylvania	0.9479
99396	Pennsylvania Monroe, PA	0.9281
99397	Pennsylvania Adams, PA	0.9471
9940	Puerto Rico	0.5905
9941	Rhode Island [1]	.....
9942	South Carolina	0.8348
9943	South Dakota	0.8000
9944	Tennessee	0.8000
99446	Tennessee. Sequatchie, TN	0.8557
99447	Tennessee Grainger, TN Jefferson, TN	0.8395
9945	Texas	0.8041
9946	Utah	0.9110
9947	Vermont	0.9560
9949	Virginia	0.8402
9950	Washington	1.0445
9951	West Virginia	0.8742
9952	Wisconsin	0.8807
9953	Wyoming	0.9091

[1] All counties within the State are classified as urban.

[2] Wage index values are based on FY 1997 hospital cost report data prior to reclassification. This wage index is further adjusted. Wage index values greater than 0.8 are subject to a budget neutrality adjustment of 1.04662. Wage index values below 0.8 are adjusted to be the greater of a 15 percent increase, subject to a maximum wage index value of 0.8, or an adjustment by multiplying the hospital wage index value for a given area by the budget neutrality adjustment. All of these adjustments have been completed by HCFA and are built into the wage index values reflected in this table.

II. Regulatory Impact Statement

A. Background

We have examined the impacts of this notice as required by Executive Order 12866, the Unfunded Mandate Reform Act, and the Regulatory Flexibility Act (RFA) (Public Law 96-354). In this notice, we identified an impact on hospices as a result of changes in the way we compute the hospice wage index. The change in the methodology for computing the wage index was determined through a negotiated rulemaking committee and implemented in the August 8, 1997 final rule (62 FR 42860). This notice only described the effects of those changes in conjunction with the annual update to the hospice wage index. Also, we believe these changes to be insignificant.

1. Executive Order 12866 and RFA

Executive Order 12866 directs agencies to assess all costs and benefits of available regulatory alternatives and, when regulation is necessary, to select regulatory approaches that maximize net benefits (including potential economic, environmental, public health and safety effects; distributive impacts; and equity). We have determined that this notice is not an economically significant rule under this Executive Order. The RFA requires agencies to analyze options for regulatory relief for small businesses. For purposes of the RFA, States and individuals are not considered small entities. However, most providers, physicians, and health care suppliers are small entities, either by nonprofit status or by having revenues of $5 million or less annually. Approximately 74 percent of Medicare certified hospices are identified as being voluntary, government, or other agency, and therefore are considered small entities. Because the National Hospice Organization estimates that approximately 65 percent of hospice patients are Medicare beneficiaries, we have not considered other sources of revenue in this analysis.

As discussed below, payments to urban hospices in Puerto Rico will experience the most significant decrease (11.6 percent) in payments under this wage index. Looking at the effects of this rule on Puerto Rico, we see that 21 of the 29 hospices in urban Puerto Rico can be considered small entities that will experience an 11.6 percent decrease in Medicare payments. Therefore, we anticipate this rule will have a significant impact on a substantial number of small entities. However, the methodology for the hospice wage index was previously determined by consensus through a negotiated rulemaking committee that included representatives of national hospice associations; rural, urban, large and small hospices; multi-site hospices; and consumer groups. Based on all of the options considered, the committee determined that the methodology described in the committee statement, and adopted into regulation on August 8, 1997 (62 FR 42860), were favorable for the hospice community as a whole, as well as for the beneficiaries that they serve. Therefore, we believe that mitigating the effects of small entities has been taken into consideration.

2. Congressional Review

Section 804(2) of Title 5, United States Code (as added by section 251 of Public Law 104–121), specifies that a ''major rule'' is any rule that the Office of Management and Budget finds is likely to result in—

- An annual effect on the economy of $100 million or more;
- A major increase in costs or prices for consumers, individual industries, Federal, State, or local government agencies, or geographic regions; or
- Significant adverse effects on competition, employment, investment, productivity, innovation, or on the ability of United States-based enterprises to compete with foreign-based enterprises in domestic and export markets.

We estimate that the impact of this notice will not be $100 million or more; therefore, this rule is not a major rule as defined in Title 5, United States Code, section 804(2) and is not being forwarded to Congress for a 60-day review period.

3. Unfunded Mandate

The Unfunded Mandate Reform Act of 1995 also requires (in section 202) that agencies prepare an assessment of anticipated costs and benefits for any rule that may result in an annual expenditure by State, local, and tribal governments, in the aggregate, or by the private sector, of $100 million or more. The notice has no consequential effect on State, local, or tribal governments. We believe the private sector costs of this rule fall below the threshold, as well.

4. Rural Hospital Impact

Section 1102(b) of the Act requires us to prepare a regulatory impact analysis for any notice that may have a significant impact on the operations of a substantial number of small rural hospitals. Such an analysis must conform to the provisions of section 604 of the RFA. For purposes of section 1102(b) of the Act, we define a small rural hospital as a hospital that is located outside a Metropolitan Statistical Area and has fewer than 50 beds.

Because this notice has no direct impact on small hospitals, in accordance with 5 U.S.C. 604, the Secretary certifies that this notice will not have a significant impact on the operations of a substantial number of small rural hospitals.

B. Anticipated Effects

In accordance with the Balanced Budget Act of 1997 (BBA of 1997), hospices are now paid for home care services based on where the service is rendered. This change was effective with FY 1998 and was implemented on October 1, 1997. This impact analysis compares hospice payments under the FY 1998 wage index (Column 4 of the table) to the second transition year blend (Column 5). The wage index blend for the second transition year of the 3-year transition is one-third of the 1983 wage index added to two-thirds of the new wage index. The data used in developing the quantitative analysis for this notice were obtained from the December 1997 update of the national claims history file of all bills submitted during fiscal year 1997. We deleted bills from hospices that have since closed.

Table C demonstrates the results of our analysis. In Column 2 of the table we indicate the number of routine home care days that were included in our analysis, although the analysis was performed on all types of hospice care. Column 3 of Table C (below) indicates payments that were made using the FY 1998 wage index. Column 5 of Table C is based on FY 1998 claims and estimates payments to be made to hospices using the FY 1999 wage index. For the purposes of this analysis, the payments reflected in Column 3 were adjusted to account for the site of service provision. This adjustment is shown in Column 4 of Table C.

The final column, which compares Columns 4 and 5, shows the percent change in estimated hospice payments made based on the category of the hospice. The overall percentage change in hospice payments is 0.2 percent. However, the wage index itself is budget neutral to what would have been paid using the 1983 wage index. The 0.2 percent is attributable to the site of service provision, i.e., the effect on payments resulting from the distribution of beneficiaries residing in MSAs with different wage index values than the hospice.

Table C categorizes hospices by various geographic and provider characteristics. The top row of the table demonstrates the neutral overall payment impact on 2,133 hospices included in the analysis. The next two rows of the table categorize hospices according to their geographic location (urban and rural). There are 1,385 hospices located in urban areas included in our analysis and 748 hospices located in rural areas. The next two groupings in the table indicate the number of hospices by census region, also broken down by urban and rural hospices. The next grouping shows the impact on hospices based on the size of the hospice's program. We determined that the majority of hospice payments are made at the routine home care rate. Therefore, we based the size of each individual hospice's program on the number of routine home care days provided in 1997. The next grouping shows the impact on hospices by type of ownership. The final grouping shows the impact on hospices defined by whether they are provider-based or freestanding.

The results of our analysis show that the greatest increases are for urban and rural hospices in the New England region, 4.5 percent and 2.8 percent respectively, and for rural hospices in the Pacific regions, with 3.8 percent. The greatest decreases, besides Puerto Rico, are the rural West North Central and rural West South Central regions with 3.1 percent and 4.0 percent respectively. The most dramatic shift occurs in Puerto Rico, where urban payments decrease by 11.6 percent and rural payments decrease by 12.3 percent. Since the wage index values for the Puerto Rico region are more than 15 percent below the 1983 wage index value of 0.8, this region is most affected by the revision to the wage index floor.

Small hospice programs show small decreases while larger programs show slight increases. Proprietary hospices show slight decreases in payment due to the wage index change while voluntary programs gain slightly. Finally, freestanding hospices show no percent change in their wage index values while provider-based hospice programs show small increases.

TABLE C.—IMPACT OF HOSPICE WAGE INDEX CHANGE

	Number of hospices (1)	Number of routine home care days in thousands (2)	Payments using FY '98 wage index in thousands (3)	Estimated payments using FY '98 wage index w/ SOS* in thousands (4)	Estimated payments using FY '99 wage index w/ SOS* in thousands (5)	Percent change in hospice payments** (6)
All	2,133	19,944	2,211,336	2,195,009	2,200,107	0.2
Urban Hospices	1,385	16,148	11,868,369	1,849,873	1,855,939	0.3
Rural Hospices	748	3,795	342,967	345,136	344,168	−0.3
Region (Urban):						
New England	102	568	72,785	72,694	75,979	4.5
Middle Atlantic	176	1,849	226,264	225,095	228,443	1.5
South Atlantic	182	3,825	445,473	443,033	445,646	0.6
East North Central	224	2,599	300,801	297,570	296,812	−0.3
East South Central	89	770	83,503	81,985	81,082	−1.1
West North Central	99	937	96,630	94,617	94,224	−0.4
West South Central	197	2,373	249,586	243,893	240,371	−1.4
Mountain	88	887	114,857	113,848	113,010	−0.7
Pacific	199	2,145	263,250	261,968	266,963	1.9
Puerto Rico	29	194	15,221	15,169	13,410	−11.6
Region (Rural):						
New England	21	63	6,341	6,358	6,536	2.8
Middle Atlantic	34	261	25,759	25,838	25,384	−1.8
South Atlantic	115	549	49,985	50,658	50,932	0.5
East North Central	121	442	40,906	41,264	41,511	0.6
East South Central	76	1,452	124,526	124,784	125,167	0.3
West North Central	164	399	36,089	36,241	35,127	−3.1
West South Central	82	255	22,474	22,926	21,999	−4.0
Mountain	80	175	16,739	16,806	16,831	0.1
Pacific	52	185	19,122	19,229	19,773	2.8
Puerto Rico	3	13	1,028	1,034	907	−12.3
Size (Routine Home Care Days):						
0–1,752 Days	533	417	48,237	48,051	47,757	−0.6
1,753–4,225 Days	533	1,524	152,653	151,925	151,578	−0.2
4,226–9,422 Days	533	3,420	352,974	351,698	352,436	0.2
9,422+ Days	534	14,583	1,657,472	1,643,334	1,648,336	0.3
Type of Ownership:						
Voluntary	1,373	13,516	1,492,335	1,483,835	1,492,700	0.6
Proprietary	560	5,876	664,169	656,650	653,129	−0.5
Government	172	474	47,067	46,818	46,550	−0.6
Other	28	78	7,766	7,705	7,727	0.3
Hospice Base:						
Freestanding	793	11,495	1,272,781	1,263,013	1,263,114	0.0
Home Health Agency	788	5,235	581,863	577,857	581,728	0.7
Hospital	533	3,123	344,200	341,727	342,789	0.3
Skilled Nursing Facility	19	91	12,492	12,411	12,476	0.5

*The FY 1997 data used to construct the FY 1998 wage index was adjusted to account for the site of service provision that was included in the Balanced Budget Act of 1997.

**Percent change in hospice payments made from 1997, taking into account the site of service change.

Authority: Section 1814(I) of the Social Security Act (42 U.S.C. 1395f(I)(1))

(Catalog of Federal Domestic Assistance Program No. 93.773 Medicare—Hospital Insurance Program; and No. 93.774, Medicare—Supplementary Medical Insurance Program)

Dated: July 7, 1998.

Nancy-Ann Min DeParle,

Administrator, Health Care Financing Administration.

Dated: August 4, 1998.

Donna E. Shalala,

Secretary.

[FR Doc. 98–26501 Filed 9–30–98; 9:53 am]

BILLING CODE 4120–01–P

DEPARTMENT OF HEALTH AND HUMAN SERVICES

National Institutes of Health

Submission for OMB Review; Comment Request: National Institutes of Health Construction Grants

SUMMARY: Under the provisions of Section 3506(c)(2)(A) of the Paperwork Reduction Act of 1995, the National Institutes of Health (NIH), Office of the Director (OD), Office of Extramural Research (OER), Office of Policy for Extramural Research Administration (OPERA) has submitted to the Office of Management and Budget (OMB) a request to review and approve a revision of the information collection listed below. This information was previously published in the **Federal Register** on June 2, 1998 (63 FR 30005) and allowed 60 days for public comments. No public comments were received. The purpose of this notice is to allow an additional 30 days for public comments. The National Institutes of Health may not conduct or sponsor, and the respondent is not required to respond to, an information collection that has been extended, revised, or implemented on or after October 1, 1995, unless it displays a currently valid OMB control number.

Proposed Collection

Title: National Institutes of Health Construction Grants (42 CFR Part 52b). *Type of Information Collection Request:* Extension of OMB No. 0925–0424, expiration date 09/30/98. *Need and Use of Information Collection:* This is a request for OMB approval for a revision of the information collection and recordkeeping requirements contained in the final rule 42 CFR Part 52b. The purpose of the regulations is to govern the awarding and administration of grants awarded by NIH and its components for construction of new buildings and the alteration, renovation, remodeling, improvement, expansion, and repair of existing buildings, including the provision of equipment necessary to make the building (or applicable part of the building) suitable for the purpose for which it was constructed. In terms of reporting requirements:

Section 52b.9(b) of the proposed regulations requires the transferor of a facility which is sold or transferred, or the owner of a facility, the use of which has changed, to provide written notice of the sale, transfer or change within 30 days. Section 52b.10(f) requires a grantee to submit an approved copy of the construction schedule prior to the start of construction. Section 52b.10(g) requires a grantee to provide daily construction logs and monthly status reports upon request at the job site. Section 52b.11(b) requires applicants for a project involving the acquisition of existing facilities to provide the estimated costs of the project, cost of the acquisition of existing facilities, and cost of remodeling, renovating, or altering facilities to serve the purposes for which they are acquired.

In terms of recordkeeping requirements: Section 52b.10(g) requires grantees to maintain daily construction logs and monthly status reports at the job site. *Frequency of Response:* On occasion. *Affected Public:* Non-profit organizations and Federal agencies. *Type of Respondents:* Grantees. The estimated respondent burden is as follows:

ESTIMATED ANNUAL REPORTING AND RECORDKEEPING BURDEN

	Annual number of respondents	Annual frequency	Average burden per response	Annual burden hours
Reporting:				
§ 52b.9(b)	1	1	.50	.50
§ 52b.10(f)	15	1	1	15
§ 52b.10(g)	30	12	1	360
§ 52b.11(b)	100	1	1	100
Recordkeeping:				
§ 52b.10(g)	30	260	1	7800
Total	176			8275.50

The annualized cost to the public, based on an average of 30 active grants in the construction phase, is estimated at: $289,642.50.

Request for Comments

Written comments and/or suggestions from the public and affected agencies should address one or more of the following points: (1) Evaluate whether the proposed collection of information and recordkeeping are necessary for the proper performance of the function of the agency, including whether the information will have practical utility; (2) Evaluate the accuracy of the agency's estimate of the burden of the proposed collection of information and recordkeeping, including the validity of the methodology and assumptions used; (3) Enhance the quality, utility, and clarity of the information to be collected and the recordkeeping information to be maintained; and (4) Minimize the burden of the collection of information on those who are to respond, including the use of appropriate automated, electronic, mechanical, or other technological collection and recordkeeping techniques or other forms of information technology.

FOR FURTHER INFORMATION CONTACT: To request more information contact Jerry Moore, NIH Regulations Officer, Office of Management Assessment, National Institutes of Health, 6011 Executive Boulevard, Room 601, MSC 7669, Rockville, MD 20852, call 301–496–4607 (this is not a toll-free number), or E-mail your request to <moorej@OD.NIH.gov>.

Comments Due Date

Comments regarding this information collection and recordkeeping are best assured of having their full effect if received on or before November 4, 1998.

Dated: September 30, 1998.

Jerry Moore,

Regulations Officer, National Institutes of Health.

[FR Doc. 98–26692 Filed 10–1–98; 9:14 am]

BILLING CODE 4140–01–M

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Substance Abuse and Mental Health Services Administration

Current List of Laboratories Which Meet Minimum Standards To Engage in Urine Drug Testing for Federal Agencies, and Laboratories That Have Withdrawn From the Program

AGENCY: Substance Abuse and Mental Health Services Administration, HHS.

ACTION: Notice.

SUMMARY: The Department of Health and Human Services notifies Federal agencies of the laboratories currently certified to meet standards of Subpart C of Mandatory Guidelines for Federal Workplace Drug Testing Programs (59 FR 29916, 29925). A similar notice listing all currently certified laboratories will be published during the first week of each month, and updated to include laboratories which subsequently apply for and complete the certification process. If any listed laboratory's certification is totally suspended or revoked, the laboratory will be omitted from updated lists until such time as it is restored to full certification under the Guidelines.

If any laboratory has withdrawn from the National Laboratory Certification Program during the past month, it will be identified as such at the end of the current list of certified laboratories, and will be omitted from the monthly listing thereafter.

This Notice is now available on the internet at the following website: http://www.health.org.

FOR FURTHER INFORMATION CONTACT: Mrs. Giselle Hersh or Dr. Walter Vogl, Division of Workplace Programs, 5600 Fishers Lane, Rockwall 2 Building, Room 815, Rockville, Maryland 20857; Tel.: (301) 443–6014.

Special Note: Our office moved to a different building on May 18, 1998. Please use the above address for all regular mail and correspondence. For all overnight mail service use the following address: Division of Workplace Programs, 5515 Security Lane, Room 815, Rockville, Maryland 20852.

SUPPLEMENTARY INFORMATION: Mandatory Guidelines for Federal Workplace Drug Testing were developed in accordance with Executive Order 12564 and section 503 of Pub. L. 100–71. Subpart C of the Guidelines, ''Certification of Laboratories Engaged in Urine Drug Testing for Federal Agencies,'' sets strict standards which laboratories must meet in order to conduct urine drug testing for Federal agencies. To become certified an applicant laboratory must undergo three rounds of performance testing plus an on-site inspection. To maintain that certification a laboratory must participate in a quarterly performance testing program plus periodic, on-site inspections.

Laboratories which claim to be in the applicant stage of certification are not to be considered as meeting the minimum requirements expressed in the HHS Guidelines. A laboratory must have its letter of certification from SAMHSA, HHS (formerly: HHS/NIDA) which attests that it has met minimum standards.

In accordance with Subpart C of the Guidelines, the following laboratories meet the minimum standards set forth in the Guidelines:

ACL Laboratories, 8901 W. Lincoln Ave., West Allis, WI 53227, 414–328–7840, (formerly: Bayshore Clinical Laboratory)

Aegis Analytical Laboratories, Inc., 345 Hill Ave., Nashville, TN 37210, 615–255–2400

Alabama Reference Laboratories, Inc., 543 South Hull St., Montgomery, AL 36103, 800–541–4931/334–263–5745

Alliance Laboratory Services, 3200 Burnet Ave., Cincinnati, OH 45229, 513–585–9000 (formerly: Jewish Hospital of Cincinnati, Inc.)

American Medical Laboratories, Inc., 14225 Newbrook Dr., Chantilly, VA 20151, 703–802–6900

Associated Pathologists Laboratories, Inc., 4230 South Burnham Ave., Suite 250, Las Vegas, NV 89119–5412, 702–733–7866/800–433–2750

Associated Regional and University Pathologists, Inc. (ARUP), 500 Chipeta Way, Salt Lake City, UT 84108, 801–583–2787/800–242–2787

Baptist Medical Center—Toxicology Laboratory, 9601 I–630, Exit 7, Little Rock, AR 72205–7299, 501–202–2783 (formerly: Forensic Toxicology Laboratory Baptist Medical Center)

Cedars Medical Center, Department of Pathology, 1400 Northwest 12th Ave., Miami, FL 33136, 305–325–5784

Clinical Reference Lab, 8433 Quivira Rd., Lenexa, KS 66215–2802, 800–445–6917

Cox Health Systems, Department of Toxicology, 1423 North Jefferson Ave., Springfield, MO 65802, 800–876–3652/417–269–3093, (formerly: Cox Medical Centers)

Dept. of the Navy, Navy Drug Screening Laboratory, Great Lakes, IL, P. O. Box 88–6819, Great Lakes, IL 60088–6819, 847–688–2045/847–688–4171

Diagnostic Services Inc., dba DSI, 12700 Westlinks Drive, Fort Myers, FL 33913, 941–561–8200/800–735–5416

Doctors Laboratory, Inc., P.O. Box 2658, 2906 Julia Dr., Valdosta, GA 31604, 912–244–4468

DrugProof, Division of Dynacare/Laboratory of Pathology, LLC, 1229 Madison St., Suite 500, Nordstrom Medical Tower, Seattle, WA 98104, 800–898–0180/206–386–2672, (formerly: Laboratory of Pathology of Seattle, Inc., DrugProof, Division of Laboratory of Pathology of Seattle, Inc.)

DrugScan, Inc., P.O. Box 2969, 1119 Mearns Rd., Warminster, PA 18974, 215–674–9310

Dynacare Kasper Medical Laboratories*, 14940–123 Ave., Edmonton, Alberta, Canada T5V 1B4, 800–661–9876/403–451–3702

ElSohly Laboratories, Inc., 5 Industrial Park Dr., Oxford, MS 38655, 601–236–2609

Gamma-Dynacare Medical Laboratories*, A Division of the Gamma-Dynacare Laboratory Partnership, 245 Pall Mall St., London, ON, Canada N6A 1P4, 519–679–1630

General Medical Laboratories, 36 South Brooks St., Madison, WI 53715, 608–267–6267

Hartford Hospital Toxicology Laboratory, 80 Seymour St., Hartford, CT 06102–5037, 860–545–6023

Info-Meth, 112 Crescent Ave., Peoria, IL 61636, 800–752–1835/309–671–5199, (Formerly: Methodist Medical Center Toxicology Laboratory)

LabCorp Occupational Testing Services, Inc., 1904 Alexander Drive, Research Triangle Park, NC 27709, 919–672–6900/800–833–3984, (Formerly: CompuChem Laboratories, Inc.; CompuChem Laboratories, Inc., a Subsidiary of Roche Biomedical Laboratory; Roche CompuChem Laboratories, Inc., a Member of the Roche Group)

LabCorp Occupational Testing Services, Inc., 4022 Willow Lake Blvd., Memphis, TN 38118, 901–795–1515/800–223–6339, (Formerly: MedExpress/National Laboratory Center)

LabOne, Inc., 8915 Lenexa Dr., Overland Park, Kansas 66214, 913–888–3927/800–728–4064, (formerly: Center for Laboratory Services, a Division of LabOne, Inc.)

Laboratory Corporation of America, 888 Willow St., Reno, NV 89502, 702–334–3400, (formerly: Sierra Nevada Laboratories, Inc.)

Laboratory Corporation of America Holdings, 69 First Ave., Raritan, NJ 08869, 800–437–4986/908–526–2400, (Formerly: Roche Biomedical Laboratories, Inc.)

Laboratory Specialists, Inc., 1111 Newton St., Gretna, LA 70053, 504–361–8989/800–433–3823

Marshfield Laboratories, Forensic Toxicology Laboratory, 1000 North Oak Ave., Marshfield, WI 54449, 715–389–3734/800–331–3734

MAXXAM Analytics Inc.,* 5540 McAdam Rd., Mississauga, ON, Canada L4Z 1P1, 905–890–2555, (formerly: NOVAMANN (Ontario) Inc.)

Medical College Hospitals Toxicology Laboratory, Department of Pathology, 3000 Arlington Ave., Toledo, OH 43614, 419–381–5213

MedTox Laboratories, Inc., 402 W. County Rd. D, St. Paul, MN 55112, 800–832–3244/612–636–7466

Methodist Hospital Toxicology Services of Clarian Health Partners, Inc., Department of Pathology and Laboratory Medicine, 1701 N. Senate Blvd., Indianapolis, IN 46202, 317–929–3587

MetroLab-Legacy Laboratory Services, 1225 NE 2nd Ave., Portland, OR 97232, 503–413–4512, 800–950–5295

Minneapolis Veterans Affairs Medical Center, Forensic Toxicology Laboratory, 1 Veterans Drive, Minneapolis, Minnesota 55417, 612–725–2088

National Toxicology Laboratories, Inc., 1100 California Ave., Bakersfield, CA 93304, 805–322–4250

Northwest Toxicology, Inc., 1141 E. 3900 South, Salt Lake City, UT 84124, 800–322–3361/801–268–2431

Oregon Medical Laboratories, P.O. Box 972, 722 East 11th Ave., Eugene, OR 97440–0972, 541–341–8092

Pacific Toxicology Laboratories, 1519 Pontius Ave., Los Angeles, CA 90025, 310–312–0056, (formerly: Centinela Hospital Airport Toxicology Laboratory)

Pathology Associates Medical Laboratories, 11604 E. Indiana, Spokane, WA 99206, 509–926–2400/ 800–541–7891

PharmChem Laboratories, Inc., 1505-A O'Brien Dr., Menlo Park, CA 94025, 650–328–6200/800–446–5177

PharmChem Laboratories, Inc., Texas, Division, 7610 Pebble Dr., Fort Worth, TX 76118, 817–595–0294, (formerly: Harris Medical Laboratory)

Physicians Reference Laboratory, 7800 West 110th St., Overland Park, KS 66210, 913–339–0372/800–821–3627

Poisonlab, Inc., 7272 Clairemont Mesa Blvd., San Diego, CA 92111, 619–279–2600/800–882–7272

Premier Analytical Laboratories, 15201 East I–10 Freeway, Suite 125, Channelview, TX 77530, 713–457–3784/800–888–4063, (formerly: Drug Labs of Texas)

Presbyterian Laboratory Services, 5040 Airport Center Parkway, Charlotte, NC 28208, 800–473–6640/704–943–3437

Quest Diagnostics Incorporated, 4444 Giddings Road, Auburn Hills, MI 48326, 810–373–9120 / 800–444–0106 (formerly: HealthCare/Preferred Laboratories, HealthCare/MetPath, CORNING Clinical Laboratories)

Quest Diagnostics Incorporated, National Center for Forensic Science, 1901 Sulphur Spring Rd., Baltimore, MD 21227, 410–536–1485 (formerly: Maryland Medical Laboratory, Inc., National Center for Forensic Science, CORNING National Center for Forensic Science)

Quest Diagnostics Incorporated, 4770 Regent Blvd., Irving, TX 75063, 800–526–0947 / 972–916–3376 (formerly: Damon Clinical Laboratories, Damon/ MetPath, CORNING Clinical Laboratories)

Quest Diagnostics Incorporated, 875 Greentree Rd., 4 Parkway Ctr., Pittsburgh, PA 15220–3610, 800–574–2474 / 412–920–7733 (formerly: Med-Chek Laboratories, Inc., Med-Chek/ Damon, MetPath Laboratories, CORNING Clinical Laboratories)

Quest Diagnostics Incorporated, 2320 Schuetz Rd., St. Louis, MO 63146, 800–288–7293 / 314–991–1311 (formerly: Metropolitan Reference Laboratories, Inc., CORNING Clinical Laboratories, South Central Division)

Quest Diagnostics Incorporated, 7470 Mission Valley Rd., San Diego, CA 92108–4406, 800–446–4728 / 619–686–3200 (formerly: Nichols Institute, Nichols Institute Substance Abuse Testing (NISAT), CORNING Nichols Institute, CORNING Clinical Laboratories)

Quest Diagnostics Incorporated, One Malcolm Ave., Teterboro, NJ 07608, 201–393–5590 (formerly: MetPath, Inc., CORNING MetPath Clinical Laboratories, CORNING Clinical Laboratory)

Quest Diagnostics Incorporated, 1355 Mittel Blvd., Wood Dale, IL 60191, 630–595–3888 (formerly: MetPath, Inc., CORNING MetPath Clinical Laboratories, CORNING Clinical Laboratories Inc.)

Scientific Testing Laboratories, Inc., 463 Southlake Blvd., Richmond, VA 23236, 804–378–9130

Scott & White Drug Testing Laboratory, 600 S. 31st St., Temple, TX 76504, 800–749–3788 / 254–771–8379

S.E.D. Medical Laboratories, 5601 Office Blvd., Albuquerque, NM 87109, 505–727–6300/ 800–999–5227

SmithKline Beecham Clinical Laboratories, 3175 Presidential Dr., Atlanta, GA 30340, 770–452–1590 (formerly: SmithKline Bio-Science Laboratories)

SmithKline Beecham Clinical Laboratories, 8000 Sovereign Row, Dallas, TX 75247, 214–637–7236 (formerly: SmithKline Bio-Science Laboratories)

SmithKline Beecham Clinical Laboratories, 801 East Dixie Ave., Leesburg, FL 34748, 352–787–9006 (formerly: Doctors & Physicians Laboratory)

SmithKline Beecham Clinical Laboratories, 400 Egypt Rd., Norristown, PA 19403, 800–877–7484 / 610–631–4600 (formerly: SmithKline Bio-Science Laboratories)

SmithKline Beecham Clinical Laboratories, 506 E. State Pkwy., Schaumburg, IL 60173, 847–447–4379/800–447–4379 (formerly: International Toxicology Laboratories)

SmithKline Beecham Clinical Laboratories, 7600 Tyrone Ave., Van Nuys, CA 91405, 818–989–2520 / 800–877–2520,

South Bend Medical Foundation, Inc., 530 N. Lafayette Blvd., South Bend, IN 46601, 219–234–4176

Southwest Laboratories, 2727 W. Baseline Rd., Tempe, AZ 85283, 602–438–8507

Sparrow Health System, Toxicology Testing Center, St. Lawrence Campus, 1210 W. Saginaw, Lansing, MI 48915, 517–377–0520 (formerly: St. Lawrence Hospital & Healthcare System)

St. Anthony Hospital Toxicology Laboratory, 1000 N. Lee St., Oklahoma City, OK 73101, 405–272–7052

Toxicology & Drug Monitoring Laboratory, University of Missouri Hospital & Clinics, 2703 Clark Lane, Suite B, Lower Level, Columbia, MO 65202, 573–882–1273

Toxicology Testing Service, Inc., 5426 N.W. 79th Ave., Miami, FL 33166, 305–593–2260

UNILAB, 18408 Oxnard St., Tarzana, CA 91356, 800–492–0800 / 818–996–7300 (formerly: MetWest-BPL Toxicology Laboratory)

Universal Toxicology Laboratories, LLC, 10210 W. Highway 80 Midland, Texas 79706, 915–561–8851 / 888–953–8851

UTMB Pathology-Toxicology Laboratory, University of Texas Medical Branch, Clinical Chemistry Division, 301 University Boulevard, Room 5.158, Old John Sealy, Galveston, Texas 77555–0551, 409–772–3197

* The Standards Council of Canada (SCC) voted to end its Laboratory Accreditation Program for Substance Abuse (LAPSA) effective May 12, 1998. Laboratories certified through that program were accredited to conduct forensic urine drug testing as required by U.S. Department of Transportation (DOT) regulations. As of that date, the certification of those accredited Canadian laboratories will continue under DOT authority. The responsibility for conducting quarterly performance testing plus periodic on-site inspections of those LAPSA-accredited laboratories was transferred to the U.S. DHHS, with the DHHS' National Laboratory Certification Program (NLCP) contractor continuing to have an active role in the performance testing and laboratory inspection processes. Other Canadian laboratories wishing to be considered for the NLCP may apply directly to the NLCP contractor just as U.S. laboratories do. Upon finding a Canadian laboratory to be qualified, the DHHS will recommend that DOT certify the laboratory (**Federal Register**, 16 July 1996) as meeting the minimum standards of the ''Mandatory Guidelines for Workplace Drug Testing'' (59 **Federal Register**, 9 June 1994, Pages 29908–29931). After receiving the DOT certification, the laboratory will be included in the monthly list of DHHS certified laboratories and participate in the NLCP certification maintenance program.

Richard Kopanda,

Executive Officer, Substance Abuse and Mental Health Services Administration.

[FR Doc. 98–26724 Filed 10–2–98; 8:45 am]

BILLING CODE 4160–20–P

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Substance Abuse and Mental Health Services Administration (SAMHSA)

Notice of Meeting

Pursuant to Pub. L. 92–463, notice is hereby given of the following teleconference meeting of the SAMHSA Special Emphasis Panel II in October.

A summary of the meeting and a roster of the members may be obtained from: Ms. Dee Herman, Committee Management Liaison, SAMHSA Office of Extramural Activities Review, 5600 Fishers Lane, Room 17–89, Rockville, Maryland 20857. Telephone: 301–443–7390.

Substantive program information may be obtained from the individual named as Contact for the meeting listed below.

The meeting will include the review, discussion and evaluation of individual grant applications. The discussion could reveal personal information concerning individuals associated with the applications. Accordingly, this meeting is concerned with matters exempt from mandatory disclosure in Title 5 U.S.C. 552b(c)(6) and 5 U.S.C. App.2, § 10(d).

Committee Name: SAMHSA Special Emphasis Panel II (SEP II).

Meeting Dates: October 6, 1998, 2:00 p.m.–3:30 p.m.

Place: Parklawn Building, Room 16C–26—Telephone Conference, 5600 Fishers Lane, Rockville, Maryland 20852.

Closed: October 6, 1998 2:00 p.m.–3:30 p.m.

Panel: FEMA—Crisis Counseling—Iowa.

Contact: Lionel Fernandez, Ph.D., Review Administrator, Room 17–89, Parklawn Building, Telephone: 301–443–3042 and FAX: 301–443–3437.

This notice is being published less than 15 days prior to the meeting due to the urgent need to meet timing limitations imposed by the review and funding cycle.

Dated: September 29, 1998.

Jeri Lipov,

Committee Management Officer, Substance Abuse and Mental Health Services Administration.

[FR Doc. 98–26523 Filed 10–2–98; 8:45 am]

BILLING CODE: 4162–20–P

DEPARTMENT OF THE INTERIOR

Bureau of Land Management

[UT–08–934–1150]

Notice of Intent; Vermilion Management Framework Plan and Coral Pink Sand Dunes and Surrounding Area

AGENCY: Bureau of Land Management, Interior.

ACTION: Notice of intent to initiate a plan amendment and associated environmental assessment for the Vermilion Management Framework Plan (MFP) and call for information regarding management of the Coral Pink Sand Dunes located in Southern Utah.

SUMMARY: The Bureau of Land Management (BLM), Kanab Field Office, proposes to amend the Vermilion MFP in order to prepare a Management Plan for the Coral Pink Sand Dunes and surrounding area.

DATES: The field Office invites the public to comment on the above preliminary issues or any others that may need to be addressed for updated management of the Coral Pink Sand Dunes. Comments must be submitted within 30 days of publication of this notice or by November 4, 1998. All comments should be sent to the address listed below. Additional opportunities for public input will be made available at the public meetings to be held at the following locations:.

—Holiday Inn Express, 815 East Highway 89, Kanab, Utah, on October 28, 1998, beginning at 7 PM.

—St. George Hilton Inn, 1450 South Hilton Drive, St. George, Utah on October 29, 1998, beginning at 7 PM.

—State of Utah Natural Resources Department Building, 1594 West North Temple, Rooms 1040 and 1050, Salt Lake City, Utah on November 5, 1998 beginning at 7 PM.

ADDRESSES: Verlin Smith, Field Manager, BLM, Kanab Field Office, 318 North First East, Kanab, Utah 84741 (435) 644–2646 or Ronald Bolander, BLM, Utah State Office, PO Box 45155, Salt Lake City, Utah 84145–0155 (801) 539–4065.

FOR FURTHER INFORMATION CONTACT: Verlin Smith, Kanab Field Office, at (435) 644–2672 ext. 2646 or Ronald Bolander, Utah State Office at (801) 539–4065.

SUPPLEMENTARY INFORMATION: The Vermilon Management Framework Plan (MFP) was completed in 1981. Since that time, changes in land use, public expectations, and the increasing potential for impairment of wilderness values and impacts to special status plant and animal species, etc., has resulted in the need to re-examine certain decisions documented in the MFP which may no longer apply to the Coral Pink Sand Dunes. In order to respond to these changes, the Kanab Field Office proposes to prepare a land use plan amendment and associated management plan for the Coral Pink Sand Dunes. The purpose of this effort is to develop a management strategy for the Dunes and surrounding area of influence. Issues tentatively identified to be analyzed include OHV use and designations, methods to reduce impairment to wilderness values, recreation management, and special status species management. An inter-disciplinary team will be utilized for the development of the proposed management plan, land use amendment and associated environmental assessment.

G. William Lamb,

State Director.

[FR Doc. 98–26555 Filed 10–2–98; 8:45 am]

BILLING CODE 4310–DQ–M

DEPARTMENT OF THE INTERIOR

Bureau of Land Management

[WY–930–1610–00]

Wyoming BLM Fire Management Plan; Notice of Availability

AGENCY: Bureau of Land Management, Interior.

ACTION: The Bureau of Land Management (BLM), Wyoming State Office, announces (1) the availability of the ''Fire Management Implementation Plan for the BLM-administered Public Lands in the State of Wyoming'' (fire management plan); and (2) an Administrative Determination documenting compliance of the plan with the National Environmental Policy Act, conformance with Wyoming BLM land use plans, and approval by the Wyoming BLM State Director.

SUMMARY: The Wyoming BLM fire management plan describes fire management objectives and strategies to be applied on about 17.5 million acres of BLM-administered public lands in the State of Wyoming. Covering 58 geographical areas within the State, the plan promotes the cost-effective protection of life, property, and natural resources from wildfire. It highlights the use of fire to manage natural resources, identifies fuel management strategies to reduce the potential for catastrophic wildfires, seeks a better understanding of the role of fire in the natural environment, and promotes fire line safety through increased communication and coordination.

Fire management planning was formally initiated in April 1997 to comply with recommendations contained in the Federal Wildland Fire Management Policy and Program Review signed in December 1995 by the Secretaries of the Interior and Agriculture. The Wyoming BLM solicited and incorporated public

comments in developing the fire management plan.

As documented in an Administrative Determination, the ''Fire Management Implementation Plan for the BLM-administered Public Lands in the State of Wyoming'' is in conformance with the 11 Wyoming BLM land use plans in the State, and is adequately covered by the environmental analyses developed for those land use plans.

FOR FURTHER INFORMATION CONTACT: *Wyoming State Office:* Stephen Eckert, State Fire Management Officer, 307–775–6235, or Joe Patti, Field Planning Coordinator, 307–775–6101, Bureau of Land Management, 5353 Yellowstone Road, P.O. Box 1828, Cheyenne, Wyoming 82003–1828.

Casper Field Office: Jim Johnson, Fire Management Officer or Glen Nebeker, Resource Advisor, Bureau of Land Management, 1701 East E Street, Casper, Wyoming 82601, 307–261–7600.

Rawlins Field Office: Larry Trapp, Fire Management Officer or John Spehar, Planning Coordinator, Bureau of Land Management, 1300 North Third Street, Rawlins, Wyoming 82301, 307–328–4200.

Rock Springs Field Office: Tony Tezak, Fire Management Specialist or Renee Dana, Resource Advisor, Bureau of Land Management, 280 Highway 191 North, Rock Springs, Wyoming 82901, 307–352–0256.

Worland Field Office: Gary Bingham, Fire Management Officer or Bob Ross, Planning Coordinator, Bureau of Land Management, 101 South 23rd Street, P.O. Box 119, Worland, Wyoming 82401–0119, 307–347–5100.

SUPPLEMENTARY INFORMATION: In verifying the conformance of the fire management plan with BLM land use plans statewide, the following BLM land use plans were reviewed. The Newcastle Management Framework Plan (MFP–1982) and the imminent Newcastle Resource Management Plan (RMP), Grass Creek MFP (1983) and the imminent Grass Creek RMP, Buffalo RMP (1985), Platte River RMP (1985), Kemmerer RMP (1986), Lander RMP (1987), Pinedale RMP (1988), Washakie RMP (1988), Cody RMP (1990), Great Divide RMP (1990), and Green River RMP (1997). It was found that the fire management plan is in conformance and does not conflict with any of these land use plans. Actually, the fire management plan is derived from the fire management decisions in these land use plans which address cost-effective protection of life, property, and natural resources from wildfire and the use of prescribed fire to achieve multiple-use management goals. As necessary, maintenance actions will be completed to incorporate new fire terminology in the older RMPs. No needs for amending any of the land use plans were identified. Minor maintenance needs for the land use plans may be identified in the future as implementation of the fire management plan progresses.

Copies of the fire management plan and Administrative Determination can be obtained by contacting any of the BLM offices or officials listed above. They can also be viewed on-line from the Wyoming BLM Internet Site at http://www.wy.blm.gov/.

Dated: September 25, 1998.

Alan R. Pierson,

State Director.

[FR Doc. 98–26527 Filed 10–2–98; 8:45 am]

BILLING CODE 4310–32–P

DEPARTMENT OF THE INTERIOR

Bureau of Land Management

[AK–050–1220–04]

Limits of Acceptable Change, Gulkana River, AK

AGENCY: Bureau of Land Management, Interior.

ACTION: Notice of intent to hold planning and scoping meetings to discuss and develop limits of acceptable change for the Gulkana River, AK and to comply with the National Environmental Policy Act (NEPA) of 1969 and the Alaska National Interest and Conservation Act (ANILCA) of 1980.

SUMMARY: The Bureau of Land Management (BLM) proposes to conduct a Limits of Acceptable Change (LAC) planning process for the Gulkana River area. The recommendations developed during the LAC planning process will be used to update the Gulkana National Wild River Management Plan and develop a Lower Gulkana River Management Plan. The LAC process will be conducted by a third party contractor. Based on the recommendations developed during the LAC process, the BLM will determine the appropriate level of compliance required under Section 102 (2)(c) of the National Environmental Policy Act of 1969.

DATES: Public meetings will be held in Glennallen, AK on October 19, 1998 beginning at 2, 4:30, and 7 pm at the Caribou Cafe Banquet Room, Mile 187, Glenn Highway, Glennallen, AK, (907) 822–3656. In Fairbanks, AK on October 21, 1998 meetings will be held at 2, 4:30 and 7 pm at the Noel Wein (FSNB) Public Library, 1215 Cowles Street, Fairbanks, AK, (907) 459–1020. In Anchorage on October 23, 1998 at 2, 4:30 and 7 pm at Z.J. Loussac Public Library Conference Room, 3600 Denali Street, Anchorage, AK (907) 343–2906.

ADDRESSES: Comments should be addressed to the Gulkana River Studies Team, P.O. 2372, Durango, CO 81302. The e-mail address is info@gulkanariver.com. A website with pertinent information has been established at www.gulkanariver.com.

FOR FURTHER INFORMATION CONTACT: Gulkana River Studies Team. 1–800–439–0410; Kathy Liska, Glennallen Field Office, Bureau of Land Management (907) 822–3217.

SUPPLEMENTARY INFORMATION: The Gulkana LAC planning process is being coordinated by a third party consultant to the Bureau of Land Management, Glennallen Field Office. The purpose of this contract is to conduct a Limits of Acceptable Change planning process for the Gulkana River, AK.

The West and Middle Forks and the mainstem of the Gulkana River are included in the National Wild and Scenic River system. In 1980 Congress designated 181 miles of the Gulkana River as ''Wild'' pursuant to the 1968 Wild and Scenic River Act. The three stretches of river exhibit general inaccessibility, except by trails, with watersheds essentially primitive with unpolluted waters and represent vestiges of primitive America.

The Limits of Acceptable Change study includes the existing Wild River Corridor and the following areas: (1) A 9,840 acre area along the South Branch West Fork, west of the existing Wild River Corridor. This stretch has been considered for additional designation as a wild river; and, (2) The Gulkana River from the southern limits of the existing Wild River Corridor at Sourdough Creek to the confluence with the Copper River, plus adjacent land generally between the river and the Richardson Highway and about 1 mile west of the river.

The objectives of the Limits of Acceptable Change process include three components: (1) Provide recommendations to update the Gulkana National Wild River Management Plan and create a citizen-driven Lower Gulkana River Management Plan; (2) Produce documents required to comply with potential National Environmental Policy Act (NEPA) actions and ANILCA Sec 810; and, (3) Develop and implement a monitoring program to measure and evaluate changes in natural and social conditions, with corresponding management actions that

may be needed to maintain or achieve desired future conditions.

The desired outcome of the Limits of Acceptable Change planning process is to develop a consensus among the various stakeholders as to the best ways to manage the Gulkana River corridor within legislative constraints. Existing regulatory guidance for management of the Gulkana River corridor is provided by the Wild and Scenic Rivers Act (1968) and the Alaska National Interest Lands and Conservation Act (1980).

In December 1983 the Bureau of Land Management completed the initial River Management Plan for the Gulkana River. That report was entitled ''Gulkana River. A Component of the National Wild and Scenic Rivers System''. In that document the specific boundaries and management policies were established for the Gulkana National Wild River.

With increasing use and improved access to the Gulkana River system, the Bureau of Land Management proposes to update the River Management Plan through the use of the Limits of Acceptable Change. Results from the LAC planning process will be utilized by the Bureau of Land Management to determine what level of NEPA compliance and environmental analysis will be required to implement the proposed recommendations.

Dated: September 28, 1998.

Kathy J. Liska,

District Outdoor Recreation Planner, Glennallen Field Office.

[FR Doc. 98–26554 Filed 10–2–98; 8:45 am]

BILLING CODE 4310–JA–P

DEPARTMENT OF THE INTERIOR

Bureau of Reclamation

Bay-Delta Advisory Council Meeting; Bay-Delta Advisory Council's Ecosystem Roundtable Meeting

AGENCY: Bureau of Reclamation, Interior.

ACTION: Notice of meetings.

SUMMARY: The Bay-Delta Advisory Council (BDAC) will meet to discuss and ask to reach concurrence on the CALFED Program's Framework for a Draft Preferred Program Alternative. In addition, Council Members will be asked to focus their discussion on governance of the CALFED Bay-Delta Program. Council Members will be asked in particular to discuss their views on the public's role in implementing and monitoring the CALFED Program during its first stage of actions. The Bay-Delta Advisory Council's (BDAC) Ecosystem Roundtable will meet to discuss several issues including: an implementation and tracking system update, the development of other directed funding programs, the planning process for FY 99, funding coordination, and other issues. The meetings are open to the public. Interested persons may make oral statements to the BDAC and Ecosystem Roundtable or may file written statements for consideration.

DATES: The Bay-Delta Advisory Council meeting will be held from 9:00 a.m. to 5:00 p.m. on Thursday, October 29, 1998, and 8:30 a.m.–Noon on Friday, October 30, 1998. The BDAC Ecosystem Roundtable meeting will be held from 1:00 p.m. to 5:00 p.m. on Wednesday, October 28, 1998.

ADDRESSES: The Bay-Delta Advisory Council will meet at the Holiday Inn Capitol Plaza, 300 J Street, Sacramento, CA 95814, (916) 446–0100. The Ecosystem Roundtable will meet at the Resources Building, 1416 Ninth Street, Room 1131, Sacramento, CA 95814.

FOR FURTHER INFORMATION CONTACT: For the Bay-Delta Advisory Council Meeting, Mary Selkirk, CALFED Bay-Delta Program, at (916) 657–2666; for the Ecosystem Roundtable, Cindy Darling, CALFED Bay-Delta Program, at (916) 657–2666. If reasonable accommodation is needed due to a disability, please contact the Equal Employment Opportunity Office at (916) 653–6952 or TDD (916) 653–6934 at least one week prior to the meeting.

SUPPLEMENTARY INFORMATION: The San Francisco Bay/Sacramento-San Joaquin Delta Estuary (Bay-Delta system) is a critically important part of California's natural environment and economy. In recognition of the serious problems facing the region and the complex resource management decisions that must be made, the state of California and the Federal government are working together to stabilize, protect, restore, and enhance the Bay-Delta system. The State and Federal agencies with management and regulatory responsibilities in the Bay-Delta System are working together as CALFED to provide policy direction and oversight for the process.

One area of Bay-Delta management includes the establishment of a joint State-Federal process to develop long-term solutions in the Bay-Delta system related to fish and wildlife, water supply reliability, natural disasters, and water quality. The intent is to develop a comprehensive and balanced plan which addresses all of the resource problems. This effort, the CALFED Bay-Delta Program (Program), is being carried out under the policy direction of CALFED. The Program is exploring and developing a long-term solution for a cooperative planning process that will determine the most appropriate strategy and actions necessary to improve water quality, restore health to the Bay-Delta ecosystem, provide for a variety of beneficial uses, and minimize Bay-Delta system vulnerability. A group of citizen advisors representing California's agricultural, environmental, urban, business, fishing, and other interests who have a stake in finding long term solutions for the problems affecting the Bay-Delta system has been chartered under the Federal Advisory Committee Act (FACA) as Advisory Council BDAC to advise CALFED on the program mission, problems to be addressed, and objectives for the Program. BDAC provides a forum to help ensure public participation, and will review reports and other materials prepared by CALFED staff. BDAC has established a subcommittee called the Ecosystem Roundtable to provide input on annual workplans to implement ecosystem restoration projects and programs.

Minutes of the meeting will be maintained by the Program, Suite 1155, 1416 Ninth Street, Sacramento, CA 95814, and will be available for public inspection during regular business hours, Monday through Friday within 30 days following the meeting.

Dated: September 29, 1998.

Roger Patterson,

Regional Director, Mid-Pacific Region.

[FR Doc. 98–26556 Filed 10–2–98; 8:45 am]

BILLING CODE 4310–94–M

DEPARTMENT OF JUSTICE

Office of Community Oriented Policing Services; Agency Information Collection Activities: Proposed Collection; Comment Request

ACTION: Notice of information collection under review; COPS MORE (Making officer redeployment effective) '95.

The Department of Justice, Office of Community Oriented Policing Services has submitted the following information collection request for review and clearance in accordance with the Paperwork Reduction Act of 1995. The Office of Management and Budget approval is being sought for the information collection listed below. This proposed information collection was previously published in the **Federal Register** April 30, 1998, allowing for a 60-day public comment period.

The purpose of this notice is to allow an additional 30 days for public

comment until November 4, 1998. This process is conducted in accordance with 5 CFR 13200.10.

Written comments and/or suggestions regarding the item(s) contained in this notice, especially regarding the estimated public burden and associated response time, should be directed to the Office of Management and Budget, Office of Information and Regulatory Affairs, Attention: Department of Justice Desk Officer, Washington, DC 20530. Additionally, comments may be submitted to OMB via facsimile to (202) 395–7285. Comments may also be submitted to the Department of Justice (DOJ), Justice Management Division, Information Management and Security Staff, Attention: Department Deputy Clearance Officer, Suite 850, 1001 G Street, NW, Washington, DC 20530.

Written comments and/or suggestions from the public and affected agencies concerning the proposed collection of information should address one or more of the following four points:

(1) Evaluate whether the proposed collection of information is necessary for the proper performance of the function of the agency, including whether the information will have practical utility;

(2) Evaluate the accuracy of the agency's estimate of the burden of the proposed collection of information, including the validity of the methodology and assumptions used;

(3) Enhance the quality, utility, and clarity of the information to be collected; and

(4) Minimize the burden of the collection of information on those who are to respond, including through the sue of appropriate automated, electronic, mechanical, or other technological collection techniques or other forms of information technology, e.g., permitting electronic submission of responses.

Overview of This Information

(1) *Type of information collection:* Extension of previously approved collection.

(2) *The title of the form/collection:* Survey Protocol: COPS MORE (Making Officer Redeployment Effective) '95.

(3) *The agency form number, if any, and the applicable component of the Department sponsoring the collection:* Office of Community Oriented Policing Services, United States Department of Justice.

(4) *Affected public who will be asked or required to respond, as well as a brief abstract:*

Primary: State, Local, or Tribal government.

Other: none. MORE will support local enforcement agencies in providing technology and civilians which will enable the agencies to be more efficient and effective in performing community policing activities.

(5) *An estimate of the total number of respondents and the amount of time estimated for an average respondent to respon/reply:* Survey Protocol: COPS MORE (Making Officer Redeployment Effective) '95: Approximately 1,150 respondents, at 15.6 hours per response (including record-keeping).

(6) *An estimate of the total public burden (in hours) associated with the collection:* Approximately 35,880 annual burden hours.

If additional information is required contact: Ms. Brenda Dyer, Deputy Clearance Officer, United States Department of Justice, Information Management and Security Staff, Justice Management Division, Suite 850, Washington Center, 1001 G Street, NW, Washington, DC 20530.

Dated: September 29, 1998.

Brenda E. Dyer,

Department Deputy Clearance Officer, United States Department of Justice.

[FR Doc. 98–26546 Filed 10–2–98; 8:45 am]

BILLING CODE 4410–AT–M

DEPARTMENT OF JUSTICE

Drug Enforcement Administration

Agency Information Collection Activities: Proposed Collection; Comment Request

ACTION: Notice of information collection under review; Extension of a currently approved collection; Registrants Inventory of Drugs Surrendered—DEA Form 41.

Office of Management and Budget (OMB) approval is being sought for the information collection listed below. This proposed information collection was previously published in the **Federal Register** on July 20, 1998, allowing for a 60-day public comment period.

The purpose of this notice is to allow an additional 30 days for public comment until November 4, 1998. This process is conducted in accordance with 5 CFR 1320.10.

Written comments and/or suggestions regarding the item(s) contained in this notice, especially regarding the estimated pubic burden and associated response time, should be directed to the Office of Management and Budget, Office of Information and Regulatory Affairs, Attention: Department of Justice Desk Officer, Washington, D.C. 20503. Additionally, comments may be submitted to OMB via facsimile to (202) 395–7285. Comments may also be submitted to the Department of Justice (DOJ), Justice Management Division, Information Management and Security Staff, Attention: Department Clearance Officer, Suite 850, 1001 G Street, NW, Washington, D.C. 20530. Additionally, comments may be submitted to DOJ via facsimile to (202) 514–1590.

Written comments and/or suggestions from the public and affected agencies concerning the proposed collection of information should address one or more of the following four points:

(1) Evaluate whether the proposed collection of information is necessary for the proper performance of the function of the agency, including whether the information will have practical utility;

(2) Evaluate the accuracy of the agency's estimate of the burden of the proposed collection of information, including the validity of the methodology and assumptions used;

(3) Enhance the accuracy of the agency's estimate of the burden of the proposed collection of information, including the validity of the methodology and assumptions used;

(4) Minimize the burden of the collection of information on those who are to respond, including through the use of appropriate automated, electronic, mechanical, or other technological collection techniques or other forms of information technology, e.g., permitting electronic submission of responses.

Overview of This Information Collection

(1) *Type of information collection:* Extension of a currently approved collection.

(2) *The title of the form/collection:* Registrants Inventory of Drugs Surrendered—DEA 41.

(3) *The agency form number, if any, and the applicable component of the Department sponsoring the collection:* Form No.: DEA–41.

Applicable component of the Department sponsoring the collection: Office of Diversion Control, Drug Enforcement Administration, U.S. Department of Justice.

(4) *Affected public who will be asked or required to respond, as well as a brief abstract:*

Primary: Business or other for-profit.

Other: None.

Abstract: Title 21, CFR, 1307.21 requires that any registrant desiring to voluntarily dispose of controlled substances shall list these controlled substances on DEA Form 41 and submit

to the nearest DEA office. The DEA 41 is used to account for surrendered destroyed controlled substances, and its use is mandatory.

(5) *An estimate of the total number of respondents and the amount of time estimated for an average respondent to respond/reply:* 20,000 respondents. 1 response per year × 30 minutes per response = .5 hrs.

(6) *An estimate of the total public burden (in hours) associated with the collection:* 10,000 annual burden hours. 20,000 respondents × .5 hrs. per respondent per year.

If additional information is required contact: Mr. Robert B. Briggs, Clearance Officer, U.S. Department of Justice, Information Management and Security Staff, Justice Management Division, Suite 850, Washington Center, 1001 G Street, NW., Washington, DC 20530, or via facsimile at (202) 514–1590.

Dated: September 8, 1998.

Robert B. Briggs,

Department Clearance Officer, United States Department of Justice.

[FR Doc. 98–26545 Filed 10–2–98; 8:45 am]

BILLING CODE 4410–09–M

DEPARTMENT OF JUSTICE

Office of Justice Programs

Agency Information Collection Activities: Proposed Collection; Comment Request

ACTION: Notice of information collection under review; Reinstatement without change, of a previously approved collection for which approval has expired; Report of public safety officers death.

The Department of Justice, Office of Justice Programs, Bureau of Justice Assistance, has submitted the following information collection request for review and clearance in accordance with the Paperwork Reduction Act of 1995. This proposed information collection is published to obtain comments from the public and affected agencies. Comments are encouraged and will be accepted for ''sixty days'' until December 4, 1998.

If you have additional comments, suggestions, or need a copy of the proposed information collection instrument with instructions or additional information, please contact Ashton E. Flemmings, 202–307–0635, Public Safety Officers' Benefits Program, Office of Justice Programs, U.S. Department of Justice, 810 7th Street, NW., Washington, DC 20531.

Written comments and suggestions from the public and affected agencies concerning the proposed collection of information should address one or more of the following four points:

(1) Evaluate whether the proposed collection of information is necessary for the proper performance of the function of the agency, including whether the information will have practical utility;

(2) Evaluate the accuracy of the agency's estimate of the burden of the proposed collection of information, including the validity of the methodology and assumptions used;

(3) Enhance the quality, utility, and clarity of the information to be collected; and

(4) Minimize the burden of the collection of information on those who are to respond, including through the use of appropriate automated, electronic, mechanical, or other technological collection techniques or other forms of information technology, e.g., permitting electronic submission of responses.

Overview of This Information

(1) *Type of information collection:* Reinstatement, with changes, of a previously approved collection for which approval has expired.

(2) *The title of the form/collection:* Claim for Death Benefits.

(3) *The agency form number, if any, and the applicable component of the Department sponsoring the collection:* The form number is 3650/5, Office of Justice Programs, United States Department of Justice.

(4) *Affected public who will be asked or required to respond, as well as a brief abstract:*

Primary: Federal, State and Local agencies. This data collection will gather information to determine the eligibility of Claim for Death Benefits.

Other: National public membership organizations.

(5) *An estimate of the total number of respondents and the amount of time estimated for an average respondent to respond/reply:* It is estimated that 320 respondents will complete a 1.2 hour nomination form.

(6) An estimate of the total public burden (in hours) associated with the collection. The Total hour burden to complete the nominations if 384 the annual burden hours.

If additional information is required contact: Mr. Robert Briggs, Clearance Officer, United States Department of Justice, Information Management and Security Staff, Justice Management Division, Suite 850, Washington Center, 1001 G Street, NW., Washington, DC 20530, or via facsimile at (202) 514–1534.

Dated: September 28, 1998.

Robert B. Briggs,

Department Clearance Officer, United States Department of Justice.

[FR Doc. 98–26547 Filed 10–2–98; 8:45 am]

BILLING CODE 4410–18–M

DEPARTMENT OF JUSTICE

Office of Justice Programs

Agency Information Collection Activities: Proposed Collection; Comment Request

ACTION: Notice of information collection under review; Reinstatement, without change, of a previously approved collection for which approval has expired; Application for Federal law enforcement dependents assistance.

The Department of Justice, Office of Justice Programs, Bureau of Justice Assistance, has submitted the following information collection request for review and clearance in accordance with the Paperwork Reduction Act of 1995. This proposed information collection is published to obtain comments from the public and affected agencies. Comments are encouraged and will be accepted for ''sixty days'' until December 4, 1998.

If you have additional comments, suggestions, or need a copy of the proposed information collection instrument with instructions or additional information, please contact Ashton E. Flemmings, (202)–616–9045, Public Safety Officers' Benefits Office, Office of Justice Programs, U.S. Department of Justice, 810 7th Street, NW, Washington, DC 20531.

Written comments and suggestions from the public and affected agencies concerning the proposed collection of information should address one or more of the following four points:

(1) Evaluate whether the proposed collection of information is necessary for the proper performance of the function of the agency, including whether the information will have practical utility;

(2) Evaluate the accuracy of the agency's estimate of the burden of the proposed collection of information, including the validity of the methodology and assumptions used;

(3) Enhance the quality, utility, and clarity of the information to be collected; and

(4) Minimize the burden of the collection of information on those who are to respond, including through the use of appropriate automated, electronic, mechanical, or other technological collection techniques or

other forms of information technology, e.g., permitting electronic submission of responses.

Overview of This Information

(1) *Type of information collection:* Reinstatement, without change, of a previously approved collection for which approval has expired.

(2) *The title of the form/collection:* Application for Federal law Enforcement Dependents Assistance.

(3) *The agency form number, if any, and the applicable component of the Department sponsoring the collection:* The form number is 1240/20 (9–97), Office of Justice Programs, United States Department of Justice.

(4) *Affected public who will be asked or required to respond, as well as a brief abstract:*

Primary: Children and spouses of Federal civilian law enforcement officers who were killed or permanently and totally disabled in the line of duty and are seeking financial assistance for the purpose of higher education.

Other: None. This program is administered under the authority of 42 U.S.C. 3796 et seq. To provide financial assistance in the form of awards to the children and spouses of Federal civilian law enforcement officers whose death or permanent and total disabilities in the line of duty resulted in the payment of benefits under the Public Safety Officers' Benefits (PSOB) Program. The Application Form will be completed by each eligible applicant and will provide information regarding educational experience, educational goals, and estimated cost of educational plan for verification and award processing.

(5) *An estimate of the total number of respondents and the amount of time estimated for an average respondent to respond/reply:* 50 responses annually at 2 hours per respondent.

(6) An estimate for the total public burden (in hours) associated with the collection: (100) annual burden hours.

If additional information is required contact: Mr. Robert B. Briggs, Clearance Officer, United States Department of Justice, Information Management and Security Staff, Justice Management Division, Suite 850, Washington Center, 1001 G Street, NW, Washington, DC 20530, or via facsimile at (202) 514–1534.

Dated: September 29, 1998.

Robert B. Briggs,

Department Clearance Officer, United States Department of Justice.

[FR Doc. 98–26548 Filed 10–2–98; 8:45 am]

BILLING CODE 4410–18–M

NATIONAL FOUNDATION FOR THE ARTS AND THE HUMANITIES

National Endowment for the Arts

President's Committee on the Arts and the Humanities: Meeting XLIII

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 President's Committee on the Arts and the Humanities will be held on October 30, 1998 from 8:30 a.m. to 12 p.m. The Committee will convene to discuss a variety of reports and projects. The meeting will be held in the Connally Room at the Institute of Texan Culture, 801 S. Bowie Street, San Antonio, Texas.

The Committee meeting will begin at 8:30 a.m. with opening remarks by Dr. John Brademas, Chairman. This will be followed by the Executive Director's Report from Harriet Mayor Fulbright. There also will be a report on Round Table Discussions, a preview of the Public Forum and an Arts Advantage report. Ms. Fulbright will give an overview of the results of the 1998 Coming Up Taller Awards and local representative will make presentations about San Antonio. The meeting will conclude with general discussion about future planning, and will adjourn at 12:00 p.m.

The President's Committee on the Arts and the Humanities was created by Executive Order in 1982 to advise the President, the two Endowments, and the Institute of Museum and Library Services on measures to encourage private sector support for the nation's cultural institutions and to promote public understanding of the arts and the humanities.

If, in the course of discussion, it becomes necessary for the Committee to discuss non-public commercial or financial information of intrinsic value, the Committee will go into closed session pursuant to subsection (c)(4) of the Government in the Sunshine Act, 5 U.S.C. 552b.

Any interested persons may attend as observers, on a space available basis, but seating is limited. Therefore, for this meeting, individuals wishing to attend must contact Regina Syquia of the President's Committee in advance at (202) 682–5409 or write to the Committee at 1100 Pennsylvania Avenue, NW, Suite 526, Washington, DC 20506. Further information with reference to this meeting can also be obtained from Ms. Syquia.

If you need special accommodations due to disability, please contact Ms. Syquia through the Office of AccessAbility, National Endowment for the Arts, 1100 Pennsylvania Avenue, NW., Washington, DC 20506, 202/682–5532, TDY–TDD 202/682–5496, at least seven (7) days prior to the meeting.

Dated: September 29, 1998.

Kathy Plowitz-Worden,

Panel Coordinator, Panel Operations, National Endowment for the Arts.

[FR Doc. 98–26552 Filed 10–2–98; 8:45 am]

BILLING CODE 7537–01–M

NUCLEAR REGULATORY COMMISSION

[Docket No. 50–003]

Consolidated Edison Company; Indian Point Nuclear Generating Station Unit 1; Notice of Public Meeting

The NRC will conduct a second public meeting at Village Hall, 236 Tate Avenue, Buchanan, New York, on October 21, 1998, to discuss plans developed by Consolidated Edison Company (Con Edison licensee) to decommission the Indian Point Nuclear Generating Station Unit 1. The Indian Point Station, located in Buchanan, New York, includes the permanently shutdown Unit 1 and two operating units, Unit 2 and Unit 3. Unit 2 is operated by Con Edison, and Unit 3 by New York Power Authority. The meeting is scheduled for 7:00 p.m.—9:30 p.m., and will be chaired by Mr. Alfred J. Donahue, Mayor of the Village of Buchanan, New York. The public meeting is being held pursuant to the NRC's regulations in Title 10 of the *Code of Federal Regulations,* Section 50.82(a)(4) regarding the requirement for the submission of a post-shutdown decommissioning activities report (PSDAR) by the licensee following permanent cessation of operation and the holding of a public meeting by the NRC on the PSDAR. Con Edison submitted a decommissioning plan, which was approved by the NRC in January 1996, prior to the rule change promulgated at 31 FR 39301 (July 29, 1996), requiring a PSDAR. Decommissioning plans approved prior to the revision are considered to meet the requirement for a PSDAR and are subject to the revised regulations, including the requirement for a public meeting. The meeting will include a short presentation by the NRC staff on the decommissioning process and NRC programs for monitoring decommissioning activities with attention being given to the licensee's decommissioning plans. There will be a presentation by Con Edison on planned

decommissioning activities, and there will be an opportunity for members of the public to ask questions of the NRC staff and Con Edison representatives and make comments on the planned activities. The meeting will be transcribed.

Con Edison's decommissioning plan provides a short discussion of the plant history, a description of the unit's radiological conditions, and a description and schedule of planned decommissioning activities. This decommissioning plan and the NRC's safety evaluation associated with the plan are available for public inspection at the White Plains Public Library, 100 Martie Avenue, White Plains, New York 10601. For more information, please contact John L. Minns, Non-Power Reactors and Decommissioning Project Directorate, Division of Reactor Program Management, Office of Nuclear Reactor Regulation, U.S. Nuclear Regulatory Commission, Washington, DC 20555–0001; telephone 301–415–3166.

Dated at Rockville, Maryland, this 28th day of September 1998.

For the Nuclear Regulatory Commission.

Marvin M. Mendonca,

Acting Director, Non-Power Reactors and Decommissioning Project Directorate, Division of Reactor Program Management, Office of Nuclear Regulatory Regulation.

[FR Doc. 98–26565 Filed 10–2–98; 8:45 am]

BILLING CODE 7590–01–P

NUCLEAR REGULATORY COMMISSION

[Docket Nos. 50–313 and 50–368; License Nos. DPR–51 and NPF–6]

Entergy Operations, Inc. (Arkansas Nuclear One, Units 1 and 2); Confirmatory Order Modifying Post-TMI Requirements Pertaining To Containment Hydrogen Monitors

I

Entergy Operations, Inc. (the Licensee), is the holder of Facility Operating License Nos. DPR–51 and NPF–6 issued by the Nuclear Regulatory Commission (NRC or Commission) pursuant to 10 CFR Part 50. The licenses authorize the operation of Arkansas Nuclear One, Units 1 and 2 (ANO–1, ANO–2), located in Pope County, Arkansas.

II

As a result of the accident at Three Mile Island, Unit 2 (TMI–2), the NRC issued NUREG–0737, ''Clarification of TMI Action Plan Requirements'' (November 1980). Generic Letters 82–05 and 82–10, issued on March 17, and May 5, 1982, respectively, requested licensees of operating power reactors to furnish information pertaining to their implementation of specific TMI Action Plan items described in NUREG–0737. Orders were issued to licensees confirming their commitments made in response to the generic letters. Orders to the Licensee issued on March 14, 1983, require the Licensee to implement and maintain the various TMI Action Plan items, including Item II.F.1, Attachment 6 pertaining to monitoring of hydrogen concentration in containment.

Significant improvements have been achieved since the TMI accident in the areas of understanding risks associated with nuclear plant operations and developing better strategies for managing the response to potentially severe accidents at nuclear plants. Recent insights pertaining to plant risks and alternate severe accident assessment tools have led the NRC staff to conclude that some TMI Action Plan items can be revised without reducing, and perhaps enhancing, the ability of licensees to respond to severe accidents. The NRC's efforts to oversee the risks associated with nuclear technology more effectively and to eliminate undue regulatory costs to licensees and the public have prompted the NRC's decision to revise the post-TMI requirement related to establishing indication of hydrogen concentration in containment.

The confirmatory Orders of March 14, 1983 imposed requirements upon the Licensee for having continuous indication of hydrogen concentration in the containment atmosphere provided in the control room, as described by TMI Action Plan Item II.F.1, Attachment 6. Information about hydrogen concentration supports the Licensee's assessments of the degree of core damage and whether a threat to the integrity of the containment may be posed by combustion of the hydrogen gas. TMI Action Item II.F.1, Attachment 6 states:

> If an indication is not available at all times, continuous indication and recording shall be functioning within 30 minutes of the initiation of safety injection.

This requirement to have indication of the hydrogen concentration in containment within 30 minutes following the start of an accident has defined both design and operating characteristics for hydrogen monitoring systems at nuclear power plants since the implementation of NUREG–0737. In addition, the technical specifications of most nuclear power plants and NRC regulations at 10 CFR 50.44, ''Standards for combustible gas control system in light-water-cooled power reactors,'' require availability of hydrogen monitors.

By letter dated March 2, 1998, Entergy Operations, Inc., requested relief for the two units at ANO from the requirement to have indication of hydrogen concentration in containment within 30 minutes of the initiation of safety injection. Specifically, the Licensee requested a 90-minute limit for indication of hydrogen concentration in containment. The technical basis for this request was that the actions necessary to establish the hydrogen indication are a distraction for control room operators from more important tasks during the initial attempts to respond to an event and that information provided by the monitors is not used until later stages of responding to an accident.

The Licensee's request of March 2, 1998, was made in conjunction with Task Zero of the Risk-Informed, Performance-Based Regulation Pilot Program, an initiative undertaken by the NRC and the Nuclear Energy Institute to improve the incorporation of risk-informed and performance-based insights into the regulation of nuclear power plants. Because the licenses for ANO–1 and ANO–2 were modified by the Orders of March 14, 1983, imposing TMI Action Plan Item II.F.1, Attachment 6, the staff informed the Licensee by letter dated July 22, 1998, that it was necessary to submit an application for an amendment to the operating licenses of ANO–1 and ANO–2 in accordance with 10 CFR 50.90 in order to modify the time limit for post-accident hydrogen monitoring. Upon further reflection, however, the NRC staff has decided that it could act upon this request more expeditiously by issuance of this Order.

On the basis of the NRC staff's review of information provided by the Licensee, consideration of the lessons learned since the TMI–2 accident pertaining to severe accident management and emergency planning, and in order to make NRC licensing and regulatory oversight more efficient, the staff concludes that the Licensee should have the flexibility and assume the responsibility for determining the appropriate time limit for indication of hydrogen concentration in containment, such that control room personnel are not distracted from more important tasks in the early phases of accident mitigation, and decisionmakers, mostly outside the control room, are able to benefit from having useful information on hydrogen concentration. Because the appropriate balance between control room activities and longer term

management of the response to severe accidents can best be determined by the Licensee, the NRC staff has determined that the Licensee may elect to adopt a risk-informed functional requirement in lieu of the current 30 minute time limit for indication of hydrogen concentration as imposed by the Orders dated March 14, 1983, and as described by TMI Action Item II.F.1, Attachment 6 in NUREG–0737. The applicable functional requirement is as follows:

Procedures shall be established for ensuring that indication of hydrogen concentration in the containment atmosphere is available in a sufficiently timely manner to support the role of the information in the Arkansas Nuclear One Emergency Plan (and related procedures) and related activities such as guidance for severe accident management. Hydrogen monitoring will be initiated on the basis of (1) the appropriate priority for establishing indication of hydrogen concentration within containment in relation to other activities in the control room, (2) the use of the indication of hydrogen concentration by decisionmakers for severe accident management and emergency response, and (3) insights from experience or evaluation pertaining to possible scenarios that result in significant generation of hydrogen that would be indicative of core damage or a potential threat to the integrity of the containment building. Affected licensing-basis documents and other related documents will be appropriately revised and/or updated in accordance with applicable NRC regulations.

The Licensee's technical specifications and 10 CFR 50.44 require the Licensee to maintain the ability to monitor hydrogen concentration in containment. However, the details pertaining to the design and manner of operation of the hydrogen monitoring system are determined by the Licensee.

III

Following various discussions with the staff, the Licensee submitted a letter dated September 9, 1998, in which it provided a commitment to operate and maintain the containment hydrogen monitors for ANO–1 and ANO–2 in accordance with the applicable functional requirement described in Section II above. The Licensee stated that the adoption of the functional requirement statement would initially result in extending the time requirement for hydrogen monitors from 30 minutes to 90 minutes after the initiation of safety injection.

I find that the Licensee's commitment as set forth in its letter of September 9, 1998, is acceptable and conclude that with this commitment the plant's safety is reasonably assured. In view of the foregoing, I have determined that public health and safety require that the Licensee's commitment be confirmed by this Order. During its discussions with the NRC staff, the Licensee agreed to waive its right to a hearing with respect to issuance of this Order.

IV

Accordingly, pursuant to Sections 103, 104b, 161b, 161i, 161o, and 182 of the Atomic Energy Act of 1954, as amended, and the Commission's regulations in 10 CFR 2.202 and 10 CFR Part 50, *it is hereby ordered* that:

(1) NRC License Nos. DPR–51 and NPF–6 are modified as follows:

The Licensee may elect to either maintain the 30-minute time limit for indication of hydrogen in containment, as described by TMI Action Plan Item II.F.1, Attachment 6, in NUREG–0737 and required by the Confirmatory Orders of March 14, 1983, or modify the time limit in the manner specified in Sections II and III of this Order.

(2) The licensee's commitments in its letter of September 9, 1998, see Section III, above, are confirmed.

The Director, Office of Nuclear Reactor Regulation, may, in writing, relax or rescind any of the above conditions upon demonstration by the Licensee of good cause.

V

Any person adversely affected by this Confirmatory Order, other than the Licensee, may request a hearing within 20 days of its issuance. Where good cause is shown, consideration will be given to extending the time to request a hearing. A request for extension of time must be made in writing to the Director, Office of Nuclear Reactor Regulation, U.S. Nuclear Regulatory Commission, Washington, D.C. 20555–0001, and include a statement of good cause for the extension. Any request for a hearing shall be submitted to the Secretary, U.S. Nuclear Regulatory Commission, ATTN: Chief, Rulemakings and Adjudications Staff, Washington, D.C. 20555–0001. Copies of the hearing request shall also be sent to the Director, Office of Nuclear Reactor Regulation, U.S. Nuclear Regulatory Commission, Washington, D.C. 20555–0001; to the Deputy Assistant General Counsel for Hearings and Enforcement at the same address; to the Regional Administrator, NRC Region IV, 611 Ryan Plaza Drive, Suite 400, Arlington, Texas 76011; and to Nicholas S. Reynolds, Esquire, Winston and Strawn, 1400 L Street, N.W., Washington, DC 20005–3502, attorney for the Licensee. If such a person requests a hearing, that person will set forth with particularity the manner in which his interest is adversely affected by this Order and will address the criteria set forth in 10 CFR 2.714(d).

If the hearing is requested by a person whose interest is adversely affected, the Commission will issue an Order designating the time and place of any hearing. If a hearing is held, the issue to be considered at such hearing will be whether this Confirmatory Order should be sustained.

In the absence of any request for hearing, or written approval of an extension of time in which to request a hearing, the provisions specified in Section IV above will be final 20 days from the date of this Order without further order or proceedings. If an extension of time for requesting a hearing has been approved, the provisions specified in Section IV will be final when the extension expires if a hearing request has not been received.

Dated at Rockville, Maryland, this 28th day of September 1998.

For the Nuclear Regulatory Commission

Samuel J. Collins,

Director, Office of Nuclear Reactor Regulation.

[FR Doc. 98–26558 Filed 10–2–98; 8:45 am]

BILLING CODE 7590–01–P

NUCLEAR REGULATORY COMMISSION

[Docket No. 50–289]

GPU Nuclear, Inc., et al.; Notice of Withdrawal of Application for Amendment to Facility Operating License

The U.S. Nuclear Regulatory Commission (the Commission) has granted the request of GPU Nuclear, Inc., et al., (the licensee) to withdraw its April 10, 1996, application as supplemented by letter dated May 24, 1996, for proposed amendment to Facility Operating License No. DPR–50 for the Three Mile Island Nuclear Station, Unit No. 1, located in Dauphin County, Pa.

The proposed amendment would have extended the Technical Specification (TS) surveillance interval from 18 to 24 months for selected instruments pursuant to the guidance contained in Generic Letter 91–04. The proposed amendment would also have deleted certain surveillances related to the Makeup, Purification, and Chemical Addition Systems.

The Commission had previously issued a Notice of Consideration of Issuance of Amendment published in the **Federal Register** on July 17, 1996 (61 FR 37300). However, by letter dated September 18, 1998, the licensee withdrew the proposed change request.

For further details with respect to this action, see the application for amendment dated April 10, 1996, as supplemented May 24, 1996, and the licensee's letter dated September 18, 1998, which withdrew the application for license amendment. The above documents 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 located at the Law/Government Publications Section, State Library of Pennsylvania, Walnut Street and Commonwealth Avenue, P.O. Box 1601, Harrisburg, PA 17105.

Dated at Rockville, Maryland, this 25th day of September 1998.

For the Nuclear Regulatory Commission.

Timothy G. Colburn,

Senior Project Manager, Project Directorate I–3, Division of Reactor Projects—I/II, Office of Nuclear Reactor Regulation.

[FR Doc. 98–26561 Filed 10–2–98; 8:45 am]

BILLING CODE 7590–01–P

NUCLEAR REGULATORY COMMISSION

[Docket Number 40–2259]

Pathfinder Mines Corporation

AGENCY: U.S. Nuclear Regulatory Commission.

ACTION: Amendment of source material license SUA–672 to change two reclamation milestone dates.

SUMMARY: Notice is hereby given that the U.S. Nuclear Regulatory Commission (NRC) has amended Pathfinder Mines Corporation's (PMC's) Source Material License SUA–672 to change two reclamation milestone dates. This amendment was requested by PMC in its letter dated July 23, 1998, and the receipt of the request by NRC was noticed in the **Federal Register** on August 12, 1998.

The license amendment modifies License Condition 61 to change completion dates for two site-reclamation milestones. The new dates approved by the NRC extend completion of placement of the final radon barrier and placement of the erosion protection cover by three years and three months. PMC attributes the delays to substantial settlement still remaining to occur on the tailings system, before a final cover can be placed. Based on the review of PMC's submittal, the NRC staff concludes that the delays are attributable to factors beyond the control of PMC, and the proposed work is scheduled to be completed as expeditiously as practicable. Furthermore, because of the previous placement of an interim cover over the Lucky Mc tailings impoundment pursuant to License Condition 61A(2), and the ongoing radiation safety and environmental monitoring programs, the staff concludes that a delay in completion of placement of the final radon barrier cover and the erosion protection cover will not result in any significant added risk to the public health and safety and the environment.

An environmental assessment is not required since this action is categorically excluded under 10 CFR 51.22(c)(11), and an environmental report from the licensee is not required by 10 CFR 51.60(b)(2).

SUPPLEMENTARY INFORMATION: PMC's amended license, and the NRC staff's technical evaluation of the amendment request are being made available for public inspection at the Commission's Public Document Room at 2120 L Street, NW (Lower Level), Washington, DC 20555.

FOR FURTHER INFORMATION CONTACT: Mohammad W. Haque, Uranium Recovery Branch, Division of Waste Management, U.S. Nuclear Regulatory Commission, Washington, DC 20555. Telephone (301) 415–6640.

Dated at Rockville, Maryland, this 29th day of September, 1998.

Joseph J. Holonich,

Chief, Uranium Recovery Branch, Division of Waste Management, Office of Nuclear Material Safety and Safeguards.

[FR Doc. 98–26564 Filed 10–2–98; 8:45 am]

BILLING CODE 7590–01–P

NUCLEAR REGULATORY COMMISSION

[Docket No. 50–483]

Union Electric Co.; Notice of Consideration of Issuance of Amendment to Facility Operating License and Opportunity for a Hearing

The U.S. Nuclear Regulatory Commission (the Commission) is considering issuance of an amendment to Facility Operating License No. NPF–30, issued to the Union Electric Company (UE or the licensee), for operation of the Callaway Plant (CW), located in Callaway County, Missouri.

The proposed amendment, requested by the licensee in a letter dated May 15, 1997, as supplemented by letters dated June 26, August 4, August 27, and September 24, 1998, would represent a full conversion from the current Technical Specifications (CTS) to a set of improved Technical Specifications (ITS) based on NUREG–1431, ''Standard Technical Specifications, Westinghouse Plants,'' Revision 1, dated April 1995. NUREG–1431 has been developed by the Commission's staff through working groups composed of both NRC staff members and industry representatives, and has been endorsed by the staff as part of an industry-wide initiative to standardize and improve the Technical Specifications for nuclear power plants. As part of this submittal, the licensee has applied the criteria contained in the Commission's ''Final Policy Statement on Technical Specification Improvements for Nuclear Power Reactors (Final Policy Statement),'' published in the **Federal Register** on July 22, 1993 (58 FR 39132), to the CTS, and, using NUREG–1431 as a basis, proposed an ITS for CW. The criteria in the Final Policy Statement were subsequently added to 10 CFR 50.36, ''Technical Specifications,'' in a rule change that was published in the **Federal Register** on July 19, 1995 (60 FR 36953) and became effective on August 18, 1995.

This conversion is a joint effort in concert with three other utilities: Pacific Gas & Electric Company for Diablo Canyon Power Plant, Units 1 and 2 (Docket Nos. 50–275 and 323); TU Electric for Comanche Peak Steam Electric Station, Units 1 and 2 (Docket Nos. 50–445 and 50–446); and Wolf Creek Nuclear Operating Corporation for Wolf Creek Generating Station (Docket No. 50–482). It is a goal of the four utilities to make the ITS for all the plants as similar as possible. This joint effort includes a common methodology for the licensees in marking-up the CTS and NUREG–1431 Specifications, and the NUREG–1431 Bases, that has been accepted by the staff. This includes the convention that, if the words in the CTS specification are not the same as the words in the ITS specification but they mean the same or have the same requirements as the words in the ITS specification, the licensee does not indicate or describe a change to the CTS.

This common methodology is discussed at the end of Enclosure 2, ''Mark-Up of Current TS''; Enclosure 5a, ''Mark-Up of NUREG–1431 Specifications''; and Enclosure 5b, ''Mark-Up of NUREG–1431 Bases,'' for each of the 14 separate ITS sections that were submitted with the licensee's application. For each of the 14 ITS sections, there is also the following: Enclosure 1, the cross reference table connecting each CTS specification (i.e., limiting condition for operation, required action, or surveillance

requirement) to the associated ITS specification, sorted by both CTS and ITS Specifications; Enclosure 3, the description of the changes to the CTS section and the comparison table showing which plants (of the four licensees in the joint effort) that each change applies to; Enclosure 4, the no significant hazards consideration (NHSC) of 10 CFR 50.91 for the changes to the CTS with generic NHSCs for administrative, more restrictive, relocation, and moving-out-of-CTS changes, and individual NHSCs for less restrictive changes and with the organization of the NHSC evaluation discussed in the beginning of the enclosure; and Enclosure 6, the descriptions of the differences from NUREG–1431 specifications and the comparison table showing which plants (of the four licensees in the joint effort) that each difference applies to. Another convention of the common methodology is that the technical justifications for the less restrictive changes are included in the NHSCs.

The licensee has categorized the proposed changes to the CTS into four general groupings. These groupings are characterized as administrative changes, relocated changes, more restrictive changes and less restrictive changes.

Administrative changes are those that involve restructuring, renumbering, rewording, interpretation and complex rearranging of requirements and other changes not affecting technical content or substantially revising an operating requirement. The reformatting, renumbering and rewording process reflects the attributes of NUREG–1431 and does not involve technical changes to the existing TS. The proposed changes include (a) providing the appropriate numbers, etc., for NUREG–1431 bracketed information (information that must be supplied on a plant-specific basis, and which may change from plant to plant), (b) identifying plant-specific wording for system names, etc., and (c) changing NUREG–1431 section wording to conform to existing licensee practices. Such changes are administrative in nature and do not impact initiators of analyzed events or assumed mitigation of accident or transient events.

Relocated changes are those involving relocation of requirements and surveillances for structures, systems, components, or variables that do not meet the criteria for inclusion in TS. Relocated changes are those current TS requirements that do not satisfy or fall within any of the four criteria specified in the Commission's policy statement and may be relocated to appropriate licensee-controlled documents.

The licensee's application of the screening criteria is described in Attachment 2 to its June 2, 1997, submittal, which is entitled, ''General Description and Assessment.'' The affected structures, systems, components or variables are not assumed to be initiators of analyzed events and are not assumed to mitigate accident or transient events. The requirements and surveillances for these affected structures, systems, components, or variables will be relocated from the TS to administratively controlled documents such as the quality assurance program, the Final Safety Analysis Report (FSAR), the ITS BASES, the Technical Requirements Manual (TRM) that is incorporated by reference in the FSAR, the Core Operating Limits Report (COLR), the Offsite Dose Calculation Manual (ODCM), the Inservice Testing (IST) Program, or other licensee-controlled documents. Changes made to these documents will be made pursuant to 10 CFR 50.59 or other appropriate control mechanisms, and may be made without prior NRC review and approval. In addition, the affected structures, systems, components, or variables are addressed in existing surveillance procedures that are also subject to 10 CFR 50.59. These proposed changes will not impose or eliminate any requirements.

More restrictive changes are those involving more stringent requirements compared to the CTS for operation of the facility. These more stringent requirements do not result in operation that will alter assumptions relative to the mitigation of an accident or transient event. The more restrictive requirements will not alter the operation of process variables, structures, systems, and components described in the safety analyses. For each requirement in the CTS that is more restrictive than the corresponding requirement in NUREG–1431 that the licensee proposes to retain in the ITS, they have provided an explanation of why they have concluded that retaining the more restrictive requirement is desirable to ensure safe operation of the facility because of specific design features of the plant.

Less restrictive changes are those where CTS requirements are relaxed or eliminated, or new plant operational flexibility is provided. The more significant ''less restrictive'' requirements are justified on a case-by-case basis. When requirements have been shown to provide little or no safety benefit, their removal from the TS may be appropriate. In most cases, relaxations previously granted to individual plants on a plant-specific basis were the result of (a) generic NRC actions, (b) new NRC staff positions that have evolved from technological advancements and operating experience, or (c) resolution of the Owners Groups' comments on the Improved Standard Technical Specifications. Generic relaxations contained in NUREG–1431 were reviewed by the staff and found to be acceptable because they are consistent with current licensing practices and NRC regulations. The licensee's design will be reviewed to determine if the specific design basis and licensing basis are consistent with the technical basis for the model requirements in NUREG–1431, thus providing a basis for these revised TS, or if relaxation of the requirements in the current TS is warranted based on the justification provided by the licensee.

These administrative, relocated, more restrictive, and less restrictive changes to the requirements of the CTS do not result in operations that will alter assumptions relative to mitigation of an analyzed accident or transient event.

In addition to the proposed changes solely involving the conversion, there are also changes proposed that are different than the requirements in both the CTS and the improved Standard Technical Specifications (NUREG–1431). These proposed beyond-scope issues to the ITS conversion are as follows:

1. ITS Surveillance Requirement (SR) 3.2.1.2—add frequency of once within 24 hours for verifying the axial heat flux hot channel factor is within limit after achieving equilibrium conditions.

2. ITS SR 3.2.2.1 note—revise the allowance to increase power until a power distribution is obtained after equilibrium is achieved.

3. ITS LCO 3.3.1—revise operability and actions for steam generator low-low level instrumentation in ITS Table 3.3.1–1 to not include Mode 3 in operability and to allow 12 hours in Mode 3 in actions instead of entry into ITS 3.0.3 for inoperable steam generator instrumentation.

4. ITS LCO 3.3.9—revise Action B to increase the verification interval for unborated water source isolation valve position from 14 days to 31 days.

5. ITS LCOs 3.4.5, 3.4.10, 3.4.11, and 3.4.12—revise applicability and add a note (to ITS 3.4.5) to add reactor coolant pump start restrictions for low temperature overpressure protection for the reactor coolant system.

6. ITS LCO 3.4.7 and SRs 3.4.5.2, 3.4.6.2, and 3.4.7.2—revise steam

generator level requirements in Modes 3, 4, and 5 to ensure tubes are covered.

7. ITS LCO 3.4.1.2—revise applicability note to allow a longer time, up to 4 hours, for injecting into the reactor coolant system.

8. ITS SR 3.6.3.7—note added to not require leak rate test of containment purge valves with resilient seals when penetration flow path is isolated by leak-tested blank flange.

9. Actions and table for ITS LCO 3.7.1—changes to main steam safety valves (MSSVs) to reflect Westinghouse Nuclear Safety Letter 94–01, revising acceptable power levels when MSSVs are inoperable.

10. ITS LCO 3.7.15—changes reference for the spent fuel pool level from that above top of fuel stored in racks to that above the top of racks.

11. ITS LCO 3.7.13—adds note to applicability and new actions on test capability of emergency exhaust system to maintain a negative building pressure while in safety injection signal lineup.

12. ITS LCO 3.8.6—revise float voltage in Table 3.8.6–1 and add an allowed voltage variation.

13. ITS 5.6.5—adds refueling boron concentration and shutdown margin limits to the core operating limits report.

14. ITS 5.7—changes limits for high radiation areas to reflect the requirements of revised 10 CFR Part 20.

Before issuance of the proposed license amendment, the Commission will have made findings required by the Atomic Energy Act of 1954, as amended (the Act) and the Commission's regulations.

By November 4, 1998, the licensee may file a request for a hearing with respect to issuance of the amendment to the subject facility operating license and any person whose interest may be affected by this proceeding and who wishes to participate as a party in the proceeding must file a written request for a hearing and a petition for leave to intervene. Requests for a hearing and a petition for leave to intervene shall be filed in accordance with the Commission's ''Rules of Practice for Domestic Licensing Proceedings'' in 10 CFR Part 2. Interested persons should consult a current copy of 10 CFR 2.714 which is available at the Commission's Public Document Room, the Gelman Building, 2120 L Street, NW., Washington, DC, and at the local public document room located at the Elmer Ellis Library, University of Missouri, Columbia, Missouri, 65201. If a request for a hearing or petition for leave to intervene is filed by the above date, the Commission or an Atomic Safety and Licensing Board, designated by the Commission or by the Chairman of the Atomic Safety and Licensing Board Panel, will rule on the request and/or petition; and the Secretary or the designated Atomic Safety and Licensing Board will issue a notice of hearing or an appropriate order.

As required by 10 CFR 2.714, a petition for leave to intervene shall set forth with particularity the interest of the petitioner in the proceeding, and how that interest may be affected by the results of the proceeding. The petition should specifically explain the reasons why intervention should be permitted with particular reference to the following factors: (1) The nature of the petitioner's right under the Act to be made a party to the proceeding; (2) the nature and extent of the petitioner's property, financial, or other interest in the proceeding; and (3) the possible effect of any order which may be entered in the proceeding on the petitioner's interest. The petition should also identify the specific aspect(s) of the subject matter of the proceeding as to which petitioner wishes to intervene. Any person who has filed a petition for leave to intervene or who has been admitted as a party may amend the petition without requesting leave of the Board up to 15 days prior to the first prehearing conference scheduled in the proceeding, but such an amended petition must satisfy the specificity requirements described above.

Not later than 15 days prior to the first prehearing conference scheduled in the proceeding, a petitioner shall file a supplement to the petition to intervene which must include a list of the contentions which are sought to be litigated in the matter. Each contention must consist of a specific statement of the issue of law or fact to be raised or controverted. In addition, the petitioner shall provide a brief explanation of the bases of the contention and a concise statement of the alleged facts or expert opinion which support the contention and on which the petitioner intends to rely in proving the contention at the hearing. The petitioner must also provide references to those specific sources and documents of which the petitioner is aware and on which the petitioner intends to rely to establish those facts or expert opinion. Petitioner must provide sufficient information to show that a genuine dispute exists with the applicant on a material issue of law or fact. Contentions shall be limited to matters within the scope of the amendment under consideration. The contention must be one which, if proven, would entitle the petitioner to relief. A petitioner who fails to file such a supplement which satisfies these requirements with respect to at least one contention will not be permitted to participate as a party.

Those permitted to intervene become parties to the proceeding, subject to any limitations in the order granting leave to intervene, and have the opportunity to participate fully in the conduct of the hearing, including the opportunity to present evidence and cross-examine witnesses.

A request for a hearing or a petition for leave to intervene must be filed with the Secretary of the Commission, U.S. Nuclear Regulatory Commission, Washington, DC 20555–0001, Attention: Rulemakings and Adjudications Staff, or may be delivered to the Commission's Public Document Room, the Gelman Building, 2120 L Street, NW., Washington, DC, by the above date. A copy of the petition should also be sent to the Office of the General Counsel, U.S. Nuclear Regulatory Commission, Washington, DC 20555–0001, and to Mr. John O'Neill, Esq., Shaw, Pittman, Potts & Trowbridge, 2300 N Street, NW., Washington, DC, 20037, attorney for the licensee.

Nontimely filings of petitions for leave to intervene, amended petitions, supplemental petitions and/or requests for hearing will not be entertained absent a determination by the Commission, the presiding officer or the presiding Atomic Safety and Licensing Board that the petition and/or request should be granted based upon a balancing of the factors specified in 10 CFR 2.714(a)(1)(I)–(v) and 2.714(d).

If a request for a hearing is received, the Commission's staff may issue the amendment after it completes its technical review and prior to the completion of any required hearing if it publishes a further notice for public comment of its proposed finding of no significant hazards consideration in accordance with 10 CFR 50.91 and 50.92.

For further details with respect to this action, see the application for amendment dated May 15, 1997, as supplemented by letters dated June 26, August 4, August 27, and September 24, 1998, which is available for public inspection at the Commission's Public Document Room, the Gelman Building, 2120 L Street, NW., Washington, DC, and at the local public document room located at the Elmer Ellis Library, University of Missouri, Columbia, Missouri, 65201.

Dated at Rockville, Maryland, this 29th day of September 1998.

For the Nuclear Regulatory Commission.

Kristine M. Thomas,

Project Manager, Project Directorate IV–2, Division of Reactor Projects III/IV, Office of Nuclear Reactor Regulation.

[FR Doc. 98–26562 Filed 10–2–98; 8:45 am]

BILLING CODE 7590–01–P

NUCLEAR REGULATORY COMMISSION

[Docket No. 50–482]

Wolf Creek Nuclear Operating Corp.; Consideration of Issuance of Amendment to Facility Operating License and Opportunity for a Hearing

The U.S. Nuclear Regulatory Commission (the Commission) is considering issuance of an amendment to Facility Operating License No. NPF–42, issued to the Wolf Creek Nuclear Operating Corporation (WCNOC or the licensee), for operation of the Wolf Creek Generating Station (WCGS), located in Coffey County, Kansas.

The proposed amendment, requested by the licensee in a letter dated May 15, 1997, as supplemented by letters dated June 30, August 5, August 28, and September 24, 1998, would represent a full conversion from the current Technical Specifications (CTS) to a set of improved Technical Specifications (ITS) based on NUREG–1431, ''Standard Technical Specifications, Westinghouse Plants,'' Revision 1, dated April 1995. NUREG–1431 has been developed by the Commission's staff through working groups composed of both NRC staff members and industry representatives, and has been endorsed by the staff as part of an industry-wide initiative to standardize and improve the Technical Specifications for nuclear power plants. As part of this submittal, the licensee has applied the criteria contained in the Commission's ''Final Policy Statement on Technical Specification Improvements for Nuclear Power Reactors (Final Policy Statement),'' published in the **Federal Register** on July 22, 1993 (58 FR 39132), to the CTS, and, using NUREG–1431 as a basis, proposed an ITS for WCGS. The criteria in the Final Policy Statement were subsequently added to 10 CFR 50.36, ''Technical Specifications,'' in a rule change that was published in the **Federal Register** on July 19, 1995 (60 FR 36953) and became effective on August 18, 1995.

This conversion is a joint effort in concert with three other utilities: Pacific Gas & Electric Company for Diablo Canyon Power Plant, Units 1 and 2 (Docket Nos. 50–275 and 323); TU Electric for Comanche Peak Steam Electric Station, Units 1 and 2 (Docket Nos. 50–445 and 50–446); and Union Electric Company for Callaway Plant (Docket No. 50–483). It is a goal of the four utilities to make the ITS for all the plants as similar as possible. This joint effort includes a common methodology for the licensees in marking-up the CTS and NUREG–1431 Specifications, and the NUREG–1431 Bases, that has been accepted by the staff. This includes the convention that, if the words in the CTS specification are not the same as the words in the ITS specification but they mean the same or have the same requirements as the words in the ITS specification, the licensee does not indicate or describe the change to the CTS.

This common methodology is discussed at the end of Enclosure 2, ''Mark-Up of Current TS''; Enclosure 5a, ''Mark-Up of NUREG–1431 Specifications''; and Enclosure 5b, ''Mark-Up of NUREG–1431 Bases,'' for each of the 14 separate ITS sections that were submitted with the licensee's application. For each of the 14 ITS sections, there is also the following: Enclosure 1, the cross reference table connecting each CTS specification (i.e., limiting condition for operation, required action, or surveillance requirement) to the associated ITS specification, sorted by both CTS and ITS Specifications; Enclosure 3, the description of the changes to the CTS section and the comparison table showing which plants (of the four licensees in the joint effort) that each change applies to; Enclosure 4, the no significant hazards consideration (NHSC) of 10 CFR 50.91 for the changes to the CTS with generic NHSCs for administrative, more restrictive, relocation, and moving-out-of-CTS changes, and individual NHSCs for less restrictive changes and with the organization of the NHSC evaluation discussed in the beginning of the enclosure; and Enclosure 6, the descriptions of the differences from NUREG–1431 specifications and the comparison table showing which plants (of the four licensees in the joint effort) that each difference applies to. Another convention of the common methodology is that the technical justifications for the less restrictive changes are included in the NHSCs.

The licensee has categorized the proposed changes to the CTS into four general groupings. These groupings are characterized as administrative changes, relocated changes, more restrictive changes and less restrictive changes.

Administrative changes are those that involve restructuring, renumbering, rewording, interpretation and complex rearranging of requirements and other changes not affecting technical content or substantially revising an operating requirement. The reformatting, renumbering and rewording process reflects the attributes of NUREG–1431 and does not involve technical changes to the existing TS. The proposed changes include (a) providing the appropriate numbers, etc., for NUREG–1431 bracketed information (information that must be supplied on a plant-specific basis, and which may change from plant to plant), (b) identifying plant-specific wording for system names, etc., and (c) changing NUREG–1431 section wording to conform to existing licensee practices. Such changes are administrative in nature and do not impact initiators of analyzed events or assumed mitigation of accident or transient events.

Relocated changes are those involving relocation of requirements and surveillances for structures, systems, components, or variables that do not meet the criteria for inclusion in TS. Relocated changes are those current TS requirements that do not satisfy or fall within any of the four criteria specified in the Commission's policy statement and may be relocated to appropriate licensee-controlled documents.

The licensee's application of the screening criteria is described in Attachment 2 to its June 2, 1997, submittal, which is entitled, ''General Description and Assessment.'' The affected structures, systems, components or variables are not assumed to be initiators of analyzed events and are not assumed to mitigate accident or transient events. The requirements and surveillances for these affected structures, systems, components, or variables will be relocated from the TS to administratively controlled documents such as the quality assurance program, the updated safety analysis report (USAR), the ITS BASES, the Technical Requirements Manual (TRM) incorporated by reference in the USAR, the Core Operating Limits Report (COLR), the Offsite Dose Calculation Manual (ODCM), the Inservice Testing (IST) Program, or other licensee-controlled documents. Changes made to these documents will be made pursuant to 10 CFR 50.59 or other appropriate control mechanisms, and may be made without prior NRC review and approval. In addition, the affected structures, systems, components, or variables are addressed in existing surveillance procedures that are also subject to 10 CFR 50.59. These proposed changes will not impose or eliminate any requirements.

More restrictive changes are those involving more stringent requirements compared to the CTS for operation of the facility. These more stringent requirements do not result in operation that will alter assumptions relative to the mitigation of an accident or transient event. The more restrictive requirements will not alter the operation of process variables, structures, systems, and components described in the safety analyses. For each requirement in the CTS that is more restrictive than the corresponding requirement in NUREG–1431 that the licensee proposes to retain in the ITS, they have provided an explanation of why they have concluded that retaining the more restrictive requirement is desirable to ensure safe operation of the facility because of specific design features of the plant.

Less restrictive changes are those where CTS requirements are relaxed or eliminated, or new plant operational flexibility is provided. The more significant ''less restrictive'' requirements are justified on a case-by-case basis. When requirements have been shown to provide little or no safety benefit, their removal from the TS may be appropriate. In most cases, relaxations previously granted to individual plants on a plant-specific basis were the result of (a) generic NRC actions, (b) new NRC staff positions that have evolved from technological advancements and operating experience, or (c) resolution of the Owners Groups' comments on the Improved Standard Technical Specifications. Generic relaxations contained in NUREG–1431 were reviewed by the staff and found to be acceptable because they are consistent with current licensing practices and NRC regulations. The licensee's design will be reviewed to determine if the specific design basis and licensing basis are consistent with the technical basis for the model requirements in NUREG–1431, thus providing a basis for these revised TS, or if relaxation of the requirements in the current TS is warranted based on the justification provided by the licensee.

These administrative, relocated, more restrictive, and less restrictive changes to the requirements of the CTS do not result in operations that will alter assumptions relative to mitigation of an analyzed accident or transient event.

In addition to the proposed changes solely involving the conversion, there are also changes proposed that are different than the requirements in both the CTS and the improved Standard Technical Specifications (NUREG–1431). These proposed beyond-scope issues to the ITS conversion are as follows:

1. ITS Surveillance Requirement (SR) 3.2.1.2—add frequency of once within 24 hours for verifying the axial heat flux hot channel factor is within limit after achieving equilibrium conditions.

2. ITS SR 3.2.2.1 note—revise the allowance to increase power until a power distribution is obtained after equilibrium is achieved.

3. ITS LCO 3.2.4—revise required actions and completion times, and note to SR 3.2.4.2 to modify quadrant power tilt ratio requirements.

4. ITS LCOs 3.4.5, 3.4.10, 3.4.11, and 3.4.12—revise applicability and add a note (to ITS 3.4.5) to add reactor coolant pump start restrictions for low temperature overpressure protection for the reactor coolant system.

5. ITS LCO 3.4.1.2—revise applicability note to allow a longer time, up to 4 hours, for injecting into the reactor coolant system.

6. ITS LCO 3.4.7 and SRs 3.4.5.2, 3.4.6.2, and 3.4.7.2—revise steam generator level requirements in Modes 3, 4, and 5 to ensure tubes are covered.

7. ITS SR 3.6.3.7—note added to not require leak rate test of containment purge valves with resilient seals when penetration flow path is isolated by leak-tested blank flange.

8. ITS LCO 3.7.13—adds note to applicability and new actions on test capability of emergency exhaust system to maintain a negative building pressure while in safety injection signal lineup.

9. ITS LCO 3.8.6—revise battery float voltage in Table 3.8.6–1 and add an allowed voltage variation.

10. ITS SRs 3.8.4.1 and 3.8.4.6—reduces the minimum allowable battery voltage.

11. ITS SR 3.8.4.8—revise restriction for rated capacity for the installed AT&T round cell batteries.

12. ITS 5.6.5—adds shutdown margin limits to the core operating limits report.

13. ITS 5.7—change limits for high radiation areas to reflect the requirements of revised 10 CFR Part 20.

14. ITS 5.1, 5.2 and 5.7—revise TS to reflect position title changes within licensee's organization.

Before issuance of the proposed license amendment[s], the Commission will have made findings required by the Atomic Energy Act of 1954, as amended (the Act) and the Commission's regulations.

By November 4, 1998, the licensee may file a request for a hearing with respect to issuance of the amendment to the subject facility operating license and any person whose interest may be affected by this proceeding and who wishes to participate as a party in the proceeding must file a written request for a hearing and a petition for leave to intervene. Requests for a hearing and a petition for leave to intervene shall be filed in accordance with the Commission's ''Rules of Practice for Domestic Licensing Proceedings'' in 10 CFR part 2. Interested persons should consult a current copy of 10 CFR 2.714 which is available at the Commission's Public Document Room, the Gelman Building, 2120 L Street, NW., Washington, DC, and at the local public document rooms located at the Emporia State University, William Allen White Library, 1200 Commercial Street, Emporia, Kansas, 66801, and Washburn University School of Law Library, Topeka, Kansas, 66621. If a request for a hearing or petition for leave to intervene is filed by the above date, the Commission or an Atomic Safety and Licensing Board, designated by the Commission or by the Chairman of the Atomic Safety and Licensing Board Panel, will rule on the request and/or petition; and the Secretary or the designated Atomic Safety and Licensing Board will issue a notice of hearing or an appropriate order.

As required by 10 CFR 2.714, a petition for leave to intervene shall set forth with particularity the interest of the petitioner in the proceeding, and how that interest may be affected by the results of the proceeding. The petition should specifically explain the reasons why intervention should be permitted with particular reference to the following factors: (1) The nature of the petitioner's right under the Act to be made a party to the proceeding; (2) the nature and extent of the petitioner's property, financial, or other interest in the proceeding; and (3) the possible effect of any order which may be entered in the proceeding on the petitioner's interest. The petition should also identify the specific aspect(s) of the subject matter of the proceeding as to which petitioner wishes to intervene. Any person who has filed a petition for leave to intervene or who has been admitted as a party may amend the petition without requesting leave of the Board up to 15 days prior to the first prehearing conference scheduled in the proceeding, but such an amended petition must satisfy the specificity requirements described above.

Not later than 15 days prior to the first prehearing conference scheduled in the proceeding, a petitioner shall file a supplement to the petition to intervene which must include a list of the contentions which are sought to be litigated in the matter. Each contention must consist of a specific statement of the issue of law or fact to be raised or

controverted. In addition, the petitioner shall provide a brief explanation of the bases of the contention and a concise statement of the alleged facts or expert opinion which support the contention and on which the petitioner intends to rely in proving the contention at the hearing. The petitioner must also provide references to those specific sources and documents of which the petitioner is aware and on which the petitioner intends to rely to establish those facts or expert opinion. Petitioner must provide sufficient information to show that a genuine dispute exists with the applicant on a material issue of law or fact. Contentions shall be limited to matters within the scope of the amendment under consideration. The contention must be one which, if proven, would entitle the petitioner to relief. A petitioner who fails to file such a supplement which satisfies these requirements with respect to at least one contention will not be permitted to participate as a party.

Those permitted to intervene become parties to the proceeding, subject to any limitations in the order granting leave to intervene, and have the opportunity to participate fully in the conduct of the hearing, including the opportunity to present evidence and cross-examine witnesses.

A request for a hearing or a petition for leave to intervene must be filed with the Secretary of the Commission, U.S. Nuclear Regulatory Commission, Washington, DC 20555–0001, Attention: Rulemakings and Adjudications Staff, or may be delivered to the Commission's Public Document Room, the Gelman Building, 2120 L Street, NW., Washington, DC, by the above date. A copy of the petition should also be sent to the Office of the General Counsel, U.S. Nuclear Regulatory Commission, Washington, DC 20555–0001, and to Mr. Jay Silberg, Esq., Shaw, Pittman, Potts and Trowbridge, 2300 N Street, NW., Washington, DC, 20037, attorney for the licensee.

Nontimely filings of petitions for leave to intervene, amended petitions, supplemental petitions and/or requests for hearing will not be entertained absent a determination by the Commission, the presiding officer or the presiding Atomic Safety and Licensing Board that the petition and/or request should be granted based upon a balancing of the factors specified in 10 CFR 2.714(a)(1)(I)–(v) and 2.714(d).

If a request for a hearing is received, the Commission's staff may issue the amendment after it completes its technical review and prior to the completion of any required hearing if it publishes a further notice for public comment of its proposed finding of no significant hazards consideration in accordance with 10 CFR 50.91 and 50.92.

For further details with respect to this action, see the application for amendment dated May 15, 1997, as supplemented by letters dated June 30, August 5, August 28, and September 24, 1998, which is available for public inspection at the Commission's Public Document Room, the Gelman Building, 2120 L Street, NW., Washington, DC, and at the local public document rooms located at the Emporia State University, William Allen White Library, 1200 Commercial Street, Emporia, Kansas, 66801, and Washburn University School of Law Library, Topeka, Kansas, 66621.

Dated at Rockville, Maryland, this 29th day of September 1998.

For the Nuclear Regulatory Commission.

Kristine M. Thomas,

Project Manager, Project Directorate IV–2, Division of Reactor Projects III/IV, Office of Nuclear Reactor Regulation.

[FR Doc. 98–26563 Filed 10–2–98; 8:45 am]

BILLING CODE 7590–01–P

NUCLEAR REGULATORY COMMISSION

[Docket Nos. 50–321 and 50–366]

Southern Nuclear Operating Company, Inc; Edwin I. Hatch Nuclear Plant, Units 1 and 2; Environmental Assessment and Finding of No Significant Impact

The U.S. Nuclear Regulatory Commission (the Commission) is considering issuance of amendments to Facility Operating License Nos. DPR–57 and NPF–5 issued to Southern Nuclear Operating Company, Inc., for operation of the Edwin I. Hatch Nuclear Plant, Units 1 and 2, located in Appling County, Georgia.

Environmental Assessment

Identification of the Proposed Action

By letter dated August 8, 1997, as supplemented by letters dated March 9, May 6, July 6, July 31, September 4, and September 11, 1998, Southern Nuclear Operating Company, Inc. (SNC/the licensee), requested amendments to Facility Operating License Nos. DPR–57 and NFP–5 for the operation of the Edwin I. Hatch Nuclear Plant (Plant Hatch), Units 1 and 2, located on the Altamaha River in Appling County, approximately 11 miles north of Baxley, Georgia. On April 17, 1997, information concerning the SNC dose assessment for Plant Hatch was submitted in advance of the application for license amendments.

SNC has requested an increase in the maximum thermal power (MWt) from 2558 MWt to 2763 MWt, which represents a power increase of 8 percent. This is considered an extended power uprate because it follows a 5 percent power uprate from the original licensing basis of 2436 MWt to 2558 MWt, which was implemented following the Unit 2 fall 1995 outage and the Unit 1 spring 1996 outage.

The Need for the Proposed Action

SNC forecasts the increase in electrical generation to allow prudent planning for adding power capacity. Large base load plants are not required for several years. However, expected increases in customer demand will be met by either increasing the number of combustion turbines or purchasing electrical power from other sources. The proposed extended power uprate will provide increased reactor power, thus adding an additional 80 to 120 MW of reliable electrical generating capacity to the grid without major hardware modifications to the plant and will displace the need for two 50-megawatts electric gas turbines. Because of design and safety margins in the plant equipment, the proposed extended power uprate can be accomplished with relatively few modifications. Also, because Plant Hatch is already in operation, impacts of construction can be avoided. The cost of adding this nuclear generating capacity roughly equals the cost of constructing combustion turbines; however, the fuel cost of nuclear power is approximately one-tenth that of natural gas and the additional energy is expected to be produced for less than 1 cent per kilowatt hour. Furthermore, unlike fossil fuel plants, Plant Hatch does not routinely emit sulfur dioxide, nitrogen oxides, carbon dioxide, or other atmospheric pollutants that contribute to greenhouse gases or acid rain.

Environmental Impacts of the Proposed Action

At the time of the issuance of the operating licenses for Plant Hatch, the NRC staff noted that any activity authorized by the license is encompassed by the overall action evaluated in the Final Environmental Statement (FES), which was issued in March 1978. The original operating licenses for both Plant Hatch units allowed a maximum reactor power level of 2436 MWt. Plant Hatch has already received a 5 percent power uprate for each unit from the original licensing bases of 2436 MWt to 2558 MWt, which were implemented following the Unit 2 fall 1995 outage and the Unit 1 spring

1996 outage. An Environmental Assessment associated with the power uprate was published in the **Federal Register** on July 27, 1995 (60 FR 38593). SNC has submitted an environmental evaluation supporting the proposed extended power uprate action and provided a summary of its conclusions concerning both the radiological and nonradiological environmental impacts of the proposed action. Based on its independent analyses and the evaluation performed by the licensee, the staff concludes that the environmental impacts of the extended power uprate are well bounded or encompassed by previously evaluated environmental impacts and criteria established by the staff in the FES. Extended power uprate can be implemented at Plant Hatch without making extensive changes to plant systems that directly or indirectly interface with the environment. No changes to State permits are required. A summary of the nonradiological and radiological effects on the environment that may result from the proposed amendments is provided herein.

Nonradiological Impacts

Terrestrial Impacts

Impacts on Land Use: The proposed extended power uprate will not modify the land use at the site, as described in the FES. Neither construction of new facilities nor the modification of existing facilities, including buildings, access roads, parking facilities, laydown areas, and onsite transmission and distribution equipment, including power line rights-of-way, is needed to support the uprate or operation after uprate. Extended power uprate will not significantly affect material storage, including chemicals, fuels, and other materials stored in aboveground and/or underground storage.

Cooling Tower Impacts: In the FES, the staff concluded that operation of the Plant Hatch cooling towers would not be detrimental to either the land or the vegetation in the vicinity of the plant. Monitoring programs, including low altitude true and false color photography, have not revealed any negative effects attributable to salt deposition from cooling tower drift resulting from station operation to date. The proposed extended power uprate will not increase the circulating water flow; therefore, no increase in cooling tower drift is expected.

The FES states that the climate at the site consists of mild, short winters (average monthly minimum temperature of approximately 52 °F); therefore, icing conditions are rare and the probability of icing on nearby roads is extremely low. Because circulating water flow will not increase as a result of extended power uprate, cooling tower drift will not increase and the impact of icing on trees, vegetation, and roads will not increase. Therefore, the conclusions of the FES relative to icing remain valid for the proposed extended power uprate.

A small increase in fogging potential due to operation of cooling towers was noted in the FES but was determined to be insignificant. The slight increase in heat load on the cooling towers from the proposed extended power uprate is expected to result in a very slight increase in the potential for fogging. However, this incremental increase is expected to be insignificant and will not change the conclusions in the FES.

After considering the small increase in heat load on the cooling towers, the staff concludes that the incremental effects of fog attributable to the proposed extended power uprate will be negligible and will continue to be bounded by the FES. Other cooling tower impacts, such as drift and icing, are not expected to change as a result of the proposed extended power uprate.

Transmission Facility Impacts: No changes in existing transmission line design and operation will result from the proposed extended power uprate. No new requirements or changes to onsite transmission equipment, operating transmission voltages, or offsite power systems will result from implementation of the proposed extended power uprate.

The rise in generator output associated with extended power uprate will produce a slight current and electromagnetic field (EMF) increase in the onsite transmission line between the main generator and the plant substation. The line is located entirely within the fenced, licensee-controlled boundary of the plant, and neither members of the public nor wildlife would be expected to be affected. Exposure to EMFs from the offsite transmission system is not expected to increase significantly and any such slight increases are not expected to change the staff's conclusion in the FES that there are no significant biological effects attributable to EMFs from high voltage transmission lines associated with Plant Hatch.

Because Plant Hatch transmission lines are designed and constructed in accordance with applicable shock prevention provisions of the National Electric Safety Code, the slight increase in current attributable to the proposed extended power uprate is not expected to change the staff's conclusions in the FES that adequate protection is provided against hazards from electrical shock.

Impacts on Terrestrial Biota: The proposed extended power uprate will not change the land use as evaluated in the FES and will not disturb the habitat of any terrestrial plant or animal species. The conclusions reached by the staff in the FES relative to impact on terrestrial ecology, including endangered and threatened plant and animal species, remain valid for the proposed extended power uprate.

Aquatic Impacts

Surface Water: Extended power uprate is accomplished by increasing the heat output of the reactor, thereby increasing steam flow to the turbine, for which increased feedwater flow is needed. For the proposed extended power uprate, the 22,500 gallons per minute (gpm) (50 cubic feet per second) average withdrawal rate for one unit of Plant Hatch assessed in the FES will remain unchanged. The increase in steam flow resulting from the extended power uprate does increase the duty on the main condenser and the resulting slight increase in evaporation from the cooling towers will be balanced by a decrease in blowdown discharge such that no increase in withdrawal is anticipated.

Groundwater: In the FES, the staff concluded that a minimal quantity of groundwater (327 gpm, 0.471 million gallons per day (gpd)) will be withdrawn from two wells for normal two-unit operation and this amount was not likely to significantly impact the regional aquifer. Groundwater use at Plant Hatch is governed by a permit issued by the Environmental Protection Division of the State of Georgia Department of Natural Resources, which authorizes withdrawal of 1.1 million gpd monthly average, and 0.550 million gpd annual average. Although the values allowed by the groundwater withdrawal permit are somewhat greater than the values evaluated in the FES, the typical groundwater withdrawal rate for two-unit operation is 0.167 million gpd (116 gpm), with a maximum value of 0.281 million gpd (195 gpm). The proposed extended power uprate will not result in a significant increase in the use of groundwater resources and will not significantly reduce the margin to limits contained in the permit issued by the State. The conclusions reached by the staff in the FES relative to groundwater use remain valid for the proposed extended power uprate.

Intake Impacts: The impacts of operation of the river water intakes include impingement of fish on the traveling screens at the intake structure

and entrainment of phytoplankton, periphyton, drifting macroinvertebrates, and fish eggs and larvae. The losses of impinged and entrained organisms were assessed in the FES and were judged to be insignificant, compared to overall populations in the Altamaha River. Due to an increase in heat load on the cooling towers as a result of extended power uprate, evaporative losses will increase. In order to compensate for the increase in evaporative losses, cooling tower makeup will be increased slightly and cooling tower blowdown will be decreased by approximately 626 gpm. The additional incremental increase in makeup is considered insignificant and will not significantly increase the impacts of impingement and entrainment on aquatic biota in the Altamaha River beyond those addressed in the FES.

Discharge Impacts: Impacts of station operation resulting from the plant discharges include thermal and physical effects of cooling tower basin blowdown and the effects of chemical discharges from serial-numbered outfalls controlled by the National Pollutant Discharge Elimination System (NPDES) permit. The increased thermal discharges resulting from the proposed extended power uprate are expected to have the effect of increasing the discharge temperature of cooling water blowdown such that the temperature increase in the Altamaha River after mixing would be less than 0.1 °F.

As described above, cooling tower blowdown is expected to decrease by 626 gpm; therefore, the extended power uprate will not result in increased impacts due to scour on aquatic macrobenthic organisms or to increase turbidity in the Altamaha River in the vicinity of the plant discharge.

Chemical usage and subsequent discharge to the environment are not expected to change significantly as a result of implementing the proposed extended power uprate. Cycles of concentration at which the cooling towers operate will not change and no changes in the cooling tower chemistry program will result from the extended power uprate. Finally, no changes to the sanitary waste system or to the parameters regulated by the NPDES permit are needed to accomplish the extended power uprate. Therefore, the conclusions in the FES regarding chemical discharges remain valid.

Socioeconomic Impacts

Physical Impacts: The staff has considered the potential for direct physical impacts resulting from the proposed extended power uprate. The proposed extended power uprate will be accomplished primarily by changes in station operation, resulting in very few modifications to the station facility. These limited modifications can be accomplished without physical changes to transmission corridors, access roads, other offsite facilities, or additional project-related transportation of goods or materials. Therefore, no significant additional construction disturbances causing noise, odors, vehicle exhaust, dust, vibration, or shock from blasting are expected and the conclusions in the FES remain valid.

Social and Economic Impacts: The staff has reviewed information provided by the licensee regarding socioeconomic impacts. SNC is a major employer in the community and the largest single contributor to the local tax base. SNC personnel also contribute to the tax base by payment of sales and property tax and many are involved in volunteer work within the community. The proposed extended power uprate will not significantly affect the size of the Plant Hatch workforce and will not have a material effect upon the labor force required for future outages. Because the plant modifications needed to implement the extended power uprate will be minor, any increase in sales tax and additional revenue to local and national business will be negligible relative to the large tax revenues generated by Plant Hatch. It is expected that improving the economic performance of Plant Hatch through cost reductions and lower total bus bar costs per kWh will enhance the value of Plant Hatch as a generating asset and lower the probability of early plant retirement. Early plant retirement would have a significant negative impact upon the local economy and the community as a whole. The ability of the local economy to provide substitute tax revenues and similar employment opportunities for SNC employees is limited and serious reductions in public services, employment, income, business revenues, and property values could result from early plant retirement, although these reductions could be mitigated by decommissioning activities in the short-term.

The staff has also evaluated the environmental impact of the proposed extended power uprate on aesthetic resources and lands with historical or archaeological significance and concludes that the proposed action will not change aesthetic resources or affect lands with historical or archeological significance.

Summary

In summary, the proposed extended power uprate will not result in a significant change in nonradiological plant effluents or terrestrial or socioeconomic impacts and will have no other nonradiological environmental impact.

Radiological Impacts

Radioactive Waste Treatment

Plant Hatch uses waste treatment systems designed to collect, process, and dispose of gaseous, liquid, and solid waste that might contain radioactive material in a safe and controlled manner such that discharges are in accordance with the requirements of Title 10 of the *Code of Federal Regulations* (10 CFR) Part 20 and Appendix I to Part 50. These radioactive waste treatment systems are discussed in the FES. The proposed extended power uprate will not affect the environmental monitoring of any of these waste streams or the radiological monitoring requirements contained in licensing basis documents. The proposed extended power uprate does not introduce any new or different radiological release pathways and does not increase the probability of an operator error or equipment malfunction that would result in an uncontrolled radioactive release.

Gaseous Radioactive Waste

During normal operation, the gaseous effluent treatment systems process and control the release of gaseous radioactive effluents to the site environs, including small quantities of noble gases, halogens, particulates, and tritium, such that routine offsite releases from station operation are below the limits in 10 CFR Part 20 and Appendix I to Part 50 (10 CFR Part 20 includes the requirements of 40 CFR Part 190). The gaseous waste management systems include the offgas system and various building ventilation systems. Assuming noble gas generation rates and the radioactivity contribution from halogens, particulates, and tritium are approximately proportional to the power increase (8 percent), a small increase in gaseous effluents due to extended power uprate will occur. The staff has evaluated information provided by the licensee and concludes that the estimated dose values will still be below Appendix I requirements after the extended power uprate and the dose impact will be a small increase (less than 8 percent) for the gaseous pathway compared to the present analysis of record for the plant.

Liquid Radioactive Waste

The liquid radwaste system is designed to process, and recycle to the extent practicable, the liquid waste collected such that annual radiation

doses to individuals from each unit resulting from routine liquid waste discharges are maintained below the guidelines in 10 CFR Part 20 and 10 CFR Part 50, Appendix I. Liquid effluents are continuously monitored and discharges are terminated if effluents exceed preset radioactivity levels. Extended power uprate conditions will not result in significant increases in the volume of liquid from the various sources to the liquid radwaste system. The single largest source of liquid and wet solid waste is the backwash of the condensate demineralizers. With extended power uprate, the average time between backwash and precoat will be reduced slightly. The floor drain collection subsystem and the waste collection subsystem both receive periodic inputs from a variety of sources; however, neither subsystem is expected to experience a significant increase in the total volume of liquid radwaste due to operation at extended power uprate conditions.

During normal operation, treated high-purity radwastes are normally routed to condensate storage for reuse. Treated floor drain wastes can also be routed to condensate storage, to the extent practical, consistent with reactor water inventory and reactor water quality requirements. Treated floor drain and chemical wastes are discharged into the cooling tower blowdown discharge pipe after being sampled to ensure discharge pipe concentrations after dilution are within applicable limits.

The activated corrosion products in liquid wastes are expected to increase proportionally to extended power uprate (approximately 8 percent). However, the total volume of processed waste is not expected to increase appreciably, since the only significant increase is due to the more frequent backwashes of the condensate demineralizers. The staff concludes that information submitted by the licensee shows that there will be no significant dose increase in the liquid pathway resulting from the proposed extended power uprate.

Solid Radioactive Waste

The solid radioactive radwaste system collects, monitors, processes, packages, and provides temporary storage facilities for radioactive solid wastes prior to offsite shipment and permanent disposal. Plant Hatch has implemented procedures to assure that the processing and packaging of solid radioactive waste is accomplished in compliance with the Commission's regulations.

Wet Wastes: Wet wastes, consisting primarily of spent demineralizer resins and filter sludges, are accumulated in phase separators and waste sludge tanks, which serve as storage and batching tanks for the wet solid radwaste system.

The largest volume contributors to radioactive solid waste are the spent resin and filter sludges from the process wastes. Equipment wastes from operation and maintenance activities, chemical wastes, and reactor system wastes also contribute to solid waste generation. Extended power uprate conditions may involve a slight increase in the process wastes generated from the operation of the reactor cleanup filter demineralizers, fuel pool filter demineralizers, and the condensate filter demineralizers. More frequent reactor water cleanup backwashes are expected to occur under extended power uprate conditions due to water chemistry limits. Extended power uprate will not involve changes in either reactor water cleanup flow rates or filter performance.

The principle effect of extended power uprate upon the condensate demineralizer system is increased condensate flow and, consequently, the condensate vessel differential pressure limit being reached more frequently, resulting in reduced run times. Without any modification, the spent resin generation from the condensate demineralizers would be expected to increase. However, to offset this, Plant Hatch is adopting the use of pleated filter elements in the demineralizer vessels. Use of pleated filters will double the run times to about 50 days using current demineralizer flow rates. Also, use of pleated filters allows precoating with less resin, resulting in a 50 to 60 percent reduction in resin usage. In conjunction with the adoption of pleated filters, Plant Hatch is installing an air surge system, which increases the energy of the backwash, enhancing the ability to flush material out of the filters and extending the life of demineralizer filters. These modifications will serve to minimize the amount of wet radwaste. The staff concludes that implementation of the proposed extended power uprate is not likely to have a significant impact on the volume or activity of wet radioactive solid wastes at Plant Hatch.

Dry Wastes: Dry wastes consist of air filters, miscellaneous paper and rags from contaminated areas, contaminated clothing, tools and equipment parts that cannot be effectively decontaminated, and solid laboratory wastes. The activity of much of this waste is low enough to permit manual handling. Dry wastes are collected in containers located throughout the plant, compacted as practicable, and then sealed and removed to a controlled-access enclosed area for temporary storage. Because of its low activity, dry waste can be stored until enough is accumulated to permit economical transportation to an offsite processing facility or a burial ground for final disposal. The staff concludes that implementation of the proposed extended power uprate should not have a significant impact on the volume or activity of the dry solid radioactive wastes at Plant Hatch.

Irradiated Reactor Components: This waste consists primarily of spent reactor control rod blades, fuel channels, incore ion chambers, and large pieces of equipment. Because of the high activation and contamination levels, reactor equipment waste is stored in the spent fuel storage pool to allow for sufficient radioactive decay before removal to inplant or offsite storage and final disposal in shielded containers or casks. Because of the mitigating effects of extended burnup and increased U–235 burnup, implementing the extended power uprate is not likely to have a significant impact on the number of irradiated reactor components discharged from the reactor.

Dose Consideration

Inplant Radiation: Increasing the rated power at Plant Hatch may result in a potential increase in radiation sources in the reactor coolant system. The increased flow of reactor coolant and feedwater needed for the increased power level may result in changing patterns of erosion and corrosion in various locations in the reactor coolant system. This may result in the shifting of corrosion products throughout the reactor coolant system and a corresponding shift in dose rates in the vicinity of reactor coolant piping and components. In addition, the increased core average flux may result in an increase in the concentration of N–16 and activated corrosion products in the reactor coolant system.

The licensee has implemented several programs in the last few years that will serve to counteract any potential increases in dose rates resulting from a power uprate. The licensee initiated a zinc injection program in 1990 and a cobalt reduction program in 1993. These programs, which are intended to reduce the level of activated corrosion products in the reactor coolant system and to inhibit the further buildup of corrosion products in reactor coolant system piping, resulted in a greater than 400 percent reduction in the reactor coolant cobalt-60 and zinc-65 concentrations

between 1993 and 1997. The licensee also performed chemical decontaminations on Unit 1 in 1991 and 1996 to reduce radiation fields in the reactor auxiliary systems. As a result of the chemical decontaminations and other initiatives described above, dose rates surrounding certain reactor coolant system components were reduced by as much as 40 percent.

To counteract any potential increases in plant doses due to the increase in N–16 levels in the reactor coolant from a power uprate, the licensee performed plant shielding reviews of potentially affected plant areas. Those target areas identified were modified to maintain radiation levels within acceptable levels.

Weekly surveillance data collected since 1990 indicates that the actual reactor water fission and corrosion product activity levels at Plant Hatch are approximately 5 percent of the activity levels assumed in the Plant Hatch original licensing basis. In addition, the average collective dose per reactor at Plant Hatch for the past 5 years has been well under the 500 person-rem value contained in the FES. The 3-year average collective dose per reactor at Plant Hatch has been trending downwards since 1990. In recent years (1991–95), occupational doses have averaged about 0.7 person-cSv (person-rem) per megawatt-year, which is consistent with doses at other boiling water reactors.

On the basis of the preceding information, the staff concludes that the expected annual collective dose for Plant Hatch, following the proposed extended power uprate, will still be bounded by the dose estimate contained in the FES.

Offsite Doses: The staff has reviewed SNC's offsite dose analysis that was provided to demonstrate that Plant Hatch can meet the offsite effluent release requirements of as low as reasonably achievable. The staff has also reviewed actual liquid and gaseous effluent release data, in conjunction with current dispersion/deposition data and periodic land/population/biota usage survey information. It is not likely that the doses to offsite individuals due to normal operational liquid effluent releases will exceed the estimated liquid effluent dose values currently outlined in the final safety analysis reports (FSARs) for Plant Hatch. The doses from airborne effluents are calculated to be increased from the calculated values in the FSARs by about 2.4 percent for the total body and 7.3 percent for the child's thyroid but the relevant dose criteria will be met. The staff concludes that the estimated doses from both the liquid and gaseous release pathways resulting from extended power uprate conditions are well within the design objectives specified in 10 CFR Part 50, Appendix I, and the limits of 10 CFR Part 20.

Accident Consideration

The staff has reviewed the licensee's analyses and has performed confirmatory calculations to verify the acceptability of the licensee's calculated doses under accident conditions. The staff concludes that the proposed extended power uprate will not significantly increase the probability or consequences of accidents and will not result in a significant increase in the radiological environmental impact of Plant Hatch under accident conditions. The results of the staff's calculations will be presented in the safety evaluation to be issued with the license amendments.

Fuel Cycle and Transportation Impacts

Extended power uprate is expected to involve an increase in the bundle average enrichment of the fuel. The environmental impacts of the fuel cycle and of transportation of fuel and wastes are described in Tables S–3 and S–4 of 10 CFR 51.51 and 10 CFR 51.52, respectively. An additional NRC assessment (53 FR 30355, dated August 11, 1988, as corrected by 53 FR 32322, dated August 24, 1988) evaluated the applicability of Tables S–3 and S–4 to higher burnup cycles and concluded that there is no significant change in environmental impact for fuel cycles with uranium enrichments up to 5 weight percent U–235 and burnups less than 60 GWd/MTU from the parameters evaluated in Tables S–3 and S–4. Because the fuel enrichment for the extended power uprate will not exceed 5 weight percent U–235 and the rod average discharge exposure will not exceed 60 GWd/MTU, the environmental impacts of the proposed extended power uprate will remain bounded by these conclusions and are not significant.

Summary

In summary, the proposed extended power uprate will not significantly increase the probability or consequences of accidents, will not introduce any new radiological release pathways, will not result in a significant increase in occupational or public radiation exposure, and will not result in significant additional fuel cycle environmental impacts. Accordingly, the Commission concludes that there are no significant radiological environmental impacts associated with the proposed action.

Alternatives to Proposed Action

Since the Commission has concluded that there is no significant environmental impact associated with the proposed action, any alternatives with equal or greater environmental impact need not be evaluated. However, as an alternative to the proposed action, the staff did consider denial of the proposed action. Denial of the proposed action would result in no change in the current environmental impacts of plant operation but would restrict operation to the currently licensed power level. The environmental impacts of the proposed action and the alternative action are similar.

Alternative Use of Resources

This action does not involve the use of any resources not previously considered in the Final Environmental Statement for the Edwin I. Hatch Nuclear Plant, Units 1 and 2.

Agencies and Persons Consulted

In accordance with its stated policy, on September 24, 1998, the staff consulted with the Georgia State official, James Setser of the Department of Natural Resources, regarding the environmental impact of the proposed action. The State official had no comments.

Final Finding of No Significant Impact

The staff has reviewed the proposed extended power uprate for Edwin I. Hatch Nuclear Plant, Units 1 and 2, relative to the requirements set forth in 10 CFR Part 51. On August 27, 1998, the staff published a draft Environmental Assessment in the **Federal Register** (63 FR 45874) for public comment. No comments were received.

Based upon the environmental assessment, the Commission concludes that the proposed action will not have a significant effect on the quality of the human environment. Accordingly, the Commission has determined not to prepare an environmental impact statement for the proposed action.

For further details with respect to the proposed action, see the licensee's letter dated August 8, 1997, as supplemented by letters dated March 9, May 6, July 6, July 31, September 4, and September 11, 1998, and the information submitted by letter dated April 17, 1997, in advance of the licensee's application, all of which 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 located at the Appling County Public Library, 301 City Hall Drive, Baxley, Georgia.

Dated at Rockville, Maryland, this 28th day of September 1998.

For the Nuclear Regulatory Commission.

Herbert N. Berkow,

Director, Project Directorate II–2, Division of Reactor Projects—I/II, Office of Nuclear Reactor Regulation.

[FR Doc. 98–26559 Filed 10–2–98; 8:45 am]

BILLING CODE 7590–01–P

NUCLEAR REGULATORY COMMISSION

Advisory Committee on Nuclear Waste; Revised

The 104th meeting of the Advisory Committee on Nuclear Waste (ACNW) has been rescheduled from October 20–22, 1998 to *October 20 and 21, 1998,* at the *Longstreet Inn, Conference Room Colorado* #2, *Stateline 373, Amargosa Valley, Nevada.* Presentations by the Department of Energy on Site Characterization and Viability Assessment will be rescheduled. The ACNW review of the NRC staff's Format and Content Guide for Reactor License Termination has been canceled. The Committee will not hold any sessions in Las Vegas as was previously announced.

All other items pertaining to this meeting remain the same as published in the **Federal Register** on Thursday, September 10, 1998 (63 FR 48532).

Further information regarding this meeting can be obtained by contacting Mr. Richard K. Major, Chief, Nuclear Waste Branch (telephone 301/415–7366), between 8:00 a.m. and 5:00 p.m. EDT.

Dated: September 29, 1998.

Andrew L. Bates,

Advisory Committee Management OFficer.

[FR Doc. 98–26557 Filed 10–2–98; 8:45 am]

BILLING CODE 7590–01–M

OFFICE OF PERSONNEL MANAGEMENT

[SF 3106 and SF 3106A]

Submission for OMB Review; Comment Request for Reclearance of a Revised Information Collection

AGENCY: Office of Personnel Management.

ACTION: Notice.

SUMMARY: In accordance with the Paperwork Reduction Act of 1995 (Pub. L. 104–13, May 22, 1995), this notice announces that the Office of Personnel Management (OPM) has submitted to the Office of Management and Budget a request for reclearance of a revised information collection. SF 3106, Application for Refund of Retirement Deductions, and SF 3106A, Current/Former Spouse's Notification of Application for Refund of Retirement Deductions, are used by former Federal employees who contributed to the Federal Employee's Retirement System to receive a refund of retirement deductions and any other money to their credit in the Retirement fund.

Approximately 17,125 SF 3106, Application for Refund of Retirement Deductions will be processed annually. The SF 3106 takes approximately 27 minutes to complete for a total of 7,706 hours annually. Approximately 13,700 of SF 3106A, Current/Former Spouse's Notification of Application for Refund of Retirement Deductions will be processed annually. The SF 3106A takes approximately 6 minutes to complete for a total of 1,370 hours annually.

For copies of this proposal, contact Mary Beth Smith-Toomey on (202) 606–8353, or E-mail to mbtoomey@opm.gov

DATES: Comments on this proposal should be received on or before November 4, 1998.

ADDRESSES: Send or deliver comments to—

John C. Crawford, Chief, FERS Division, Retirement and Insurance Service, U.S. Office of Personnel Management, 1900 E Street, NW, Room 3313, Washington, DC 20415

and

Joseph Lackey, OPM Desk Officer, Office of Information and Regulatory Affairs, Office of Management and Budget, New Executive Office Building, NW, Room 10235, Washington, DC 20503

FOR INFORMATION REGARDING ADMINISTRATIVE COORDINATION—CONTACT: Donna G. Lease, Budget and Administrative Services Division, (202) 606–0623.

U.S. Office of Personnel Management.

Janice R. Lachance,

Director.

[FR Doc. 98–26624 Filed 10–2–98; 8:45 am]

BILLING CODE 6325–01–P

OFFICE OF PERSONNEL MANAGEMENT

National Partnership Council Meeting

AGENCY: Office of Personnel Management.

ACTION: Notice of meeting.

TIME AND DATE: 1 p.m., October 14, 1998.

PLACE: Executive Conference Room 5A06A, U.S. Office of Personnel Management, Theodore Roosevelt Building, 1900 E Street, NW., Washington, DC. Room 5A06A is located on the fifth floor, inside the director's suite.

STATUS: This meeting will be open to the public. Seating will be available on a first-come, first-served basis. Individuals with special access needs wishing to attend should contact OPM at the number shown below to obtain appropriate accommodations.

MATTERS TO BE CONSIDERED: This meeting will consist of a discussion of the National Partnership Council's 1998 accomplishments and outstanding items, including the Council's research project, 1998 Report to the President, and skills-building publication. It will also consist of a discussion of ideas for the Council's 1999 Strategic Action Plan.

CONTACT PERSON FOR MORE INFORMATION: Andrew M. Wasilisin, Acting Director, Center for Partnership and Labor-Management Relations, Office of Personnel Management, Theodore Roosevelt Building, 1900 E Street, NW., Room 7H28, Washington, DC 20415–2000, (202) 606–2930.

Office of Personnel Management.

Janice R. Lachance,

Director.

[FR Doc. 98–26635 Filed 10–2–98; 8:45 am]

BILLING CODE 6325–01–P

SECURITIES AND EXCHANGE COMMISSION

Sunshine Act Meeting

Notice is hereby given, pursuant to the provisions of the Government in the Sunshine Act, Pub. L. 94–409, that the Securities and Exchange Commission will hold the following meeting during the week of October 5, 1998.

A closed meeting will be held on Wednesday, October 7, 1998, at 10:00 a.m.

Commissioners, Counsel to the Commissioners, the Secretary to the Commission, and recording secretaries will attend the closed meeting. Certain staff members who have an interest in the matters may also be present.

The General Counsel of the Commission, or his designee, has certified that, in his opinion, one or more of the exemptions set forth in 5 U.S.C. 552b(c)(4), (8), (9)(A) and (10) and 17 CFR 200.402(a)(4), (8), (9)(i) and (10), permit consideration of the scheduled matters at the closed meeting.

Commissioner Hunt, as duty officer, voted to consider the items listed for the closed meeting in a closed session.

The subject matter of the closed meeting scheduled for Wednesday, October 7, 1998, at 10:00 a.m., will be: Institution of administrative proceedings of an enforcement nature.

At times, changes in Commission priorities require alterations in the scheduling of meeting items. For further information and to ascertain what, if any, matters have been added, deleted or postponed, please contact:

The Office of the Secretary at (202) 942–7070.

Dated: October 1, 1998.

Jonathan G. Katz,

Secretary.

[FR Doc. 98–26800 Filed 10–01–98; 3:54 pm]

BILLING CODE 8010–01–M

SECURITIES AND EXCHANGE COMMISSION

(Release No. 34–40487; File No. SR–NSCC–98–06)

Self-Regulatory Organizations; National Securities Clearing Corporation; Notice of Filing of a Proposed Rule Change Modifying the Automated Customer Account Transfer Service

September 28, 1998.

Pursuant to Section 19(b)(1) of the Securities Exchange Act of 1934 (''Act''),[1] notice is hereby given that on June 5, 1988, the National Securities Clearing Corporation (''NSCC'') filed with the Securities and Exchange Commission (''Commission'') and on June 17, 1998, amended the proposed rule change, as described in Items I, II, and III below, which items have been prepared primarily by NSCC. The Commission is publishing this notice to solicit comments on the proposed rule change from interested persons.

I. Self-Regulatory Organization's Statement of the Terms of Substance of the Proposed Rule Change

The proposed rule change will modify NSCC's rules and procedures regarding the automated customer account transfer service (''ACATS'') to expand the types of eligible ACATS participants and the kinds of accounts that may be transferred.

II. Self-Regulatory Organization's Statement of the Purpose of, and Statutory Basis for, the Proposed Rule Change

In its filing with the Commission, NSCC include statements concerning the purpose of and basis for the proposed rule change and discussed any comments it received on the proposed rule change. The text of these statements may be examined at the places specified in Item IV below. NSCC has prepared summaries, set forth in sections (A), (B), and (C) below, of the most significant aspects of such statements.[2]

(A) Self-Regulatory Organization's Statement of the Purpose of, and Statutory Basis for, the Proposed Rule Change

ACATS enables members of NSCC to effect automated transfers of customer accounts among NSCC members.[3] The proposed rule change will expand the types of eligible ACATS participants and the kinds of accounts that may be transferred. Additionally, it will permit NSCC to transmit data to clearing agencies in order to expand the automated settlement capabilities of ACATS.[4]

Users

Currently, only NSCC members, primarily broker-dealers, may participate in ACATS. The proposed rule change will permit a qualified securities depository (''QSD'') to also effect customer account transfers on behalf of its participants in ACATS.[5] Thus the proposed rule change will permit ACATS transfers between two participants of a QSD and between a QSD participant and a NSCC member.

Transfers

The proposed rule change will set forth three categories of ACATS transfers: (1) Receiving member[6] initiated full account transfers; (2) delivering member[7] initiated partial account transfers; and (3) receiving member initiated partial account transfers. Categories one and two, while currently available, will be modified. Category three will be a new addition to ACATS.

Receiving member initiated full account transfers. Under the proposed rule filing, a receiving member will be required to submit transfer information to NSCC in automated format. The ''transfer initiation request'' paper form will no longer be accepted by NSCC.[8]

Upon submission of customer account asset data, the delivering member will be required to specify the quantity of mutual fund services eligible book share mutual fund assets (''mutual fund assets'') to be processed, if any, and to indicate whether the transfer will be a full or a partial transfer. A full transfer will cause all mutual fund assets, whether greater or lesser than the quantity specified, to be transferred. A partial transfer will cause only the quantity specified or, if the account has less than such amount, such lesser amount to be transferred. Since the actual quantity registered on the records of the mutual fund may be adjusted between the time of the transfer request submission and settlement of the ACATS transfer (due for example to reinvested dividends or capital gains), this modification will provide ACATS participants with a means to transfer the quantity of assets available on settlement date. In addition, the rule filing states that if the transfer is not confirmed or rejected by the mutual fund processor or fund member within the time frame established by NSCC, it will be deleted from the Fund/Serv system[9] by NSCC. As a result, such transfer requests will no longer pend in NSCC's systems for an indefinite period of time.

Currently, once a delivering member rejects a receiving member's transfer request, the receiving member is required to reinitiate the ACATS process. The rule filing will provide that in response to certain enumerated categories of delivering member rejections, the receiving member may make corrections to its customer account transfer request. This will allow a receiving member to adjust within one business day after notification of a delivering member's rejections its customer account transfer request by

[1] 15 U.S.C. 78s(b)(1).

[2] The Commission has modified parts of these statements.

[3] ACATS complements New York Stock Exchange (''NYSE'') and National Association of Securities Dealers (''NASD'') rules that require NYSE and NASD members to use automated clearing agency customers account transfer services and to effect customer account transfers within specified time frames.

[4] NSCC stated that another reason for the redesign is to make the ACTS system Year 2000 compliant.

[5] QSD is a defined term in NSCC's rules (see Rule 1). A QSD is a registered clearing agency, pursuant to Section 3(a)(23) of the Act, that has entered into an agreement with NSCC pursuant to which it will act as a securities depository for NSCC and will effect book-entry transfers of securities for NSCC with respect to NSCC's continuous net settlement system. The Depository Trust Company is the only registered clearing agency that has entered into such an agreement with NSCC.

[6] The proposed rule change will define the receiving member as a NSCC member or QSD to whom a customer's full account is to be transferred.

[7] The proposed rule change will define the delivering member as the NSCC member or QSD which currently has the account.

[8] A receiving member will be able to continue to utilize the facilities of NSCC to submit physical documentation that a delivering member may need in order to act upon the receiving member's request.

[9] For a complete description of NSCC's Fund/SERV system refer to Securities Exchange Act Release No. 31937 (March 1, 1993), 58 FR 12609 [File No. SR–NSCC–92–14] (order approving proposed rule change regarding Fund/SERV system).

submitting corrections to NSCC. A delivering member must then either reject the adjusted transfer request by submitting a new rejection to NSCC or submit to NSCC detailed customer account asset data. If the delivering member fails to respond to the adjusted transfer request within the time frame established by NSCC, NSCC will delete the request from ACATS and will notify the receiving and delivering members.

To the extent that a receiving member determines that any information as reported on the transfer initiation request is inaccurate, the rule filing will provide that the receiving member may cause an adjustment to be made by submitting corrected data to NSCC. Similarly, if a delivering member determines that the account number of its customer as reported on the transfer initiation request is inaccurate, it may cause that adjustment to be made by submitting corrected data to NSCC.

The proposed rule change will permit a receiving member to accelerate the transfer of a customer account by accepting the report detailing the customer account asset data on the business day it receives the report from NSCC. However, under these new circumstances, if a delivering member submits a timely adjustment to an account for which an accelerated acceptance has been received by NSCC, it will cause such accelerated acceptance to be void.

To the extent an ACATS transfer is between two NSCC members, the proposed rule change will differentiate between the processing of continuous net settlement (''CNS'') eligible and non-CNS eligible items that are otherwise eligible at The Depository Trust company (''DTC''). The rule filing will not change the processing of CNS eligible items. The proposed rule change provides that NSCC will produce ACATS instruction files for all non-CNS eligible items that are otherwise eligible at DTC. The instruction files will be similar to DTC deliver orders (*i.e.*, naming the receiving and delivering participants, the quality of the securities to be delivered, and the value for such delivery). Any such deliveries will be subject to the rules of DTC. If a delivering member does not want instruction files to be submitted to DTC, it may request, at the time the account asset details are submitted or pursuant to a standing instruction filed with NSCC, that separate receive and deliver instructions be produced. In such instances, it will be up to the delivering member to initiate the delivery of the asset.

Under the proposed rule change, foreign currency assets may be transferred from a delivering member to a receiving member. ACATS will produce receive and deliver instructions but will not specify a value for such assets.

To the extent that either a receiving member or a delivering member (or both) is a participant of a QSD, such transfer will be processed in the same manner as the transfers described in the current rule, except as specified below:

1. For all DTC eligible assets, other than United States dollar cash balances (''cash''), assets covered by a standing instruction filed by a delivering member with NSCC, and assets for which a receive/deliver instruction request was received from a delivering member at the time asset details were submitted, NSCC will issue an instruction file to DTC specifying the quantity of each asset to be delivered with a deliver value of zero.

2. For all non-DTC eligible assets (other than assets available at other registered clearing agencies and cash), assets covered by standing instructions filed by a delivering member with NSCC and assets for which a receive/deliver instruction request was received from a delivering member at the time asset details were submitted, NSCC will produce receive and deliver instructions naming the receiving member and the delivering member. All such receive and deliver instructions will specify no value. Unlike a transfer between NSCC members, NSCC will not debit and credit the value of assets being transferred between participants of a QSD or between a participant of a QSD and a member of NSCC.[10]

3. If the account has a cash balance, NSCC will issue an instruction to DTC indicating the participants to be debited and credited and the corresponding amount.

Delivering member initiated partial account transfers. The proposed rule change will permit a delivering member to initiate additional types of partial account transfers. In addition to the transfer of residual credit positions, delivering members will be able to: Deliver a partial account (in the form of cash or securities); initiate the delivery of a position which was purchased by the delivering member for the benefit of a customer's account and which the customer wants to be custodied at the receiving member; obtain the return of cash previously paid with respect to fail positions for which delivery is unable to be completed;[11] and obtain the return of cash or securities mistakenly delivered through ACATS other than mutual fund assets and positions eligible for processing at The Options Clearing Corporation (''OCC''), the Government Securities Clearing Corporation (''GSCC'') or the Participants Trust Company (''PTC'').[12]

NSCC proposes that a delivering member may initiate a transfer by submitting to NSCC those transfer details that are required by NSCC. NSCC will reject the transfer if the details contain an edit or format error. NSCC will notify the delivering member if a transfer is rejected in which case the delivering member must reinitiate the transfer as if it had never been previously submitted.

NSCC also proposes that a receiving member may reject the transfer by submitting information on the same day as the transfer request is received. No action will be required by the receiving member if it determines to accept the transfer. A receiving member may not submit corrections, and a delivering member may not make adjustments to such transfer request.

Settlement date will be one business day following the day NSCC receives the transfer request unless the request includes option assets which are eligible for processing at OCC in which case the settlement date for all assets shall be two business days following the day NSCC receives the transfer request.

Receiving member initiated partial account transfers. Under the proposed rule change, a receiving member may submit a request to initiate the transfer of a partial customer account. The request will be delivered by NSCC to the delivering member on the same day that it is received by NSCC. Each day NSCC will produce a report that indicates all of the requests received by NSCC that day. A delivering member may respond to a receiving member's request for a partial account transfer at any time by the delivering member initiating a partial account transfer, by following the procedure set forth in the delivering member initiated transfer section set forth above. No action will be required by the delivering member if it determines not to respond to a request and no transfer will occur.

Agreement with DTC. NSCC intends to enter into an agreement with DTC to

[10] Under the current ACATS rule, the delivering firm is debited the current market value of the assets and the member receiving firm is credited the current market value of the assets. The member delivering firm recovers its money by making delivery of the assets. Under the proposed rule change, whenever a QSD participates in the ACATS process, the assets will be delivered on a no value basis.

[11] This service may only be initiated to the extent that the fail is between two NSCC members.

[12] This service may only be initiated to the extent that the delivery is between two NSCC members.

permit DTC to obtain access to ACATS on behalf of its participants.[13] NSCC's agreement with DTC will permit ACATS to be used for the transfer of accounts between two DTC participants or between a DTC participant and an NSCC member.

Linkage Agreements. NSCC currently has an agreement in place with OCC regarding the transfer of options positions within customer accounts being transferred pursuant to ACATS. The agreement provides that NSCC may send instructions to OCC for the delivery and receipt of options positions on behalf of ACATS participants that are members of NSCC as well as of OCC.

In order to broaden the types of assets which can be transferred through ACATS based on instructions from NSCC, the proposed rule change will permit NSCC to establish links with other registered clearing agencies (''RCA''), such as DTC, PTC and GSCC. Once an agreement has been reached with the applicable RCA, to the extent a transfer involves an asset position eligible for delivery at such RCA and both the receiving member and delivering member have an account there, NSCC will issue instructions to the applicable RCA indicating the delivering or receiving participant and the quantity of assets to be delivered and received. Such instructions shall not specify a value unless the transfer is between two members of NSCC and the assets to be transferred are government securities (where a nominal value shall be specified) [14] or mortgage-backed securities. If the assets are mortgage-backed securities, on settlement date NSCC will debit the deliverer the value and credit the receiver the value of the assets.

Indemnification Provision

The proposed rule change will include indemnification provisions similar to those currently in use by users of ACATS. While the revised rule will include such provisions, it will not preclude participants from entering into separate indemnification arrangements which are broader than those contained in the rule.

NSCC believes that the proposed rule change is consistent with Section 17A(b)(3)(F) because it will facilitate the prompt and accurate clearance and settlement of securities transactions and, in general, protect investors and the public interest.[15]

(B) Self-Regulatory Organization's Statement on Burden on Competition

NSCC does not believe that the proposed rule change will have an impact on or impose a burden on competition.

(C) Self-Regulatory Organization's Statement on Comments on the Proposed Rule Change Received From Members, Participants, or Others

Written comments relating to the proposed rule change have not yet been solicited or received. NSCC will notify the Commission of any written comments received by NSCC.

III. Date of Effectiveness of the Proposed Rule Change and Timing for Commission Action

Within thirty-five days of the date of publication of this notice in the **Federal Register** or within such longer period (i) as the Commission may designate up to ninety days of such date if it finds such longer period to be appropriate and publishes its reasons for so finding or (ii) as to which NSCC consents, the Commission will:

(A) by order approve such rule filing or

(B) institute proceedings to determine whether the rule filing should be disapproved.

IV. Solicitation of Comments

Interested persons are invited to submit written data, views, and arguments concerning the foregoing, including whether the proposed rule change is consistent with the Act. 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 statement with respect to the rule filing that are filed with the Commission, and all written communications relating to the rule filing 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 Pubic Reference Room in Washington, D.C. Copies of such filing will also be available for inspection and copying at the principal office of NSCC. All submissions should refer to the File No. SR–NSCC–98–06 and should be submitted by October 26, 1998.

For the Commission by the Division of Market Regulation, pursuant to delegated authority.[16]

Margaret H. McFarland,

Deputy Secretary.

[FR Doc. 98–26530 Filed 10–2–98; 8:45 am]

BILLING CODE 8010–01–M

[13] This agreement will be similar to the current agreement between NSCC and DTC regarding DTC's access to NSCC's mutual funds services.

[14] On June 17, 1998, NSCC amended the proposed rule change (File No. NSCC–98–06) to include the transfer of government securities where a nominal value is specified.

[15] 15 U.S.C. 78q–1(b)(3)(F).

[16] 17 CFR 200.30–3(a)(12).

SMALL BUSINESS ADMINISTRATION

Region I Advisory Council; Public Meeting

The U.S. Small Business Administration Region I Advisory Council, located in the geographical area of Hartford, Connecticut will hold a public meeting at 8:30 a.m., on Monday, October 19, 1998, Hartford, District Office, 330 Main Street, 2nd Floor, Hartford, Connecticut 06106, to discuss such matters as may be presented by members, staff of the U.S. Small Business Administration, or others present.

FOR FURTHER INFORMATION CONTACT: Marie A. Record, District Director, U.S. Small Business Administration, 330 Main Street, 2nd Floor, Hartford, Connecticut 06106, (860) 240–4700.

Shirl Thomas,

Director, External Affairs.

[FR Doc. 98–26549 Filed 10–2–98; 8:45 am]

BILLING CODE 8025–02–P

SMALL BUSINESS ADMINISTRATION

Region V District Advisory Council; Public Meeting

The U.S. Small Business Administration Region V District Advisory Council, located in the geographical area of Minneapolis/St. Paul, Minnesota, will hold a public meeting on November 6, 1998 at 11:30 a.m., at the Federal Reserve Bank, 90 Hennepin Avenue, Minneapolis, Minnesota, to discuss such matters as may be presented by members, staff of the U.S. Small Business Administration, or others present.

FOR FURTHER INFORMATION CONTACT: Edward A. Daum, District Director, U.S. Small Business Administration, 610–C Butler Square, 100 North Sixth Street, Minneapolis, Minnesota 55403, (612) 370–2306.

Shirl Thomas,

Director, External Affairs.

[FR Doc. 98–26551 Filed 10–2–98; 8:45 am]

BILLING CODE 8025–01–P

SMALL BUSINESS ADMINISTRATION

Wisconsin State Advisory Council; Public Meeting

The U.S. Small Business Administration Wisconsin State Advisory Council, located in the geographical area of Milwaukee, Wisconsin, will hold a public meeting from 12:00 p.m., to 1:00 p.m. on October 15, 1998, at Metro Milwaukee Area Chamber (MMAC) Association of Commerce Building, 756 North Milwaukee Street, Fourth Floor, Milwaukee, Wisconsin to discuss such matters as may be presented by members, staff of the U.S. Small Business Administration, or others present.

FOR FURTHER INFORMATION CONTACT: Yolanda Lassiter, U.S. Small Business Administration, 310 W. Wisconsin Ave. Milwaukee, Wisconsin 53203, (414) 297–1092.

Shirl Thomas,

Director, External Affairs.

[FR Doc. 98–26550 Filed 10–2–98; 8:45 am]

BILLING CODE 8025–01–P

OFFICE OF THE UNITED STATES TRADE REPRESENTATIVE

North American Free Trade Agreement: Sanitary and Phytosanitary Committee

AGENCY: Office of the United States Trade Representative.

ACTION: Notice of public meeting and request for comments.

SUMMARY: In accordance with legislation implementing the North American Free Trade Agreement, we are informing the public of a meeting to be held Thursday, October 15, 1998 at the U.S. Department of Agriculture (USDA) in Washington, D.C. The purpose of this meeting is to solicit public comment on proposed agenda items for the next scheduled meeting of the North American Free Trade Agreement (NAFTA) Sanitary and Phytosanitary (SPS) Committee, November 4–5, 1998, in Mexico City, Mexico. It is also to seek public input in identifying any new issues of concern that should be considered for the agenda. Representatives from each of the SPS Committee's eight Technical Working Groups (TWGs) will also be present to apprise the public of each TWG's progress and to respond to questions.

The November meeting will be the Seventh Meeting of the NAFTA SPS Committee and will include the co-chairs from the TWGs that report to the Committee. The purpose of the NAFTA SPS Committee is to address sanitary and phytosanitary trade issues affecting the entry of agricultural products among the three member countries.

DATES: The public meeting date is Thursday, October 15, 1998, 2:00 p.m. to 4:00 p.m., Washington, DC. Written comments should be submitted by October 12, 1998.

FOR FURTHER INFORMATION CONTACT: Lisa Anderson, Foreign Agricultural Service, International Trade Policy, Food Safety and Technical Services Division, Room 5545, South Building, 14th Street the Independence Avenue SW, Washington, DC, 20250, (202) 720–1301; or e-mail ofsts@fas.usda.gov.

SUPPLEMENTARY INFORMATION: In accordance with Article 722 of NAFTA, the NAFTA SPS Committee is responsible for facilitating: (a) the enhancement of food safety and sanitary and phytosanitary conditions in the territories of the part is; (b) activities of the Parties pursuant to Articles 713 and 714 relating respectively to international standards and equivalence; (c) technical cooperation; and (d) consultation on specific bilateral issues. An SPS issue can be raised by any party and is sent to the Committee for consideration. The Committee will either consider the matter itself or refer the issue to an individual, working group or relevant standard setting organization for technical advice.

Since the entry into force of NAFTA on January 1, 1994, the NAFTA SPS Committee has met on six separate occasions: March 24, 1994 in Washington, DC; October 6, 1994 in Washington, DC; September 21, 1995 in Mexico City, February 14, 1996 in Mexico City; June 20, 1996 in Ottawa; and November 18–19, 1997 in Washington, DC. The Committee meets at least once a year with meetings rotating among the three countries. Starting in 1998, the dates for meetings of the NAFTA SPS Committee are fixed for the first week in November. Each TWG is to send at least one representative to the annual Committee meeting to report on its progress and activity. The eight TWGS under the NAFTA SPS Committee and their points of contact (POC) are as follows:

1. Animal Health,
   POC: Dr. Tom Walton, Animal and Plant Health Inspection Service (APHIS)
2. Dairy, Fruits, Vegetables and Processed Foods
   POC: Dr. Terry Troxell, Office of Plant & Dairy Foods & Beverages, Food and Drug Administration (FDA)
3. Food Additives and Contaminants
   POC: Dr. Alan Rulis, Office of Pre-Market Approval, FDA
4. Fish & Fishery Product Inspection
   POC: Dr. Philip Spiller, Office of Seafood, FDA
5. Meat, Poultry & Egg Inspection
   POC: Dr. John Prucha, Food Safety Inspection Service, USDA
6. Pesticides
   POC: Ms. Marcia Mulkey, Office of Pesticide Programs, Environmental Protection Agency
7. Plant Health, Seeds & Fertilizers
   POC: Mr. Alan Green, Phytosantiary Issues Management Team, APHIS/USDA
8. Veterinary Drugs & Feed.
   POC: Dr. Robert Livingstone, Center for Veterinary Medicine, FDA

Note: At present, the Technical Working Group on Labeling, Packaging and Standards is an independent working group which provides reports to the NAFTA SPS as well as other committees.

PUBLIC MEETING: The public meeting will take place at the U.S. Department of Agriculture, 1400 Independence Ave. SW, Washington, D.C., (at the back of USDA cafeteria, 1st floor).

WRITTEN COMMENTS: Those persons wishing to submit written comments should provide five (5) typed copies to John Payne, Director for SPS Affairs, Office of the United States Trade Representatives, 600 17th St., NW, Room 421; Washington, DC 20508. If the submission contains business confidential information, five copies of a confidential version must also be submitted. A justification as to why the information contained in the submission should be treated confidentially must be included in the submission. In addition, any submissions containing business confidential information must be clearly marked ''Confidential'' at the top and bottom of the cover page (or letter) and of each succeeding page of the submission. The version that does not contain confidential information should also be clearly marked, at the top and bottom of each page, ''public version'' or ''nonconfidential.''

Written comments submitted in connection with this request, except for information granted ''business confidential'' status pursuant to 15 CFR 20003.6, will be available for public inspection in the USTR Reading Room, Room 101, Office of the United States Trade Representatives, 600 17th Street, N.W., Washington, D.C. An appointment to review the file may be made by calling Brenda Webb (202) 395–6186. The Reading Room is open to the public from 9:30 a.m. to 12 noon,

and from 1 p.m. to 4 p.m., Monday through Friday.

Frederick L. Montgomery,

Chairman, Trade Policy Staff Committee.

[FR Doc. 98–26774 Filed 10–2–98; 8:45 am]

BILLING CODE 3190–01–M

DEPARTMENT OF TRANSPORTATION

Office of the Secretary

Aviation Proceedings, Agreements Filed During the Week Ending September 25, 1998

The following Agreements were filed with the Department of Transportation under the provisions of 49 U.S.C. 412 and 414. Answers may be filed within 21 days of date of filing.

Docket Number: OST–98–4471

Date Filed: September 21, 1998

Parties: Members of the International Air Transport Association

Subject:

PTC23 EUR–SASC 0034 dated September 18, 1998 r1–10

PTC23 EUR–SASC 0035 dated September 18, 1998 r11

Europe-South Asian Subcontinent Resos

PTC23 EUR–SASC 0036 dated September 18, 1998

Minutes Intended effective date: as early as November 1, 1998

Docket Number: OST–98–4484

Date Filed: September 22, 1998

Parties: Members of the International Air Transport Association

Subject:

COMP Telex Mail Vote 954

Amend Rounding Units for Reso 024d

MV Amendments—Telexes TW 715/717

Intended effective date: January 1, 1999.

Docket Number: OST–98–4497

Date Filed: September 24, 1998

Parties: Members of the International Air Transport Association

Subject:

COMP Telex Mail Vote 956 (Reso 011)

Mileages and Routes for Tariff Purposes

Intended effective date: November 1, 1998

Dorothy W. Walker,

Federal Register Liaison.

[FR Doc. 98–26579 Filed 10–2–98; 8:45 am]

BILLING CODE 4910–62–P

DEPARTMENT OF TRANSPORTATION

Office of the Secretary

Notice of Applications for Certificates of Public Convenience and Necessity and Foreign Air Carrier Permits Filed Under Subpart Q During the Week Ending September 25, 1998.

The following Applications for Certificates of Public Convenience and Necessity and Foreign Air Carrier Permits were filed under Subpart Q of the Department of Transportation's Procedural Regulations (See 14 CFR 302.1701 *et. seq.*). The due date for Answers, Conforming Applications, or Motions to Modify Scope are set forth below for each application. Following the Answer period DOT may process the application by expedited procedures. Such procedures may consist of the adoption of a show-cause order, a tentative order, or in appropriate cases a final order without further proceedings.

Docket Number: OST–98–4487.

Date Filed: September 22, 1998.

Due Date for Answers, Conforming Applications, or Motions to Modify Scope: October 20, 1998.

Description: Application of MNG Airlines Cargo Inc. (MNG Havayollari Kargo Tasimacilik ve A.S.) pursuant to 49 U.S.C. 41302 and Subpart Q, applies for an initial Foreign Air Carrier Permit authorizing it to perform (1) scheduled international transportation of property and mail from a point or points in Turkey to Bangor, Maine via Shannon, Ireland (technical stop), Prestwick, Scotland (technical stop) or Reykjavik, Iceland, and from Bangor, Maine to a point or points in Turkey via London, England (technical stop) or Shannon, Ireland (technical stop): and from a point or points in Turkey to New York, New York via Reykjavik, Iceland (technical stop), Shannon, Ireland and Gander, Canada (technical stop) or Prestwick, Scotland and Gander, Canada (technical stop), and from New York, New York to a point or points in Turkey via Reykjavik, Iceland (technical stop), Gander, Canada and London, England (technical stop) or Gander, Canada and Shannon, Ireland (technical stop) and (2) international charter air transportation of property and mail between any point or points in the territory of Turkey and any point or points in the territory of the United States, and between any point or points in the territory of the United States and any point or points in a third country.

Docket Number: OST–98–3727.

Date Filed: September 23, 1998.

Due Date for Answers, Conforming Applications, or Motions to Modify Scope: October 21, 1998.

Description: Application of Ethiopian Airlines Enterprise pursuant to 49 U.S.C. Section 41302 and Subpart Q, applies for an amendment to its application to provide scheduled foreign air transportation of persons, property and mail between Addis Ababa, Ethiopia, Newark and Washington, D.C. via Rome.

Dorothy W. Walker,

Federal Register Liaison.

[FR Doc. 98–26580 Filed 10–2–98; 8:45 am]

BILLING CODE 4910–62–P

DEPARTMENT OF TRANSPORTATION

Coast Guard

[USCG–1998–4514]

National Offshore Safety Advisory Committee

AGENCY: Coast Guard, DOT.

ACTION: Notice of meetings..

SUMMARY: The National Offshore Safety Advisory Committee (NOSAC) will meet to discuss various issues relating to offshore safety. The meeting will be open to the public.

DATES: NOSAC will meet on Thursday, November 5, 1998, from 8:30 a.m. to 2:30 p.m. The meeting may close early if all business is finished. Written material and requests to make oral presentations should reach the Coast Guard on or before October 29, 1998. Requests to have a copy of your material distributed to each member of the committee should reach the Coast Guard on or before October 22, 1998.

ADDRESSES: NOSAC will meet in room 1242, Hale Boggs Federal Building, 501 Magazine Street, New Orleans, Louisiana (Magazine Street, New Orleans, Louisiana (Magazine Street at intersection with Poydras Street). Send written material and requests to make oral presentations to Captain R. L. Skewes, Commandant (G–MSO), U.S. Coast Guard Headquarters, 2100 Second Street SW., Washington, DC 20593–0001. This notice is available on the Internet at http://dms.dot.gov.

FOR FURTHER INFORMATION CONTACT: For questions on this notice, contact Captain R. L. Skewes, Executive Director of NOSAC, or Mr. Jim Magill, Assistant to the Executive Director, telephone 202–267–0214, fax 202–267–4570. For questions on viewing, or submitting material to, the docket, contact Dorothy Walker, Chief, Dockets,

Department of Transportation, 202–366–9329.

SUPPLEMENTARY INFORMATION: Notice of this meeting is given under the Federal Advisory Committee Act, 5 U.S.C. App. 2.

Agenda of Meeting

National Offshore Safety Advisory Committee (NOSAC). The agenda includes the following:

(1) Introduction and swearing-in of new members.

(2) Progress report from the Prevention Through People Subcommittee.

(3) Progress report from the Subcommittee on Pipeline-Free Anchorages for Mobile Offshore Drilling Units, Liftboats and Vessels.

(4) Status report on revision of 33 CFR Subchapter ''N'', Outer Continental Shelf Regulations.

(5) Report on the new regulations for large offshore supply vessels and crewboats, (supplementary 46 CFR Subchapter ''L'').

(6) Report on issues concerning the International Maritime Organization (IMO) and the International Organization of Standardization (ISO).

(7) Status report from Incident Reporting Subcommittee.

(8) Report from Platform/Ship collision Avoidance subcommittee.

(9) MODUs—U.S. Flag to Foreign Flag Movement.

(10) Jackup MODUs—Inclining Test and Dead-weight Survey issues due to modifications.

Procedural

The meeting is open to the public. Please note that the meeting may close early if all business is finished. At the Chair's discretion, members of the public may make oral presentations during the meeting. If you would like to make an oral presentation at the meeting, please notify the Executive Director no later than October 29, 1998. Written material for distribution at the meeting should reach the Coast Guard no later than October 29, 1998. If you would like a copy of your material distributed to each member of the committee or subcommittee in advance of the meeting, please submit 25 copies to the Executive Director no later than October 22, 1998.

Information on Services of Individuals With Disabilities

For information on facilities or services for individuals with disabilities or to request special assistance at the meetings, contact the Executive Director as soon as possible.

Dated: September 24, 1998.

Joseph J. Angelo,

Director of Standards, Marine Safety and Environmental Protection.

[FR Doc. 98–26576 Filed 10–2–98; 8:45 am]

BILLING CODE 4910–15–M

DEPARTMENT OF TRANSPORTATION

Coast Guard

[USCG–1998–3350]

Public Workshops for Response Plan Equipment Caps: Scheduled Increases in Mechanical Recovery and Potential Changes to Dispersant Planning Requirements

AGENCY: Coast Guard, DOT.

ACTION: Notice: Closure of comment period.

SUMMARY: This notice establishes the closure date of October 30, 1998 for Docket USCG–1998–3350. The Coast Guard published a notice in the **Federal Register** on June 24, 1998. That notice announced three public workshops to solicit comments on potential changes to the equipment requirements within the response plan regulations for mechanical recovery, dispersants, and other oil spill removal technologies. However, the Coast Guard omitted a closure date for the submission of comments to the docket.

DATES: Comments must reach the Docket Management Facility on or before October 30, 1998.

ADDRESSES: You may mail comments to the Docket Management Facility, (USCG–98–3350), U.S. Department of Transportation (DOT), room PL–401, 400 Seventh Street SW, Washington, DC 20590–0001, or deliver them to room PL–401, located on the Plaza level of the Nassif Building at the same address between 9 a.m. and 5 p.m., Monday through Friday, except Federal holidays. The telephone number is 202–366–9329. The Docket Management Facility maintains the public docket for this notice. Comments, and documents as indicated in this preamble will become part of this docket and will be available for inspection or copying at room PL–401, located on the Plaza Level of the Nassif Building at the above address between 9 a.m. and 5 p.m., Monday through Friday, except Federal holidays. You may also access the public docket on the internet at http://dms.dot.gov.

FOR FURTHER INFORMATION CONTACT: For questions on this notice, please contact Lieutenant Commander John Caplis, Plans and Preparedness Division, Office of Response, telephone 202–267–6922, fax 202–267–4065, or at email address jcaplis@comdt.uscg.mil. For questions on this docket, contact Dorothy Walker, Chief, Dockets, Department of Transportation, telephone 202–366–9329.

Dated: September 28, 1998.

Joseph Angelo,

Director of Standards, Marine Safety and Environmental Protection.

[FR Doc. 98–26575 Filed 10–2–98; 8:45 am]

BILLING CODE 4910–15–M

DEPARTMENT OF TRANSPORTATION

Federal Aviation Administration

Proposed Advisory Circular (AC) 25.1419–1X, Certification of Transport Category Airplanes for Flight in Icing Conditions

AGENCY: Federal Aviation Administration, DOT.

ACTION: Notice of proposed advisory circular.

SUMMARY: The Federal Aviation Administration invites public comment on a proposed Advisory Circular (AC) which provides guidance for certification of airframe ice protection systems on transport category airplanes.

DATES: December 4, 1998.

ADDRESSES: Send all comments on the proposed AC to: Kathi Ishimaru, Propulsion/Mechanical Systems/Crashworthiness Branch, ANM–112, FAA Transport Airplane Directorate, Aircraft Certification Service, 1601 Lind Ave SW., Renton, WA 98055–4056.

FOR FURTHER INFORMATION CONTACT: Katherine Burks, Regulations Branch, ANM–114, FAA Transport Airplane Directorate, Aircraft Certification Service, 1601 Lind Ave SW., Renton, WA 98055–4056; telephone (425) 227–2114.

SUPPLEMENTARY INFORMATION:

Comments Invited

A copy of the subject AC may be obtained by contacting the person named above under **FOR FURTHER INFORMATION CONTACT.** Interested persons are invited to comment on the proposed AC by submitting such written data, views, or arguments as they may desire. Commenters must identify the title of the AC and submit comments in duplicate to the address specified above. All comments on or before the closing date for comments will be considered by the Transport Airplane Directorate before issuing the final AC.

Discussion

If certification for flight in icing conditions is desired, an applicant must demonstrate that the airplane can safely operate through the icing envelope of 14 CFR part 25, Appendix C. Sections 25.1419 sets forth the specific airframe requirements for demonstrating compliance with the icing conditions defined in Appendix C. To provide guidance to applicants seeking approval of the installation and operation of ice protections systems in the icing environment, the FAA has developed guidance material in the form of a draft advisory circular (AC 25.1419–1X). While the primary focus of this draft AC pertains to the certification of airframe ice protection systems on transport category, it also supplements similar guidance provided in other AC's concerning icing requirements for other parts of the airplane (i.e., engine, engine inlet, propeller). Examples of the type of guidance provided in this AC include:

1. Development of a certification plan.

2. Analyses (e.g., flutter, similarity, failure, etc.) to substantiate decisions involving the application of selected ice protection equipment, including areas and components to be protected.

3. Dry air ground tests.

4. Flight test planning.

5. Compliance tests, including dry air flight tests with ice protection equipment installed and with predicted artificial ice shapes installed, as well as flight tests in both natural icing and simulated icing conditions.

6. Placards necessary for safe operation of the airplane in an icing environment.

7. Airplane Flight Manual pilot information needed to operate the ice protection system.

The guidance provided in this AC is applicable to new Type Certificates (TC's) Supplemental Type Certificates (STC's), and amendments to existing TC's for airplanes certified under part 4b of the Civil Aviation Requirements (CAR) and part 25, for which approval under the provisions of § 25.1419 is desired.

John J. Hickey,

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

[FR Doc. 98–26612 Filed 10–2–98; 8:45 am]

BILLING CODE 4910–13–M

DEPARTMENT OF TRANSPORTATION

Office of the Secretary

[FAA Docket No. 29303]

Federal Aviation Administration; Policy Regarding Airpot Rates and Charges, Request for Comments

AGENCY: United States Department of Transportation, Office of the Secretary, and Federal Aviation Administration (FAA).

ACTION: Notice extending comment period.

SUMMARY: On Wednesday, August 12, 1998, the Department of Transportation opened a public docket to receive information and comments from interested parties on the replacement provisions of the Department of Transportation's Policy Regarding Airport Rates and Charges (Policy Statement) issued June 21, 1996, and vacated in part by the United States Court of Appeals for the District of Columbia Circuit. The notice provided for comments to be submitted by October 13, 1998. Reply comments were to be submitted on or before October 26, 1998. By this notice, the Department is extending the time period for public comment from October 13, 1998, until December 30, 1998. The due date for reply comments is extended to February 1, 1999.

DATES: Comments should be received by December 30, 1998. Reply comments will be accepted and must be submitted on or before February 1, 1999. Comments that are received after that date will be considered only to the extent possible.

ADDRESSES: Comment on this notice must be delivered or mailed, in quadruplicate, to: Federal Aviation Administration, Office of Chief Counsel, Attention: Rules Docket (AGC–10), Docket No. 29303, 800 Independence Ave, SW, Room 915G, Washingotn, DC 20591. All comments must be marked ''Docket No. 29303.'' Commenters wishing the FAA to acknowledge receipt of their comments must include a preaddressed, stamped postcard on which the following statement is made: ''Comments to Docket No. 29303. The postcard will be date stamped and mailed to the commenter. Comments on this Notice may be delivered or examined in room 915G on weekdays, except on Federal holidays between 8:30 am and 5:00 p.m.

FOR FURTHER INFORMATION CONTACT: Mr. Barry Molar, Manager (AAS–400), (220) 267–3187; or Mr. Wayne Heibeck, Compliance Specialist (AAS–400), (202) 267–8726, Airport Compliance Division, Office of Airport Safety and Standards, Federal Aviation Administration, 800 Independence Avenue, SW, Washington, DC 20591.

SUPPLEMENTARY INFORMATION: The Department recently published an advance notice of proposed policy on airport rates and charges requesting public comments (63 FR 43228, August 12, 1998). In that request, we asked parties to provide us with suggestions for replacement provisions for the portions of the Department of Transportation's Policy Regarding Airport Rates and Charges (Policy Statement) issued June 21, 1996, that were vacted by the United States Court of Appeals for the District of Columbia Circuit. Based on a September 4, petition of the Air Transport Association of America (ATA), as well as a September 10 petition jointly filed by the Airports Council International—North America (ACI–NA) and the American Association of Airport Executives (AAAE), we are now convinced that the public interest would be served by extending the comment period.

The ATA petitioned pursuant to the Department's Rulemaking Procedures (49 CFR 5.25(a)) to extend the comment period by at least 120 days, to December 14, 1998, on the grounds that it needs time to prepare and conduct an extensive survey of its member airlines, organize and analyze the data collected, and draft comments for approval by its members in response to the complex issues we raised in this and DOT's separate Request for Public Comment on Competitive Issues Affecting the Domestic Airline Industry, Docket No. OST 98–4025. By a notice in the **Federal Register** (63 FR 45894) on August 27, 1998, the Department extended the comment period in that proceeding until December 30, 1998. The ATA stated that, since its member airlines serve, either directly or through code-share relationship, about 95 percent of the more than 400 domestic commercial service airports, it has a substantive interest in this proceeding.

In a September 10 filing, ACI–NA and AAAE said that our October 13 deadline would not allow it adequate time to compile, verify and analyze pertinent information from airport operators and then prepare well-reasoned responses to the complex legal, economic, and policy questions identified in this and DOT's separate Request for Public Comment on Competitive Issues Affecting the Domestic Airline Industry, Docket No. OST 98–4025. ACI–NA stated that, since its members are airport sponsors serve

more than 97 percent of the domestic United States' passenger and cargo traffic, and AAAE members manage airports which enplane 99 percent of the passengers in the United States, these organizations have a substantive interest in this proceeding. ACI–NA requested that the comment period be extended until December 30, 1998, to coincide with the comment period in Docket No. OST–98–4025. By letter dated September 14, 1998, legal counsel for ATA advised that ATA did not object to the ACI–NA's and AAAE's request.

Under our rules (49 CFR 5.25(b)), we may grant a petition for extension of time when a petitioner shows that it is in the public interest and the petitioner has good cause for the extension and a substantive interest in the propsoed action. We have determined that it would be reasonable and in the public interest to give parties more time to prepare their submissions. While we are interested in developing a Final Policy on Airport Rates and Charges as soon as posssible, we also are interested in a decision that is based on comprehensive information and thoroughly considered public comments. Extending the comment period will assure that the common issues in the proceeding in Docket No. OST 98–4025 and this proceeding are fully addressed in the comments.

Accordingly

1. We grant the requests of the Air Transport Association, Airport Council International-North America, and the American Association of Airport Executives to extend the date by which comments are due to Docket No. 29303;

2. We hereby extend the date by which comments to Docket No. 29303 are due to December 30, 1998;

3. We will accept reply comments submitted on or before February 1, 1999; and

4. We deny all other requests.

Issued in Washington, DC, on September 29, 1998.

Nancy E. McFadden,

General Counsel, Department of Transportation.

Susan L. Kurland,

Associate Administrator for Airports, Federal Aviation Administration.

[FR Doc. 98–26605 Filed 10–2–98; 8:45 am]

BILLING CODE 4910–13–M

DEPARTMENT OF TRANSPORTATION

Federal Aviation Administration

Aviation Rulemaking Advisory Committee; Meeting

AGENCY: Federal Aviation Administration (FAA), DOT.

ACTION: Notice of meeting.

SUMMARY: The FAA is issuing this notice to advise the public of a meeting of the Federal Aviation Administration Aviation Rulemaking Advisory Committee to discuss aircraft certification procedures issues.

DATES: The meeting will be held on October 22, 1998, at 9:00 a.m.

ADDRESSES: The meeting will be held at the General Aviation Manufacturers Association, 1400 K Street, NW., Suite 801, Washington, DC.

FOR FURTHER INFORMATION CONTACT: Marisa Mullen, Transportation Industry Analyst, Office of Rulemaking (ARM–205), 800 Independence Avenue, SW., Washington, DC 20591. Telephone: (202) 267–7653; FAX: (202) 267–5075.

SUPPLEMENTARY INFORMATION: Pursuant to section 10(a)(2) of the Federal Advisory Committee Act (Pub. L. 92–463; 5 U.S.C. App. II), notice is hereby given of a meeting of the Aviation Rulemaking Advisory Committee to discuss aircraft certification procedures issues. This meeting will be held on October 22, 1998, at 9:00 a.m. at the General Aviation Manufacturers Association, 1400 K Street, NW., Suite 801, Washington, DC.

The agenda for this meeting will include:

(1) A status report on the submission of the ''Type Certification Procedures for Changed Products'' Notice of Proposed Rulemaking (NPRM) and ARAC's recommendations to the Federal Aviation Administration;

(2) A status report on the Parts and Production Certification tasking;

(3) A status report on harmonizing the 8130–3 Airworthiness Approval Tag tasking; and

(4) Discussion and vote on the ''Establishment of Organization Designation Authorization (ODA) Procedures'' draft NPRM and draft advisory circular entitled ''Airworthiness Designee Function Codes and Consolidated Directory for DMIR/DAR/ODAR/DAS/DOA/SFAR No. 36 and the New ODA.''

Copies of materials which will be presented for discussion and vote may be obtained by contacting Marisa Mullen at the address, telephone number, or facsimile number provided in the **FOR FURTHER INFORMATION CONTACT** section.

Attendance is open to the interested public but may be limited to the space available. The public must make arrangements in advance to present oral statements at the meeting or may present written statements to the committee at any time. In addition, sign and oral interpretation can be made available at the meeting, as well as an assistive listening device, if requested 10 calendar days before the meeting. Arrangements may be made by contacting the person listed under **FOR FURTHER INFORMATION CONTACT**.

Issued in Washington, DC, on September 29, 1998.

Brian Yanez,

Assistant Executive Director for Aircraft Certification Procedures, Aviation Rulemaking Advisory Committee.

[FR Doc. 98–26604 Filed 10–2–98; 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 the Revenue From a Passenger Facility Charge (PFC) at Minneapolis-St. Paul International Airport, Minneapolis, MN

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 the revenue from a PFC at Minneapolis-St. Paul 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).

DATES: Comments must be received on or before November 4, 1998.

ADDRESSES: Comments on this application may be mailed or delivered in triplicate to the FAA at the following address: Federal Aviation Administration, Minneapolis Airports District Office, 6020 28th Avenue South, Room 102, Minneapolis, Minnesota 55450.

In addition, one copy of any comments submitted to the FAA must be mailed or delivered to Mr. Robert Vorpahl, Minneapolis-St. Paul Metropolitan Airports Commission, at the following address: Minneapolis-St. Paul Metropolitan Airports

Commission, 6040 28th Avenue South, Minneapolis, Minnesota 55450.

Air carriers and foreign air carriers may submit copies of written comments previously provided to the Minneapolis-St. Paul Metropolitan Airports Commission under section 158.24 of Part 158.

FOR FURTHER INFORMATION CONTACT: Mr. Gordon Nelson, Program Manager, Airports District Office, 6020 28th Avenue South, Room 102, Minneapolis, Minnesota 55450, (612) 713–4358. The application may be reviewed in person at this same location.

SUPPLEMENTARY INFORMATION: The FAA proposes to rule and invites public comment on the application to impose and use the revenue from a PFC at Minneapolis-St. Paul International Airport under the provisions of the Aviation Safety and Capacity Extension 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 September 21, 1998, the FAA determined that the application to impose and use the revenue from a PFC submitted by the Minneapolis-St. Paul Metropolitan Airports Commission was substantially complete within the requirements of section 158.25 of Part 158. The FAA will approve or disapprove the application, in whole or in part, no later than December 19, 1998.

The following is a brief overview of the application.

PFC application number: 98–04–C–00–MSP.

Level of the proposed PFC: $3.00.

Proposed charge effective date: January 1, 2000.

Proposed charge expiration date: June 1, 2001.

Total estimated PFC revenue: $55,460,000.00.

Brief description of proposed projects: Snow removal equipment storage building addition; Maintenance campus site work; Hangars 1 & 2 demolition; Taxiway W construction; Part 150 residential noise mitigation; MAC building demolition; Runway 12R/30L tunnel rehabilitation; Security fence upgrade; Stormwater collection/detention ponds; Electrical systems computerization; Run-up pad blast fence. Class or classes of air carriers which the public agency has requested not be required to collect PFCs: Air Taxi/Commercial Operators (ATCO) filing FAA Form 1800–31.

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 Minneapolis-St. Paul Metropolitan Airports Commission office.

Issued in Des Plaines, Illinois, on September 25, 1998.

Nancy Nistler,

Acting Manager, Planning/Programming Branch, Airports Division, Great Lakes Region.

[FR Doc. 98–26613 Filed 10–2–98; 8:45 am]

BILLING CODE 4910–13–M

DEPARTMENT OF TRANSPORTATION

Federal Highway Administration

[FHWA Docket FHWA–98–4300]

Transportation Equity Act for the 21st Century; Implementation for Participation in the Value Pricing Pilot Program

AGENCY: Federal Highway Administration (FHWA), Department of Transportation (DOT).

ACTION: Notice; solicitation for participation.

SUMMARY: This notice invites State or local governments or other public authorities to make applications for participation in the Value Pricing Pilot Program (Pilot Program) authorized by section 1216(a) of the Transportation Equity Act for the 21st Century (TEA–21) (Pub. L. 105–178, 112 Stat. 107) and presents guidelines for program applications. This document also describes the legislative mandate for the Pilot Program and procedures which will be used to implement the program. As described in the background section of this notice, and in keeping with the DOT's broad outreach on TEA–21 programs, the procedures described in this notice reflect the valuable contributions of FHWA's State and local partners and many others who have participated in a series of regional workshops and an October 1997, Project Partners' Retreat. The FHWA will accept comments on these administrative guidelines throughout the life of the Pilot Program and, as necessary, will issue additional guidance in response to public comments and program experience.

DATES: The solicitation for participation in the Pilot Program will be held open until further notice.

FOR FURTHER INFORMATION CONTACT: Mr. John T. Berg, Highway Revenue and Pricing Team, HPP–10, (202) 366–0570; or Mr. Wilbert Baccus, Office of the Chief Counsel, HCC–32, (202) 366–0780; FHWA, 400 Seventh Street, SW., Washington, D.C. 20590.

SUPPLEMENTARY INFORMATION:

Electronic Access

Internet users can access all comments received by the U.S. DOT Dockets, Room PL–401, by using the universal resource locator (URL): http://dms.dot.gov. It is available 24 hours each day, 365 days each year. Please follow the instructions online for more information and help.

An electronic copy of this document may be downloaded using a modem and suitable communications software from the Government Printing Office's Electronic Bulletin Board Service at (202) 512–1661. Internet users may reach the **Federal Register**'s home page at: http://www.nara.gov/fedreg and the Government Printing Office's database at: http://www.access.gpo.gov/nara.

Background

Section 1216(a) of TEA–21 authorizes the Secretary of Transportation (the Secretary) to create a Pilot Program by entering into cooperative agreements with up to fifteen State or local governments or other public authorities, to establish, maintain, and monitor local value pricing pilot programs. Section 1216(a)(4) amends section 1012(b)(4) of the Intermodal Surface Transportation Efficiency Act of 1991 (ISTEA), Pub.L. 102–240, 105 Stat. 1914, by providing that any value pricing project included under these local programs may involve the use of tolls on the Interstate system. This is an exception to the general provisions concerning tolls on the Interstate system as contained in 23 U.S.C. 129 and 301. A maximum of $7 million is authorized for fiscal year 1999, and $11 million for each of the fiscal years 2000 through 2003 to be made available to carry out Pilot Program requirements. The Federal matching share for local programs is 80 percent. Funds allocated by the Secretary to a State under this section shall remain available for obligation by the State for a period of three years after the last day of the fiscal year for which funds are authorized. If, on September 30 of any year, the amount of funds made available for the Pilot Program, but not allocated, exceeds $8 million, the excess amount will be apportioned to all States for purposes of the Surface Transportation Program.

Funds available for the Pilot Program can be used to support pre-project study activities and to pay for implementation costs of value pricing projects.

Section 1216 (a)(5) of TEA–21 amends section 1012(b) of ISTEA by adding

subsection (6) which provides that a State may permit vehicles with fewer than two occupants to operate in high occupancy vehicle (HOV) lanes if the vehicles are part of a local value pricing pilot program under this section. This is an exception to the general provision contained in 23 U.S.C. 102, that no fewer than two occupants per vehicle be allowed on HOV lanes. Potential financial effects of value pricing projects on low-income drivers shall be considered and, where such effects are expected to be significant, possible mitigation measures should be identified. The costs of such mitigation measures can be included as part of the value pricing project implementation cost. The Secretary is to report to Congress every two years on the effects of local value pricing pilot programs.

The Value Pricing Pilot Program is a continuation of the congestion Pricing Pilot Program authorized by section 1012(b) of the ISTEA. Under this program, pricing projects have reached the implementation stage in San Diego, California; Lee County, Florida; and Houston, Texas. In addition, pre-program planning activities have been supported in Portland, Oregon; Los Angeles, San Francisco and Sonoma County, California; Boulder, Colorado; Minneapolis/St. Paul, Minnesota; and Westchester County, New York. Funds were also used to support the California DOT's monitoring and evaluation study of the private, variable-priced toll lanes along State Route 91 in Orange County, California.

An important aspect of the ISTEA program was the Federal/State/local partnership that was created as part of the program's development. The Value Pricing Pilot Program described in this notice builds upon that partnership and the experience of the ISTEA program. In particular, the views and concerns of the FHWA's project partners, and other interested parties, were solicited during a series of regional workshops that were sponsored as part of the ISTEA program, and in a Project Partners' Retreat that was held in October 1997. This notice reflects these valuable contributions.

Purpose

The purpose of this notice is to provide general information about the Pilot Program and FWHA's plans for implementing the program, and to invite State or local governments or other public authorities to make applications for participation in the Pilot Program.

Definitions

Value pricing, congestion pricing, peak-period pricing, variable pricing, or variable tolling, are all terms used to refer to direct point/time-of-travel charges for road use, possibly varying by location, time of day, severity of congestion, vehicle occupancy, or type of facility. By shifting some trips to off-peak periods, to mass transit or other higher-occupancy vehicles, or to routes away from congested facilities, or by encouraging consolidation of trips, value pricing charges are intended to promote economic efficiency both generally and within the commercial freight sector, and to achieve congestion reduction, air quality, energy conservation, and transit productivity goals.

A value pricing project means any implementation of value pricing concepts or techniques meeting the definitions contained in this notice and included under a *local value pricing pilot program* under this section, where a local value pricing pilot program includes one or more value pricing projects serving a single geographic area, such as a metropolitan area, and included under a single cooperative agreement with the FHWA. *Cooperative agreement* means the agreement signed between the FHWA and a State or local government, or other public authority to implement local value pricing pilot programs under this section.

Program Objective

The overall objective of the Pilot Program is to support efforts by State and local governments or other public authorities to establish local value pricing pilot programs, to provide for the monitoring and evaluation of value pricing projects included in such programs, and to report on their effects. While the Pilot Program's primary focus is on value pricing on roads, attention will also be given to the use of other market-based approaches to congestion relief, such as parking pricing, if they incorporate significant price variations by time, location, and/or level of congestion.

Potential Project Types

The FHWA is seeking proposals to use value pricing projects to reduce congestion and promote mobility. Value pricing charges are expected to accomplish this purpose by encouraging the use of alternative times, modes, routes, or trip patterns. To this end, and to increase the likelihood of generating information on a variety of useful value pricing strategies, proposed projects having as many of the following characteristics as possible will receive highest priority for Federal support. Projects of interest include:

1. Applications of value pricing which are comprehensive, such as areawide pricing, pricing of multiple facilities or corridors, and/or combinations of road pricing and parking pricing.

2. Pricing of key traffic bottlenecks, single traffic corridors, or pricing on single highway facilities, including bridges and tunnels. Proposals to shift from a fixed to a variable toll schedule on existing toll facilities are encouraged (i.e., combinations of peak-period surcharges and off-peak discounts).

3. More limited applications of value pricing are also acceptable, including pricing on lanes otherwise reserved for high occupancy vehicles, known as high occupancy toll (HOT) lanes, or pricing on newly constructed lanes. Highest priority will be given to lane pricing proposals which cover multiple facilities and/or offer innovative pricing, enforcement, or operational technologies. In order to protect the integrity of HOV programs, the FHWA will give priority to those HOT lane proposals where it is clear that an HOV lane is underutilized and where local officials can demonstrate that the pilot project would not undermine a long-term regional strategy to increase ridesharing. In addition, areas proposing HOT lane projects are encouraged to use revenues from the project to promote improved transit service or other programs that will encourage transit use and ridesharing.

4. Innovative time-of-day parking pricing strategies, provided the level and coverage of proposed parking charges is sufficient to reduce congestion. Parking pricing strategies which are integrated with other market-based pricing strategies (e.g., value pricing) are encouraged. Parking pricing strategies should be designed to influence trip-making behavior, and might include peak-period parking surcharges, or policies such as parking cash-out, where cash is offered to employees in lieu of subsidized parking. Pricing of a single parking facility, coverage of a few employee spaces, or pricing of parking spaces in a small area, for example, are unlikely to receive priority treatment, unless they incorporate a truly unique element which might facilitate broader applications across local areas and States.

5. Projects with anticipated value pricing charges which have the key characteristic that they are targeted at vehicles causing congestion, and they are set at levels significant enough to encourage drivers to use alternative times, routes, modes, or trip patterns during congested periods. Proposed projects which contemplate value pricing charges which are not

significant enough to influence demand, such as minor increases in fees during peak-periods, or moderate toll increases instituted primarily for financing purposes, will be given low priority.

6. Projects which are likely to add to the base of knowledge about the various design, implementation, effectiveness, operational, and acceptability dimensions of value pricing. The FHWA is seeking information related to the impacts of value pricing on travel behavior (mode use, time-of-travel, trip destinations, trip generation, etc., by private and commercial trips); on traffic conditions (trip lengths, speeds, level of service); on implementation issues (technology, innovative pricing techniques, public acceptance, administration, operation, enforcement, legality, institutional issues, etc.); on revenues, their uses and financial plans; on different types of users and businesses; and on measures designed to mitigate possible adverse impacts and their effectiveness. These diverse information needs mean that the FHWA may fund different types of value pricing applications in different local contexts to maximize the learning potential of the pilot program.

7. Projects which do not have adverse effects on alternative routes or modes, or on low-income or other transportation disadvantaged groups. If such effects are anticipated, proposed pricing programs should incorporate measures to mitigate any major adverse impacts, including enhancement of transportation alternatives for peak-period travelers.

8. Projects which indicate that revenues will be used to support the goals of the value pricing project and to mitigate any adverse impacts of the project.

While the FHWA is seeking proposals that incorporate some, or all of these project characteristics, these guidelines are intended only to illustrate selection priorities, not to limit potential program participants from proposing new and innovative pricing approaches for incorporation in the program.

Pre-Project Studies

A small amount of Pilot Program funds will be used to assist State and local governments in carrying out pre-project study activities designed to lead to implementation of a value pricing project, including activities such as pre-project planning, public participation, consensus building, modeling, impact assessment, financial planning studies, and work necessary to meet any Federal or State environmental or other planning requirements. The intent of the pre-project study phase of the Pilot Program is to support efforts to identify and evaluate value pricing project alternatives, and to prepare the necessary groundwork for possible future implementation. Purely academic studies of value pricing (not designed to lead to possible project implementation), or broad, areawide planning studies which incorporate value pricing as an option, will not be funded under this program. Broad planning studies can be funded with regular Federal-aid highway or transit planning funds. Proposals for pre-project studies will be selected based on the likelihood that they will lead to implementation of pilot tests of value pricing meeting the characteristics described in the previous section.

Eligible Costs

Funds available for the Pilot Program can be used to support pre-project study activities and to pay for implementation costs of value pricing projects. Costs eligible for reimbursement under section 1216(a) of TEA–21 include costs of planning for, setting up, managing, operating, monitoring, evaluating, and reporting on local value pricing pilot projects. Examples of specific costs eligible for reimbursement include the following:

1. *Pre-Project Study Costs*—All costs of pre-project study activities, including costs of pre-project planning, public participation, consensus building, marketing research, impact assessment, modeling, financial planning, technology assessments and specifications, and other work necessary for defining value pricing projects for implementation, and doing necessary design work to bring projects to the point where they can be implemented. Costs of pre-project study activities cannot be reimbursed for longer than three years.

2. *Implementation Costs*—Implementation costs are costs necessary for implementation of specific value pricing projects identified during the pre-project study phase of the program, including costs for setting up, managing, operating, evaluating, and reporting on a value pricing project, including:

a. Costs associated with implementation of a value pricing project, including necessary salaries and expenses or other administrative and operational costs, such as installation of equipment necessary for operation of a pilot project (e.g., AVI technology, video equipment for traffic monitoring, other instrumentation), enforcement costs, costs of monitoring and evaluating project operations, and costs of continuing public relations activities during the period of implementation.

b. Costs of providing transportation alternatives, such as, new or expanded transit service provided as an integral part of the value pricing project. Funds are not available to replace existing sources of support for transit services.

c. Depending on the availability of funds, a limited amount of funds may be made available to serve as a revenue reserve fund to provide assurance to toll authorities that a pilot test of value pricing would not jeopardize their bond covenants. For example, a toll authority might propose a revenue-neutral pricing strategy with peak-period surcharges and off-peak discounts designed to shift demand patterns and improve customer service, or to reduce the need for future capacity expansion. Even though no reduction in toll revenues is intended, FHWA recognizes that forecasting traffic and revenue changes is inherently uncertain, and the availability of a reserve fund to offset any unintended toll revenue losses is intended to help overcome institutional barriers to the testing and use of value pricing by existing toll authorities.

Project implementation costs can be supported for a period of at least one year, and thereafter until such time that sufficient revenues are being generated by the project to fund its implementation costs without Federal support, except that implementation costs for a pilot project cannot be reimbursed for longer than three years. Each implementation project included in a local value pricing pilot program will be considered separately for this purpose. Funds may not be used to pay for activities conducted prior to approval of Pilot Program participation. Funds may not be used to construct new highway through lanes, bridges, etc., even if those facilities are to be priced, but toll ramps or minor pavement additions needed to facilitate toll collection or enforcement are eligible.

Complementary actions, such as, construction of HOV lanes, implementation of traffic control systems, or transit projects can be funded through other highway and transit programs eligible under TEA–21. Those interested in participating in the Pilot Program are encouraged to explore opportunities for combining funds from these other programs with Pilot Program funds.

Eligible Uses of Revenue

Revenues generated by a pilot project must be applied first to pay for pilot project implementation costs as defined above. Any project revenues in excess of pilot project implementation expenses, may be used for any programs eligible under Title 23, U.S.C. Uses of revenue

are encouraged which will support the goals of the value pricing program, particularly uses designed to provide benefits to those traveling in the corridor where the project is being implemented.

Applying for Program Participation

Qualified applicants include local, regional and State government agencies, as well as public tolling authorities. Although project agreements must be with public authorities, a local value pricing program partnership may also include private tolling sponsors and authorities. To streamline the process of applying for program participation as much as possible, it is suggested that, prior to submitting a formal application for program participation, potential applicants contact their State FHWA Division Office and/or the FHWA Pricing Team in the Office of Policy Development to discuss their interest in the Pilot Program and the general nature of the proposed local value pricing pilot program or pre-project study. The FHWA will then be able to provide materials and technical support to assist in the development of the application. Following this initial contact, a sketch plan for the proposed pricing program should be submitted before a full scale proposal is developed. The sketch plan should, as a minimum, provide a brief description of the following:

1. Congestion problem to be addressed.
2. Nature of proposed or potential pricing projects to respond to that problem, including overall project goals, potential facilities to be included, time line for study and possible implementation of value pricing projects.
3. Parties proposed as being signatories to the cooperative agreement with the FHWA (as a minimum, the local Metropolitan Planning Organization (MPO), and the owner/operator of the facility or facilities to be priced, must endorse or express support for the program). Indications of support from affected parties, including representatives of business, labor, industry, transportation users, and/or local residents, or plans for obtaining such support should be included.
4. Extent of public participation in the development of the proposal, or of plans for future public participation activities. Potential equity consequences of any proposed projects should be portrayed in general terms, and if adverse impacts are anticipated, preliminary plans for responding to such problems should be identified.
5. Legal and administrative authority needed to carry out a value pricing project, extent to which these have been obtained, and further steps needed to obtain necessary authority.
6. Plans for pre-project study, or findings from pre-project studies that have already been completed.

The sketch plan should be submitted through the MPO and/or State Department of Transportation to the appropriate FHWA Division Administrator, who will forward the plan to FHWA's Director, Office of Policy Development, where the FHWA Pricing Team is located.

Based on its initial review of the initial sketch plan, the FHWA will work with the proposing authority to develop a detailed proposal for review by the Federal Interagency Review Group which provides support to the FHWA in evaluating program applications (see ''Review Process,'' below). Ideally, the detailed proposal will include:

1. Detailed description of the congestion problem being addressed (current and projected);
2. Detailed description of the proposed pricing program and its goals, including description of facilities included, expected pricing schedules, technology to be used, enforcement programs, and so on;
3. Preliminary estimates of the social and economic effects of the pricing program, including potential equity impacts, and a plan or methodology for further refining these estimates for all pricing project(s) included in the program;
4. The role of alternative transportation modes in the project, and anticipated enhancements proposed to be included in the pricing program.
5. A time line for the pre-project study and implementation phases of the project (proposals indicating early implementation of pricing projects that will allow evaluation during the life of TEA–21 will receive priority);
6. A description of tasks to be carried out as part of each phase of the project, and an estimate of costs associated with each;
7. Plans for monitoring and evaluating value pricing projects, including plans for data collection and analysis, before and after assessment, and plans for long term monitoring and documenting of project effects;
8. A detailed finance and revenue plan, including a budget for capital and operating costs; a description of all funding sources, planned expenditures, proposed uses of revenues, and a plan for projects to become financially self-sustaining (without Federal support) within three years of implementation.
9. Plans for involving key affected parties, coalition building, media relations, etc., including either demonstration of previous public involvement in the development of the proposed pricing program, or plans to ensure adequate public involvement prior to implementation;
10. Plans for meeting all Federal, State and local legal and administrative requirements for project implementation, including necessary Federal-aid planning and environmental requirements. Priority will be given to proposals where projects are included as a part of (or are consistent with) a broad program addressing congestion, mobility, air quality and energy conservation, where an area has congestion management systems (CMS) for Transportation Management Areas (urbanized areas over 200,000 population or those designated by the Secretary) and the congestion mitigation and air quality (CMAQ) program. If some of these items are not available or fully developed at the time the proposal is submitted, proposals will still be considered for support if they meet some of the priority interests of the FHWA as described under ''Potential Project Types,'' and include some of the proposal characteristics described in this section, and there is a strong indication that these items will be completed within a short time.

Review Process

Upon receipt of the detailed proposal, the FHWA's Pricing Team will arrange for a review of the proposal by the Federal Interagency Review Group established to assist the FHWA in assessing the likelihood that proposed local value pricing programs will provide valid and useful tests of value pricing concepts. The Review Group is composed of representatives of several concerned offices in the U.S. DOT, including offices in FHWA, Federal Transit Administration, Office of the Secretary of Transportation, and Office of Intermodalism. The Environmental Protection Agency is also represented on the Review Group. To facilitate review, applicants should submit ten copies, plus an unbound reproducible copy, of the proposal. The FHWA will review applications received and make selections of program participants based on the criteria contained in this notice. As with the sketch plan, detailed proposals should be submitted through the MPO and/or State DOT to the appropriate FHWA Division Administrator, who will forward the plan to the FHWA's Director, Office of Policy Development.

Cooperative Agreement

Based on the recommendations of the Review Group, the FHWA will identify those Pilot Program proposals which have the greatest potential for promoting the objectives of the Pilot Program, including demonstrating the effects of value pricing on driver behavior, traffic volume, ridesharing, transit ridership, air quality, availability of funds for transportation programs, and other measures of the effects of value pricing. Those Pilot Program candidates will then be invited to enter into negotiations with the FHWA to develop a cooperative agreement under which the scope of work for the value pricing program will be defined. The cooperative agreement will be governed by the Federal statutes and regulations cited in the agreement and 49 CFR part 18, Uniform Administrative Requirements for Grants and Cooperative Agreements to State and Local Governments, as they relate to the acceptance and use of Federal funds for this program.

Prior to FHWA approval of pricing project implementation, value pricing programs must be shown to be consistent with Federal metropolitan and statewide planning requirements.

Projects outside metropolitan areas must be included in the approved statewide transportation improvement program and be selected in accordance with the requirements set forth in section 1204(f)(3) of TEA–21.

Those in metropolitan areas must be: (a) Included in, or consistent with, the approved metropolitan transportation plan (if the area is in nonattainment for a transportation related pollutant, the metro plan must be in conformance with the State air quality implementation plan); (b) included in the approved metro and statewide transportation improvement programs (if the metro area is in nonattainment for a transportation related pollutant, the metro transportation improvement program must be in conformance with the State air quality implementation plan); (c) selected in accordance with the requirements in Pub.L. No. 105–178, section 1203(h)(5) or (i)(2); and (d) consistent with any existing congestion management system in transportation management areas, developed pursuant to 23 U.S.C. 134(i)(3).

(Authority: 23 U.S.C. 315; sec. 1216(a), Pub. L. 105–178, 112 Stat. 107; 49 CFR 1.48).

Issued on: September 24, 1998.

Kenneth R. Wykle,

Federal Highway Administration, Administrator.

[FR Doc. 98–26531 Filed 10–2–98; 8:45 am]

BILLING CODE 4910–22–P

DEPARTMENT OF THE TREASURY

Office of the Secretary

List of Countries Requiring Cooperation With an International Boycott

In order to comply with the mandate of section 999(a)(3) of the Internal Revenue Code of 1986, the Department of the Treasury is publishing a current list of countries which may require participation in, or cooperation with, an international boycott (within the meaning of section 999(b)(3) of the Internal Revenue Code of 1986).

On the basis of the best information currently available to the Department of the Treasury, the following countries may require participation in, or cooperation with, an international boycott (within the meaning of section 999(b)(3) of the Internal Revenue Code of 1986)

Bahrain
Iraq
Kuwait
Lebanon
Libya
Oman
Qatar
Saudi Arabia
Syria
United Arab Emirates
Yemen, Republic of

Dated: September 28, 1998.

Philip West,

International Tax Counsel (Tax Policy).

[FR Doc. 98–26573 Filed 10–2–98; 8:45 am]

BILLING CODE 4810–25–M

DEPARTMENT OF THE TREASURY

[Treasury Directive Number 74–06]

Home-to-Work Transportation Controls

September 15, 1998.

1. *Purpose.* This Directive establishes policy and sets forth responsibilities and reporting requirements concerning official use of Government passenger carriers, including motor vehicles, between an employee's residence and place of employment. This transportation is referred to as ''home-to-work'' in this Directive; this term also includes work-to-home transportation.

2. *Scope.* This Directive applies to all bureaus, the Departmental Offices (DO), the Office of Inspector General and the Office of the Inspector General for Tax Administration (all referred to herein as bureaus), with respect to the provision of home-to-work transportation to Treasury employees in normal duty (non-travel) status. This Directive does not apply to the use of a Government passenger carrier in conformity with the Federal Travel Regulation (41 Code of Federal Regulations (CFR) part 301) in conjunction with official travel to perform temporary duty assignments outside the employee's commuting area and away from a designated or regular place of employment, nor does it apply where the Secretary has prescribed rules for incidental use, for other than official business, of vehicles owned or leased by the Government.

3. *Policy.* A Government passenger carrier (hereafter ''Passenger Carrier'') is a motor vehicle, aircraft, boat, ship, or other similar means of transportation that is owned or leased (including non-temporary duty rentals) by the Government, or has come into the possession of the Government by other means, including forfeiture or donation. Passenger carriers are to be used for official purposes only.

a. Use of a Passenger Carrier between an employee's residence and place of employment qualifies as transportation for an official purpose only in those situations permitted by 31 United States Code (U.S.C.) 1344. In the Department, this statute permits home-to-work transportation to be provided to the Secretary; and for other employees when the Secretary determines that:

(1) Home-to-work transportation for the Secretary's single principal deputy is appropriate;

(2) Transportation between residence and various locations is required for performance of field work, in accordance with applicable regulations;

(3) Transportation between residence and various locations is essential for safe and efficient performance of intelligence, counterintelligence, protective services or criminal law enforcement duties; or

(4) A clear and present danger, an emergency or other compelling operational considerations make home-to-work transportation essential to the conduct of official business.

b. Employees may use Passenger Carriers for home-to-work transportation only after a written determination permitting such use has been executed by the Secretary.

c. For home-to-work transportation provided under a determination made pursuant to paragraph 5.a, home-to-work transportation may be authorized only within a fifty mile commuting radius from the employee's place of employment. This restriction does not apply to situations contemplated in paragraphs 5.b, c, d, e or 6.

d. During home-to-work transportation provided under a determination made pursuant to paragraphs 5.a to 5.e, an employee may

share space only with other federal employees who are on official government business; no other passengers are permitted. During other official transportation or travel, bureau policies shall control who may be in a Passenger Carrier.

4. *Regulations.*

a. The General Services Administration (GSA) has issued regulations governing home-to-work transportation at 41 CFR subpart 101–6.4. Copies of the regulations are available from the Office of Real and Personal Property Management (ORPPM) in DO. The regulations apply throughout the Department to home-to-work transportation authorized under paragraphs 5.a, 5.c, 5.d or 5.e below. The regulations define the following terms: passenger carrier; employee; residence; place of employment; field work; clear and present danger; emergency; and compelling operational considerations. Those definitions are incorporated here.

b. ''Place of employment'' includes, in addition to the regular worksite, other locations such as sites of meetings, conferences, etc. Transportation in a Passenger Carrier between residence and any such local site is ''home-to-work'' transportation for purposes of this Directive.

5. *Bases for Authorization.* The Secretary is the only official within the Department who may make a determination which authorizes the use of Passenger Carriers for home-to-work transportation of employees. The categories of determinations are listed below.

a. *Persons Engaged in Field Work.* Guidance on field work is in the GSA regulations at 41 CFR 101–6.405. The assignment of an employee to a field work position does not, of itself, entitle the employee to receive daily home-to-work transportation. In cases where field work is performed only on an intermittent basis, bureau procedures shall be established to ensure home-to-work transportation is used only on days when field work is actually performed by the employee. Determinations for the Internal Revenue Service dyed fuel program should be proposed as field work. A field work authorization cannot be used when:

(1) The employee's workday begins at the official government duty station; or

(2) The employee normally commutes to a fixed location, however far removed from the employee's official duty station, except to a remote location that is accessible only by Government provided transportation.

b. *Intelligence, Counterintelligence, Protective Services or Criminal Law Enforcement.* An employee who is engaged in Intelligence, Counterintelligence, Protective Services or Criminal Law Enforcement activities and who occupies a position for which transportation between residence and various locations is essential to the safe and efficient performance of those duties may be provided with home-to-work transportation only if the employee is so designated in a determination executed by the Secretary.

c. *Situations which present a clear and present danger.* (See 41 CFR 101–6.401(h)).

d. *Emergencies.* (See 41 CFR 101–6.401 (I)).

e. *Compelling operational considerations.* (See 41 CFR 101–6.401 (j)).

6. *Contingency Determinations.* Bureaus may require certain employees to be ready to respond to foreseeable, but sudden and immediate circumstances that arise without warning. In order to provide a capability to respond immediately, bureaus may prepare contingency determinations for execution in advance by the Secretary. Such contingency determinations will identify situations which, if and when they occur, will authorize designated employees to be provided with home-to-work transportation. Contingency determinations require development of administrative controls and supervisory review to prevent abuse. Contingency determinations may be based on situations which present a clear and present danger, emergency, or compelling operational considerations.

7. *Authorizing Home-To-Work Transportation.*

a. A *determination* is the written finding executed by the Secretary which concludes that sufficient grounds exist to authorize an employee to use a Passenger Carrier for home-to-work transportation. A determination shall describe which employees are so authorized, and the basis for the authorization.

b. *The Deputy Assistant Secretary (Administration), Heads of Bureaus, the Inspector General and the Inspector General for Tax Administration,* (all referred to herein as bureau heads), shall submit requests for determinations in memorandum form to ORPPM. Each memorandum shall:

(1) Describe the types and numbers of employees who will be authorized to use the Passenger Carriers as well as the situations in which they will be used;

(2) Describe the reviews and administrative controls which will be relied upon to ensure that home-to-work transportation is used solely for the purpose for which it is intended; and

(3) Contain the bureau head's assurance that the requested home-to-work determinations are necessary to the bureau's mission requirements, satisfy applicable statutes and regulations, and will not adversely impact on program budgets. This provision cannot be delegated.

c. A bureau must prepare a separate request for determination for each basis of authorization employed. Bureaus should note requirements specific to the following categories of determinations:

(1) *Field Work.* Home-to-work transportation for field work may be authorized either on an individual basis (by name and title of the employee) or on the basis of position. In field work positions where rapid turnover occurs, bureaus are encouraged to propose determinations by position rather than by individual. These proposed determinations must include sufficient information, such as the position title, number of positions to be authorized, location, and operational level where the work is to be performed.

(2) *Intelligence, Counterintelligence, Protective Services or Criminal Law Enforcement.* Bureau heads shall submit consolidated requests for determinations setting forth the number of positions for which home-to-work transportation authority is requested. Each request shall describe the specific Intelligence, Counterintelligence, Protective Services or Criminal Law Enforcement duties and responsibilities involved as the basis for requiring home-to-work transportation. ORPPM, in consultation with the Office of Enforcement, shall provide a model determination memorandum to the bureaus for their guidance.

(3) *Contingencies.* When a contingency determination is exercised, it must be supplemented by the information on the specific situation required by 41 CFR 101–6.403(c), if not already set out in the determination.

d. *ORPPM* will review all requests for determinations for conformance with provisions of applicable statutes and regulations, as well as this directive. Requests which cite Intelligence, Counterintelligence, Protective Services or Criminal Law Enforcement as justification will be jointly reviewed with Office of Enforcement. The products of such reviews will be memoranda to the Assistant Secretary for Management and Chief Financial Officer (and the Undersecretary of Enforcement where law enforcement bureaus are involved) which recommend either forwarding the request(s) to the Secretary for a

determination or returning them to the bureau for further development.

8. *Timetable for and Duration of Determinations.* An employee may be provided with home-to-work transportation only after a determination has been executed by the Secretary. Bureaus shall request determinations and renewals as follows.

a. Initial proposed determinations based on field work, Intelligence, Counterintelligence, Protective Services, Criminal Law Enforcement, or contingencies shall be submitted within 90 days after issuance of this Directive.

b. The duration of determinations authorized under paragraph 5.a is two years and for determinations authorized under paragraph 5.b it is five years. Requests for renewals shall be submitted to ORPPM no later than 60 days prior to expiration of these determinations. Requests for renewals shall be routed according to paragraph 7.b above.

c. Bureaus may submit supplemental requests for additional determinations for field work, Intelligence, Counterintelligence, Protective Services or Criminal Law Enforcement as required. Bureaus are urged to restrict the frequency of such requests.

d. Requests for emergency, clear and present danger, and compelling operational consideration determinations may be submitted at any time.

e. A determination based on clear and present danger, an emergency, or a compelling operational consideration, shall not exceed 15 calendar days in duration. (The duration of a contingency determination begins with the first day of usage and expires 15 calendar days from that date, after which a new contingency determination must be requested.) Should the circumstances justifying home-to-work transportation continue, subsequent determinations of not more than 90 additional calendar days each may be approved by the Secretary. If, at the end of the subsequent determination, the underlying circumstances continue to exist, the Secretary may authorize an additional extension of 90 calendar days. This process may continue as long as required by the circumstances. If a bureau seeks such an extension, it shall use the format provided by ORPPM.

9. *Tax Matters.* The provision of home-to-work transportation, and/or parking provided for an official vehicle used for this purpose, to an employee may result in the attribution of ''fringe benefit income'' to the employee. See 26 U.S.C. 61 and 132(f), 26 CFR 1.61–21, 26 CFR 1.132–5, IRS Notice 94–3, and IRS Publication No. 535. Bureaus must apply the cited provisions to determine if fringe benefit income is to be reported and how it is to be computed. Bureaus are responsible for keeping necessary records, reporting such income on W–2 forms, and performing any required withholding of taxes. Employees are liable for any taxes incurred.

10. *Responsibilities.*

a. *The Director, Office of Real and Personal Property Management,* shall prepare all notifications to Congress required by 31 U.S.C. 1344 for signature by the Assistant Secretary Management and Chief Financial Officer; and

b. *The Deputy Chief Financial Officer* shall include in the Accounting Principles and Standards Manual the requirements for reporting on W–2 forms any fringe benefit income attributable to home-to-work transportation.

c. *The Director, Administrative Operations Division,* DO, shall prepare a notification to Congress whenever the Secretary makes a designation authorizing a single principal deputy to receive home-to-work transportation. A change in the individual designated as a single principal deputy requires a notification. The notification shall be submitted to ORPPM for processing.

d. *Bureau Heads* shall determine which employees may be eligible to use home-to-work transportation and submit requests for determinations and renewals according to paragraph 7., and shall:

(1) Where authorizations have been made by position or by classification series, maintain records that identify the individual employees who are authorized home-to-work transportation;

(2) Develop procedures and financial reporting systems for employees utilizing home-to-work transportation to comply with tax laws and regulations, and prepare any required W–2 forms; and

(3) Fulfill labor relations responsibilities.

11. *Record Keeping Requirements.* The Department is required by law to maintain logs or other records to establish the official purpose of home-to-work transportation. Bureaus shall maintain daily mileage logs and other records necessary to establish that home-to-work transportation was used for official purposes. The logs shall contain the name and title of the employee (or other identification, if confidential), who is assigned the passenger vehicle; the name and title of the person authorizing the use; the passenger carrier identification; and the date(s) of assignment. Beyond that, the logs shall record all usage of the passenger carrier outside of the normal scheduled tour of duty hours of the individual to whom the carrier was assigned. The logs and other records shall be accessible for audit, except where on-going criminal investigations could be compromised.

Record keeping for home-to-work transportation authorized under paragraphs 5.a, 5.c, 5.d or 5.e shall be established and maintained in accordance with the requirements of 41 CFR 101–6.403. See also paragraph 9 for tax-related record keeping requirements.

12. *Authorities.*

a. 31 U.S.C. 1344.

b. 41 CFR part 101–6.4.

c. 26 U.S.C. 61 and 132(f).

d. 26 CFR. 1.61–21; 26 CFR 1.132–5.

13. *No Private Rights Created.* This Directive is for the internal management of the Department and does not create any right or benefit, substantive or procedural, enforceable by an employee or any other party against the Department.

14. *Expiration Date.* This Directive shall expire three years from the date of issuance unless superseded or canceled prior to that date.

15. *Office of Primary Interest.* Office of Real and Personal Property Management, Office of the Deputy Assistant Secretary (Management Operations), Office of the Assistant Secretary (Management) and Chief Financial Officer.

Nancy Killefer,

Assistant Secretary Management and Chief Financial Officer.

[FR Doc. 98–26574 Filed 10–2–98; 8:45 am]

BILLING CODE 4810–25–P

DEPARTMENT OF THE TREASURY

Customs Service

List of Foreign Entities Violating Textile Transshipment and Country of Origin Rules

AGENCY: U.S. Customs Service, Department of the Treasury.

ACTION: General notice.

SUMMARY: This document notifies the public of foreign entities which have been issued a penalty claim under section 592 of the Tariff Act, for certain violations of the customs laws. This list is authorized to be published by section 333 of the Uruguay Round Agreements Act.

FOR FURTHER INFORMATION CONTACT: For information regarding any of the operational aspects, contact Scott Greenberg, National Seizures and Penalties Officer, Seizures and Penalties

Division, at 415–782–9442. For information regarding any of the legal aspects, contact Ellen McClain, Office of Chief Counsel, at 202–927–6900.

SUPPLEMENTARY INFORMATION:

Background

Section 333 of the Uruguay Round Agreements Act (URAA) (Pub. L. 103–465, 108 Stat. 4809) (signed December 8, 1994), entitled Textile Transshipments, amended Part V of title IV of the Tariff Act of 1930 by creating a section 592A (19 U.S.C. 1592A), which authorizes the Secretary of the Treasury to publish in the **Federal Register**, on a biannual basis, a list of the names of any producers, manufacturers, suppliers, sellers, exporters, or other persons located outside the Customs territory of the United States, when these entities and/or persons have been issued a penalty claim under section 592 of the Tariff Act, for certain violations of the customs laws, provided that certain conditions are satisfied.

The violations of the customs laws referred to above are the following: (1) Using documentation, or providing documentation subsequently used by the importer of record, which indicates a false or fraudulent country of origin or source of textile or apparel products; (2) Using counterfeit visas, licenses, permits, bills of lading, or similar documentation, or providing counterfeit visas, licenses, permits, bills of lading, or similar documentation that is subsequently used by the importer of record, with respect to the entry into the Customs territory of the United States of textile or apparel products; (3) Manufacturing, producing, supplying, or selling textile or apparel products which are falsely or fraudulently labeled as to country of origin or source; and (4) Engaging in practices which aid or abet the transshipment, through a country other than the country of origin, of textile or apparel products in a manner which conceals the true origin of the textile or apparel products or permits the evasion of quotas on, or voluntary restraint agreements with respect to, imports of textile or apparel products.

If a penalty claim has been issued with respect to any of the above violations, and no petition in response to the claim has been filed, the name of the party to whom the penalty claim was issued will appear on the list. If a petition, supplemental petition or second supplemental petition for relief from the penalty claim is submitted under 19 U.S.C. 1618, in accord with the time periods established by §§ 171.32 and 171.33, Customs Regulations (19 CFR 171.32, 171.33) and the petition is subsequently denied or the penalty is mitigated, and no further petition, if allowed, is received within 30 days of the denial or allowance of mitigation, then the administrative action shall be deemed to be final and administrative remedies will be deemed to be exhausted. Consequently, the name of the party to whom the penalty claim was issued will appear on the list. However, provision is made for an appeal to the Secretary of the Treasury by the person named on the list, for the removal of its name from the list. If the Secretary finds that such person or entity has not committed any of the enumerated violations for a period of not less than 3 years after the date on which the person or entity's name was published, the name will be removed from the list as of the next publication of the list.

Reasonable Care Required

Section 592A 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. Reliance solely upon information regarding the imported product from a person named on the list is clearly not the exercise of reasonable care. Thus, the 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 of the Tariff Act of 1930, 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?

The law authorizes a biannual publication of the names of the foreign entities and/or persons. On March 17, 1998, Customs published a Notice in the **Federal Register** (63 FR 13097) which identified 19 (nineteen) entities which fell within the purview of section 592A of the Tariff Act of 1930.

592A List

For the period ending September 30, 1998, Customs has identified 26 (twenty-six) foreign entities that fall within the purview of section 592A of the Tariff Act of 1930. This list reflects the addition of 9 new entities and 2 removals to the 19 entities named on the list published on March 17, 1998. The parties on the current list were assessed a penalty claim under 19 U.S.C. 1592, for one or more of the four above-described violations. The administrative penalty action was concluded against the parties by one of the actions noted above as having terminated the administrative process.

The names and addresses of the 26 foreign parties which have been assessed penalties by Customs for violations of section 592 are listed below pursuant to section 592A. This

list supersedes any previously published list. The names and addresses of the 26 foreign parties are as follows (the parenthesis following the listing sets forth the month and year in which the name of the company was first published in the **Federal Register**):

Azmat Bangladesh, Plot Number 22–23, Sector 2 EPZ, Chittagong 4233, Bangladesh. (9/96)
Bestraight Limited, Room 5K, World Tech Centre, 95 How Ming Street, Kwun Tong, Kowloon, Hong Kong. (3/96)
Cupid Fashion Manufacturing Ltd., 17/F Block B, Wongs Factory Building, 368–370 Sha Tsui Road, Tsuen Wan, Hong Kong. (9/97)
Excelsior Industrial Company, 311–313 Nathan Road, Room 1, 15th Floor, Kowloon, Hong Kong. (9/98)
Eun Sung Guatemala, S.A., 13 Calle 3–62 Zona Colonia Landivar, Guatemala City, Guatemala. (3/98)
Glory Growth Trading Company, No. 6 Ping Street, Flat 7–10, Block A, 21st Floor, New Trade Plaza, Shatin, New Territories, Hong Kong. (9/98)
Great Southern International Limited, Flat A, 13th floor, Foo Cheong Building, 82–86 Wing Lok Street, Central, Hong Kong. (9/98)
Hanin Garment Factory, 31 Tai Yau Street, Kowloon, Hong Kong. (3/96)
Hip Hing Thread Company, No. 10, 6/F Building A, 221 Texaco Road, Waikai Industrial Center, Tsuen Wan, N.T., Hong Kong. (3/96)
Hyattex Industrial Company, 3F, No. 207–4 Hsin Shu Road, Hsin Chuang City, Taipei Hsien, Taiwan. (9/96)
Jentex Industrial, 7–1 Fl., No. 246, Chang An E. Rd., Sec. 2, Taipei, Taiwan. (3/97)
Jiangxi Garments Import and Export Corp., Foreign Trade Building, 60 Zhangqian Road, Nanchang, China. (3/98)
Liable Trading Company, 1103 Kai Tak Commercial Building, 62–72 Stanley Street, Kowloon, Hong Kong. (9/98)
Li Xing Garment Company Limited, 2/F Long Guang Building, Number 2 Manufacturing District, Sanxiang Town, Zhongshan, Guandgong, China. (9/96)
McKowan Lowe & Company Limited, 1001–1012 Hope Sea Industrial Centre, 26 Lam Hing Street, Kowloon Bay, Kowloon, Hong Kong. (9/98)
Meigao Jamaica Company Limited, 134 Pineapple Ave., Kingston, Jamaica. (9/96)
Meiya Garment Manufacturers Limited, No. 2 Building, 3/F, Shantou Special Economic Zone, Shantou, China. (9/96)
Poshak International, H–83 South Extension, Part-I (Back Side), New Delhi, India. (3/96)
Rex Industries Limited, VIP Commercial Center, 116–120 Canton Road, 11th Floor, Tsimshatsui, Kowloon, Hong Kong. (9/98)
Sannies Garment Factory, 35–41 Tai Lin Pai road, Gold King Industrial Building, Flat A & B, 2nd Floor, Kwai Chung, New Territories, Hong Kong. (9/98)
Shing Fat Gloves & Rainwear, 2 Tai Lee Street, 1–2 Floor, Yuen Long, New Territories, Hong Kong. (9/98)
Sun Kong Glove Factory, 188 San Wan Road, Units 32–35, 3rd Floor, Block B, Sheung Shui, New Territories, Hong Kong. (9/98)
Sun Weaving Mill Ltd., Lee Sum Factory Building, Block 1 & 2, 23 Sze Mei Street, Sanpokong, Bk 1/2, Kowloon, Hong Kong. (9/97)
Takhi Corporation, Huvsgalchdyn Avenue, Ulaanbaatar 11, Mongolia. (3/98)
Topstyle Limited, 6/F, South Block, Kwai Shun Industrial Center, 51–63 Container Port Road, Kwai Chung, New Territories, Hong Kong. (9/96)
Yunnan Provincial Textiles Import & Export, 576 Beijing Road Kunming, Yun Nan, China. (3/96)

Any of the above parties may petition to have its name removed from the list. Such petitions, to include any documentation that the petitioner deems pertinent to the petition, should be forwarded to the Assistant Commissioner, Office of Field Operations, United States Customs Service, 1300 Pennsylvania Avenue, NW., Washington, DC 20229.

Additional Foreign Entities

In the March 17, 1998, **Federal Register** notice, Customs also solicited information regarding the whereabouts of 54 foreign entities, which were identified by name and known address, concerning alleged violations of section 592. Persons with knowledge of the whereabouts of those 54 entities were requested to contact the Assistant Commissioner, Office of Field Operations, United States Customs Service, 1300 Pennsylvania Avenue, NW., Washington, DC 20229.

In this document, a new list is being published which contains the names and last known addresses of 29 entities. This reflects the addition of six new entities to the list and a removal of 31 entities from the list.

Customs is soliciting information regarding the whereabouts of the following 29 foreign entities concerning alleged violations of section 592. Their names and last known addresses are listed below (the parenthesis following the listing sets forth the month and year in which the name of the company was first published in the **Federal Register**):

Balmar Export Pte. Ltd., No. 7 Kampong Kayu Road, Singapore, 1543. (3/98)
Envestisman Sanayi A.S., Buyukdere Cad 47, Tek Is Merkezi, Istanbul, Turkey. (9/97)
Essence Garment Making Factory, Splendid Centre, 100 Larch Street, Flat D, 5th Floor, Taikoktsui, Kowloon, Hong Kong. (3/98)
Fabrica de Artigos de Vest. Dynasty, Lda., Avenida do Almirante Magalhaes Correia, Edificio Industrial Keck Seng, Block III, 4th Floor ''UV'', Macau. (3/98)
Fabrica de Artigos de Vestuario Lei Kou, 45 Estrada Marginal de Areia Preta, Edif.Ind.Centro Polytex, 6th Floor, D, Macau. (9/98)
Fabrica de Vestuario Wing Tai, 45 Estrada Marginal Da Areia Preta, Edif. Centro Poltex, 3/E, Macau. (3/98)
Galaxy Gloves Factory, Annking Industrial Building, Wang Yip East Street Room A, 2/F, Lot 357, Yuen Long Industrial Estate, Yuen Long, New Territories, Hong Kong. (3/98)
Golden Perfect Garment Factory, Wong's Industrial Building, 33 Hung To Road, 3rd Floor, Kwun Tong, Kowloon, Hong Kong. (9/98)
Grey Rose Maldives, Phoenix Villa, Majeedee Magu, Male, Republic of Maldives. (3/98)
K & J Enterprises, Witty Commercial Building, 1A–1L Tung Choi Street, Room 1912F, Mong Kok, Kowloon, Hong Kong. (9/98)
Konivon Development Corp., Shun Tak Center, 200 Connaught Road, No. 3204, Hong Kong. (3/98)
Kwuk Yuk Garment Factory, Kwong Industrial Building, 39–41 Beech St., Flat A, 11th Floor, Tai Kok Tsui, Kowloon, Hong Kong. (3/98)
Land Global Ltd., Block c, 14/F, Y.P. Fat Building, Phase 1, 77 Hoi Yuen Road, Kowloon, Hong Kong. (9/97)
Leader Glove Factory, Tai Ping Industrial Centre, 57, Ting Kok Road, 25/F, Block 1, Flat A, Tai Po, New Territories, Hong Kong. (3/98)
Lins Fashions S.A., Lot 111, San Pedro de Macoris, Dominican Republic. (9/96)
New Leo Garment Factory Ltd, Galaxy Factory Building, 25–27 Luk Hop Street, Unit B, 18th Floor, San Po Kong, Kowloon, Hong Kong. (9/98)
Patenter Trading Company, Block C. 14/F, Yip Fat Industrial Building, Phase 1, 77 Hoi Yuen Road, Kowloon, Hong Kong. (9/97)
Penta-5 Holding (HK) Ltd., Metro Center II, 21 Lam Hing Street, Room 1907, Kowloon Bay, Kowloon, Hong Kong. (9/98)
Round Ford Investments, 37–39 Ma Tau Wai Road, 13/f Tower B, Kowloon, Hong Kong. (9/97)
Shanghai Yang Yuan Garment Factory, 2 Zhaogao Road, Chuanshin, Shanghai, China. (9/97)
Silver Pacific Enterprises Ltd., Shun Tak Center, 200 Connaught Road, No. 3204, Hong Kong. (3/98)
Tat Hing Garment Factory, Tat Cheong Industrial Building, 3 Wing Ming Street, Block C, 13/F, Lai Chi Kok, Kowloon, Hong Kong. (3/98)
Tientak Glove Factory Limited, 1 Ting Kok Road, Block A, 26/F, Tai Po, New Territories, Hong Kong. (3/98)
United Textile and Weaving, PO Box 40355, Sharjah, United Arab Emirates. (3/97)
Wealthy Dart, Wing Ka Industrial Building, 87 Larch Street, 7th Floor, Kowloon, Hong Kong. (3/98)
Wilson Industrial Company, Yip Fat Factory Building, 77 Hoi Yuen Road, Room B, 3/F, Kwun Yong, Kowloon, Hong Kong. (3/98)
Wing Lung Manufactory, Hing Wah Industrial Building, Units 2, 5–8, 4th Floor YLTL 373, Yuen Long, New Territories, Hong Kong. (9/98)
Yogay Fashion Garment Factory Ltd, Lee Wan Industrial Building, 5 Luk Hop Street, San Po Kong, Kowloon, Hong Kong. (3/98)
Zuun Mod Garment Factory Ltd., Tuv Aimag, Mongolia. (9/97)

If you have any information as to a correct mailing address for any of the above 29 firms, please send that information to the Assistant Commissioner, Office of Field Operations, U.S. Customs Service, 1300 Pennsylvania Avenue, NW., Washington, DC 20229.

Dated: September 29, 1998.

Robert S. Trotter,

Assistant Commissioner, Office of Field Operations.

[FR Doc. 98–26415 Filed 10–1–98; 8:45 am]

BILLING CODE 4820–02–P

federal register

Monday
October 5, 1998

Part II

Department of Commerce

Patent and Trademark Office

37 CFR Part 1

Changes To Implement the Patent Business Goals; Proposed Rule

DEPARTMENT OF COMMERCE

Patent and Trademark Office

37 CFR Part 1

[Docket No.: 980826226–8226–01]

RIN 0651–AA98

Changes To Implement the Patent Business Goals

AGENCY: Patent and Trademark Office, Commerce.

ACTION: Advance notice of proposed rulemaking.

SUMMARY: The Patent and Trademark Office (PTO) has established business goals for the organizations reporting to the Assistant Commissioner for Patents (Patent Business Goals). The Patent Business Goals have been established in response to the Vice-President's designation of the PTO as an agency that has a high impact on the public, and they are designed to make the PTO a more business-like agency. The focus of the Patent Business Goals is to increase the level of service to the public by raising the efficiency and effectiveness of the PTO's business processes.

The PTO is considering a number of changes to the rules of practice and procedure to support the Patent Business Goals. The PTO is publishing this Advance Notice of Proposed Rulemaking to allow for public input at an early stage in the rule making process. The PTO is soliciting comments on these specific changes to the rules of practice or procedures.

DATES: *Comment Deadline Date:* To be ensured of consideration, written comments must be received on or before December 4, 1998. While comments may be submitted after this date, the PTO cannot ensure that consideration will be given to such comments. No public hearing will be held.

ADDRESSES: Comments should be sent by mail message over the Internet addressed to regreform@uspto.gov. Comments may also be submitted by mail addressed to: Box Comments—Patents, Assistant Commissioner for Patents, Washington, D.C. 20231, or by facsimile to (703) 308–6916, marked to the attention of Hiram H. Bernstein. Although comments may be submitted by mail or facsimile, the Office prefers to receive comments via the Internet. Where comments are submitted by mail, the Office would prefer that the comments be submitted on a DOS formatted 3¼ inch disk accompanied by a paper copy.

The comments will be available for public inspection at the Special Program Law Office, Office of the Deputy Assistant Commissioner for Patent Policy and Projects, located at Suite 520, of One Crystal Park, 2011 Crystal Drive, Arlington, Virginia, and will be available through anonymous file transfer protocol (ftp) via the Internet (address: ftp.uspto.gov). Since comments will be made available for public inspection, information that is not desired to be made public, such as an address or phone number, should not be included in the comments.

FOR FURTHER INFORMATION CONTACT: *With regard to* this Advance Notice of Proposed Rulemaking in General: Hiram H. Bernstein or Robert W. Bahr, by telephone at (703) 305–9285, or by mail addressed to: Box Comments—Patents, Assistant Commissioner for Patents, Washington, DC 20231, or by facsimile to (703) 308–6916, marked to the attention of Mr. Bernstein.

With regard to simplifying request for small entity status (Topic 1): James E. Bryant, III, at the above telephone number.

With regard to requiring separate surcharges and supplying filing receipts (Topic 2), and permitting delayed submission of an oath or declaration, and changing time period for submission of the basic filing fee and English translation (Topic 3), and creating a PTO review service for applicant-created forms (Topic 21): Fred A. Silverberg, at the above telephone number.

With regard to limiting the number of claims in an application (Topic 4), providing for presumptive elections (Topic 14), and creating alternative review procedures for applications under appeal (Topic 18): Robert W. Bahr, at the above telephone number.

With regard to harmonizing standards for patent drawings (Topic 5), printing patents in color (Topic 6), and reducing time for filing corrected or formal drawings (Topic 7): Karin L. Tyson, at the above telephone number.

With regard to permitting electronic submission of voluminous material (Topic 8): Jay Lucas, at the above telephone number.

With regard to imposing limits/requirements on information disclosure statement submissions (Topic 9), and refusing information disclosure statement consideration under certain circumstances (Topic 10): Kenneth M. Schor, at the above telephone number.

With regard to providing no cause suspension of action (Topic 11): Gerald A. Dost, at the above telephone number.

With regard to requiring a handling fee for preliminary amendments and supplemental replies (Topic 12): Randall L. Green, at the above telephone number.

With regard to changing amendment practice to replacement by paragraphs/claims (Topic 13), requiring identification of broadening in a reissue application (Topic 16), and changing multiple reissue application treatment (Topic 17): Joseph A. Narcavage, at the above telephone number.

With regard to creating a rocket docket for design applications (Topic 15): Lawrence E. Anderson, at the above telephone number.

With regard to eliminating preauthorization of payment of the issue fee (Topic 19), and reevaluating the Disclosure Document Program (Topic 20): John F. Gonzales, at the above telephone number.

SUPPLEMENTARY INFORMATION:

I. Background

For Fiscal Year 1999, the PTO is emphasizing its core business: (1) the granting of patents; (2) the registering of trademarks; and (3) the dissemination of the information contained in those documents. The Presidential themes of encouraging innovation and investment, enhancing our customers' satisfaction and seeking efficiencies through international cooperation are embodied in the business goals of the organizations reporting to the Assistant Commissioner for Patents (Patent Business Goals).

President Clinton's Framework for Global Electronic Commerce demands that the United States make its system for protecting patentable innovations more efficient to meet the needs of the fast-moving electronic age. The PTO was selected by Vice President Gore as one of a small group of Federal agencies, known as High Impact Agencies, that has a direct impact on the public. The products and services that the PTO provides to its customers must enable them to get their new inventions and new ideas into the American and global marketplace.

The PTO's participation as a High Impact Agency is expressed in its Year 2000 Commitments, part of the Fiscal Year 1999 Annual Performance Plan. Some key objectives of that plan include:

1. The PTO will reduce its processing or cycle time (*i.e.*, the actual time spent by the PTO in processing an application, which does not include the time when the PTO is awaiting a reply or other action by the applicant) for inventions to twelve months by the year 2003.

2. The PTO will test reengineered processes and automated systems, and

be ready to deploy electronic processing of patent applications by the year 2003.

3. The PTO will work with the World Intellectual Property Organization (WIPO) to achieve electronic filing of Patent Cooperation Treaty applications, and by the year 2000, electronically receive and process Patent Cooperation Treaty (PCT) applications at the PTO.

The activities in this plan call for changes in the very nature of the patent prosecution activity as it currently exists. Such activities are reflected in the regulations of the PTO, Title 37 of the Code of Federal Regulations. This rulemaking is designed to be the vehicle of the changes to these regulations, to embody the spirit and substance of the PTO's activities for self-improvement.

II. Specific Patent Business Goals

The PTO has established five specific Patent Business Goals, which have been adopted as part of the Fiscal Year 1999 Corporate Plan Submission of the President. The five Patent Business Goals are:

Goal 1: Reduce PTO processing time (cycle time) to twelve months or less for all inventions.

Goal 2: Establish fully-supported and integrated Industry Sectors.

Goal 3: Receive applications and publish patents electronically.

Goal 4: Exceed our customers' quality expectations, through the competencies and empowerment of our employees.

Goal 5: Align fees commensurate with resource utilization and customer efficiency.

The organizations reporting to the Assistant Commissioner for Patents have developed a business plan (Patent Business Plan) to achieve the Patents Business Goals. The rule and procedure changes currently under consideration by the PTO, and to which this Advance Notice of Proposed Rulemaking (Advance Notice) pertains, are in support of the Patent Business Plan.

An example of how the PTO is considering changes to the rules of practice and procedure to meet the varied demands of its customers is shown by the consideration of both an expedited examination procedure for design applications as well as an expanded suspension of action (or deferred examination) procedure. Currently, all applications are, with limited exceptions, scheduled for examination based upon their filing date. *See* section 708.02 of the Manual of Patent Examining Procedure (6th ed., rev. 3, July 1997) (MPEP). While the rules of practice do provide for the advancement of applications for examination (37 CFR 1.102) and suspension of action in an application (37 CFR 1.103), the current procedures are not sufficiently tailored to the varied needs of the PTO's customers.

The PTO is considering providing a procedure under which those design applicants who need rapid examination due to rapid style changes will be able to request expedited examination of their applications. The PTO is also considering providing a procedure under which those applicants who do not need or desire examination (*e.g.*, the cost of prosecution is a burden and the invention is not yet commercially viable) will be able to request a prolonged suspension of action. Obviously, applicants may be required to pay additional fees (*e.g.*, to recover the PTO's costs of exception processing for an expedited application) or waive certain rights (*e.g.*, agree to publication of the application as a condition of a prolonged suspension of action) to avail themselves of the benefits of these procedures.

Finally, the changes under consideration are intended to improve the PTO's business processes in the context of the current legal and technological environment. Should these environments change (*e.g.*, by adoption of an international Patent Law Treaty, enactment of H.R. 400 or S. 507, 105th Cong., 1st Sess. (1997), or implementation of new automation capabilities), the PTO would have to reconsider its business processes and make such further changes to the rules of practice as are necessary.

III. Topics for Public Comment

A. Introduction

The topics on which the PTO particularly desires public input at this rulemaking stage are:

(1) Simplifying requests for small entity status (37 CFR 1.27);

(2) Requiring separate surcharges and supplying filing receipts (37 CFR 1.53);

(3) Permitting delayed submission of an oath or declaration, and changing time period for submission of the basic filing fee and English translation (37 CFR 1.52, 1.53);

(4) Limiting the number of claims in an application (37 CFR 1.75);

(5) Harmonizing standards for patent drawings (37 CFR 1.84);

(6) Printing patents in color (37 CFR 1.84);

(7) Reducing time for filing corrected or formal drawings (37 CFR 1.85);

(8) Permitting electronic submission of voluminous material (37 CFR 1.96, 1.821);

(9) Imposing limits/requirements on information disclosure statement submissions (37 CFR 1.98);

(10) Refusing information disclosure statement consideration under certain circumstances (37 CFR 1.98);

(11) Providing no cause suspension of action (37 CFR 1.103);

(12) Requiring a handling fee for preliminary amendments and supplemental replies (37 CFR 1.111);

(13) Changing amendment practice to replacement by paragraphs/claims (37 CFR 1.121);

(14) Providing for presumptive elections (37 CFR 1.141);

(15) Creating a rocket docket for design applications (37 CFR 1.155);

(16) Requiring identification of broadening in a reissue application (37 CFR 1.173);

(17) Changing multiple reissue application treatment (37 CFR 1.177);

(18) Creating alternative review procedures for applications under appeal (37 CFR 1.192);

(19) Eliminating preauthorization of payment of the issue fee (37 CFR 1.311);

(20) Reevaluating the Disclosure Document Program; and

(21) Creating a PTO review service for applicant-created forms.

A discussion of each of these topics is set forth below.

The topics discussed in this Advance Notice are those for which the PTO is considering the greatest change from current practice. For this reason, the PTO is publishing this Advance Notice (rather than a Notice of Proposed Rulemaking) to obtain public input on these topics at the inception of the rulemaking process. The public is invited to submit written comments on any of the topics, including issues related to changes in practice as well as the implementation of any such change in practice. Certain topics do not conclude with questions; however, the PTO desires comments on such topics in general.

Other Considerations

This Advance Notice is in conformity with the requirements of the Regulatory Flexibility Act (5 U.S.C. 601 *et seq.*), Executive Order 12612 (October 26, 1987), and the Paperwork Reduction Act of 1995 (44 U.S.C. 3501 *et seq.*). It has been determined that this rulemaking is significant for the purposes of Executive Order 12866 (September 30, 1993).

This Advance Notice involves information collection requirements which are subject to review by the Office of Management and Budget (OMB) under the Paperwork Reduction Act of 1995 (44 U.S.C. 3501 *et seq.*). The collections of information involved in this Advance Notice have been reviewed and previously approved by OMB under the following control

numbers: 0651–0021, 0651–0030, 0651–0031, 0651–0032, 0651–0033, 0651–0035, and 0651–0037. Any collections of information whose requirements will be revised as a result of the proposed rule changes discussed in this Advance Notice will be submitted to OMB for approval. The principal impact of the changes under consideration in this Advance Rule is to raise the efficiency and effectiveness of the PTO's business processes to make the PTO a more business-like agency and increase the level of the PTO's service to the public.

Notwithstanding any other provision of law, no person is required to respond to nor shall a person be subject to a penalty for failure to comply with a collection of information subject to the requirements of the Paperwork Reduction Act unless that collection of information displays a currently valid OMB control number.

As required by the Paperwork Reduction Act of 1995 (44 U.S.C. 3507(d)), the PTO has submitted a copy of this Advance Notice to OMB for its review of these information collections. Interested persons are requested to send comments regarding these information collections, including suggestions for reducing this burden, to Robert J. Spar, Director, Special Program Law Office, Patent and Trademark Office, Washington, D.C. 20231, or to the Office of Information and Regulatory Affairs of OMB, New Executive Office Bldg., 725 17th St. NW, rm. 10235, Washington, DC 20503, Attn: Desk Officer for the Patent and Trademark Office.

The PTO has determined that this Advance Notice has no Federalism implications affecting the relationship between the National Government and the States as outlined in Executive Order 12612.

B. Discussion of Specific Topics

1. Simplifying request for small entity status (37 CFR 1.27)

Summary: The PTO is considering simplifying applicant's request for small entity status. The currently used small entity statement forms would be eliminated as they would no longer be needed.

Specifics of Change being Considered: Small entity status would be established at any time by a simple assertion of entitlement to small entity status without the currently required formalistic reference to 37 CFR 1.9. Payment of the (exact) small entity basic filing fee would be considered an assertion of small entity status. To establish small entity status after payment of the basic filing fee, a written assertion of small entity status would be required to be submitted with or prior to a fee payment. There would be no change in the current requirement to make an investigation in order to determine entitlement to small entity status; the PTO would only be changing the ease with which small entity status can be claimed once it has been determined that a claim to such status is appropriate.

Problem and Background: 37 CFR 1.27 currently requires that a request for small entity status be accompanied by submission of an appropriate statement that the party seeking small entity status qualifies in accordance with 37 CFR 1.9. Either a reference to 37 CFR 1.9 or a specific statement relating to the provisions of 37 CFR 1.9 is mandatory. For a small business, the small business must either state that exclusive rights remain with the small business, or if not, identify the party to which some rights have been transferred so that the party to which rights have been transferred can submit its own small entity statement (37 CFR 1.27(c)(1)(iii)). This can lead to the submission of multiple small entity statements for each request for small entity status where rights in the invention are split. The request for small entity status and reference/statement may be submitted prior to paying, or at the time of paying, any small entity fee. In part, to ensure that at least the reference to 37 CFR 1.9 is complied with, the PTO has produced four types of small entity statement forms (including ones for the inventors, small businesses and non-profit organizations) that include the required reference to 37 CFR 1.9 and specific statements as to exclusive rights in the invention. Additionally, the statement forms relating to small businesses and non-profit organizations need to be signed by an appropriate official empowered to act on behalf of the small business or non-profit organization. Refunds of non-small entity fees can only be obtained if a refund is specifically requested within two months of the payment of the full (non-small entity) fee and is supported by the required small entity statement. *See* 37 CFR 1.28(a)(1). The two-month refund window is not extendable.

The rigid requirements of 37 CFR 1.27 and 1.28 have led to a substantial number of problems. Applicants, particularly *pro se* applicants, do not always recognize that a particular reference to 37 CFR 1.9 is required in their request to establish small entity status. They believe that all they have to do is pay the small entity fee and state that they are a small entity. Further, the time required to ascertain who are the appropriate officials to sign the statement and to have the statements (referring to 37 CFR 1.9) signed and collected (where more than one is necessary), results, in many instances, in having to pay the higher non-small entity fees and then seek a refund. These situations result in: (1) small entity applicants also having to pay additional fees (*e.g.,* surcharges and extension(s) of time fees for the delayed submission of the small entity statement form); (2) additional correspondence with the PTO to perfect a claim for small entity status; and (3) the filing of petitions with petition fees to revive abandoned applications. This increases the pendency of the prosecution of the application in the PTO and, in some cases, results in loss of patent term. For example, under current procedures, if a *pro se* applicant files a new application with small entity fees but without a small entity statement, the PTO mails a notice to the *pro se* applicant requiring the full basic filing fee of a non-small entity. Even if the applicant timely files a small entity statement, the applicant must still timely pay the small entity surcharge for the delayed submission of the small entity statement to avoid abandonment of the application. A second example is a non-profit organization paying the basic filing fee as a non-small entity because of difficulty in obtaining the non-profit small entity statement form signed by an appropriate official. In this situation, a refund pursuant to 37 CFR 1.26, based on establishing status as a small entity, may only be obtained if a statement under 37 CFR 1.27 and the request for the excess amount are filed within the non-extendable two-month period from the date of the timely payment of the full fee. A third example is an application filed without the basic filing fee on behalf of a small business by a practitioner who includes the standard authorization to pay additional fees. The PTO will immediately charge the non-small entity basic filing fee without specific notification thereof at the time of the charge. By the time the deposit account statement is received and reviewed, the two-month period for refund may have expired.

Accordingly, a simpler procedure to establish small entity status would reduce processing time within the PTO (Patent Business Goal 1) and would be a tremendous benefit to small entity applicants as it would eliminate the time-consuming and aggravating processing requirements that are mandated by the current rules. Thus, the proposed simplification would help small entity applicants to receive patents sooner with fewer expenditures

in fees and resources and the PTO could issue the patent with fewer resources (Patent Business Goals 4 and 5).

Simplified Request for Small Entity Status: The PTO is considering allowing small entity status to be established by the submission of an assertion of entitlement to small entity status. The current formal requirements of 37 CFR 1.27, which include a reference to either 37 CFR 1.9, or to the exclusive rights in the invention, would be eliminated. If small entity status is to be requested at the time of payment of the basic filing fee, the payment of the (exact) small entity basic filing fee will be considered to be a sufficient assertion. If small entity status was not established when the basic filing fee was paid, a later claim to small entity status would be by way of a written assertion. Payment of a small entity fee (*e.g.*, extension of time, or issue fee) without inclusion of a written assertion would not be sufficient.

The written assertion will not be required to be presented in any particular form. Written assertions of small entity status or references to small entity fees will be liberally interpreted to represent the required assertion. The written assertion could be made in any paper filed in or with the application and need be no more than a simple sentence or a box checked in an application transmittal letter or reply cover sheet. Accordingly, small entity status could be established without submission of any of the current small entity statement forms (PTO/SB/09–12) that embody and comply with the current requirements of 37 CFR 1.27 and which are therefore now used to establish small entity status.

An applicant filing a patent application and paying the exact small entity basic filing fee would automatically establish small entity status for the application even without any further written assertion of small entity status. If payment is made, but it is not the exact small entity basic filing fee required and a written assertion of small entity status is not present, the PTO would mail a notice of insufficient filing fees as in current practice. The PTO would not consider a basic filing fee submitted in an amount above the correct small entity basic filing fee, but below the non-small entity filing fee, as a request to establish small entity status unless an additional written assertion is also present. Of course, the submission of a basic filing fee below the correct small entity basic filing fee would not serve to establish small entity status. Where an application is originally filed by a party, who is in fact a small entity, with an authorization to charge fees (including filing fees) and no indication (assertion) of entitlement to small entity status, that authorization would not be sufficient to establish small entity status unless the authorization was specifically directed to small entity filing fees. The general authorization to charge fees would continue to be acted upon immediately and the full (not small entity) filing fees would be charged with applicant having two months to request a refund by asserting entitlement to small entity status. This would be so even if the application were a continuing application where small entity status had been established in the prior application.

Once small entity status is established in an application, any change in status from small to non-small, would also require a specific written assertion to that extent, similar to current practice.

The party who could request small entity status would be any party permitted by PTO regulations to pay the basic filing fee and file a paper in the application. This eliminates the additional requirement of obtaining the signature of an appropriate party other than the party prosecuting the application. By way of example, in the case of three *pro se* inventors for a particular application, any of the three inventors upon filing the application could pay a small entity basic filing fee and thereby establish small entity status for the application. For small business concerns and non-profit organizations, the practitioner could supply the assertion rather than the current requirement for an appropriate official of the organization to execute a small entity statement form.

PTO policy and procedures already permit establishment of small entity status in certain applications through simplified procedures. For example, small entity status may be established in a continuing or reissue applications simply by payment of the small entity basic filing fee if the prior application/patent had small entity status. *See* 37 CFR 1.28(a)(2). The instant concept of payment of the basic statutory filing fee to establish small entity status in a new application is merely a logical extension of that practice.

There may be some concern that elimination of the small entity statement forms will result in applicants requesting small entity status who are not actually entitled to such status. On balance, it seems that more errors occur where small entity applicants who are entitled to such status run afoul of procedural hurdles formed by the requirements of 37 CFR 1.27 than the requirements help to prevent status claims for those who are not in fact entitled to such status.

Correction of any inadvertent and incorrect establishment of small entity status would be by way of a paper under 37 CFR 1.28(c) as in current practice.

Continued Obligations for Thorough Investigation of Small Entity Status: Applicants should not confuse the fact that the PTO is making it easier to qualify for small entity status with the need to do a complete and thorough investigation and to assert that they do in fact qualify for small entity status. It should be clearly understood that, even though it would be much easier to assert and thereby establish small entity status, applicants would continue to need to make a full and complete investigation of all facts and circumstances before making a determination of actual entitlement to small entity status. Where entitlement to small entity status is uncertain it should not be claimed. *See* MPEP 509.03. The assertion of small entity status (even by mere payment of the exact small entity basic filing fee) is not appropriate until such an investigation has been completed. Thus, in the previous example of the three *pro se* inventors, before one of the inventors could pay the small entity basic filing fee to establish small entity status, the inventor would need to check with the other two inventors to determine whether small entity status was appropriate.

The intent of 37 CFR 1.27 is that the person making the assertion of small entity status is the person in a position to know the facts about whether or not status as a small entity can be properly established. That person, thus, has a duty to investigate the circumstances surrounding entitlement to small entity status to the fullest extent. Therefore, while the PTO is interested in making it easier to claim small entity status, it is important to note that small entity status must not be claimed unless the person or persons can unequivocally make the required self-certification.

Consistent with 37 CFR 1.4(d)(2), which sets forth that for the presentation to the PTO (whether by signing, filing, submitting, or later advocating) of any paper by a party, whether a practitioner or non-practitioner, the payment of a small entity basic filing fee would constitute a certification under 37 CFR 10.18. Thus, a simple payment of the small entity basic statutory filing fee will activate the provisions of 37 CFR 1.4(d)(2) and, by that, provoke the self-certification as set forth in 37 CFR 10.18(b), regardless of whether the party is a practitioner or non-practitioner.

2. Requiring separate surcharges and supplying filing receipts (37 CFR 1.53)

Summary: The PTO is considering charging separate surcharges in a nonprovisional application for the delayed submission of an oath/declaration, and the application filing fee, and issuing another filing receipt, without charge, to correct any errors or to update filing information, as needed.

Specifics of Change Being Considered: The PTO would charge a separate surcharge (currently $130) for each missing part item that is submitted in a delayed manner. Thus, the delayed submission of both an oath/declaration under 37 CFR 1.63, and the payment of the basic filing fee in a nonprovisional application filed under 35 U.S.C. 111(a), would result in the imposition of two surcharges (totaling $260). The change under consideration would not apply to provisional applications filed under 35 U.S.C. 111(b) and 37 CFR 1.53(c). In addition, as the basic national fee must be submitted by the expiration of the applicable twenty- or thirty-month period in 35 U.S.C. 371(b) in a PCT application, the change under consideration would also be inapplicable to applications filed under the PCT.

While the PTO would be charging a separate surcharge for each missing part submitted in a delayed manner, the PTO would also be providing three new user-friendly services which were requested by, and would provide benefits that are desired by, our customers. The three new user-friendly services are: (1) issuing a corrected filing receipt without the fee presently required by 37 CFR 1.9(h) when an oath/declaration, and/or the payment of the application filing fee are submitted in a delayed manner; (2) issuing a corrected filing receipt without the fee presently required by 37 CFR 1.19(h), and without a question as to fault, for any error in the filing receipt; and (3) placing a copy of each filing receipt supplied to the applicant in the application file as evidence of issuance of the filing receipt.

Background: Approximately thirty-one per cent of all nonprovisional applications filed are missing parts applications, that is, an application filed without an executed oath/declaration and/or the application filing fee, with a substantial burden being placed on the PTO to provide additional handling, storage and processing for these missing part applications. Neither the payment of the application filing fee nor an oath/declaration in compliance with 37 CFR 1.63 is needed for an application to meet the minimum requirements to be accorded a filing date in a nonprovisional application. *See* 37 CFR 1.53(b). Currently, the PTO charges a single surcharge of $130 for the filing of an oath/declaration or the filing fee or both on a date later than the application filing date. At present, the PTO issues a filing receipt at the time a determination is made that an application meets the minimum requirements to receive a filing date. The filing receipt includes, among other things, bibliographic information (*e.g.*, inventive entity/application identifier, title, continuing data, inventor's city and state address, foreign priority, attorney docket number), while also denoting, among other things, the application number, filing date and receipt of the application filing fee. A ''Notice of Omitted Item(s)'' (form PTO–1669) or a ''Notice To File Missing Parts'' (PTO–1533), if needed, are mailed separately. A ''Notice of Omitted Items'' is mailed by the PTO in an application wherein the application papers so deposited have been accorded a filing date, but a portion (*e.g.*, some of the page(s) of or figure(s) of drawings described in the specification) has been omitted from the submitted application parts. *See Change in Procedure Relating to an Application Filing Date;* Notice, 61 FR 30041 (June 13, 1996), 1188 *Off. Gaz. Pat. Office* 48 (July 9, 1996), and MPEP 601.01(d)–(h). A ''Notice To File Missing Parts'' is mailed by the PTO in an application wherein a part of the application (*e.g.*, the oath/declaration, or the appropriate application filing fee) has been omitted on filing. *See Changes in Practice in Supplying Certified Copies and Filing Receipts;* Notice, 1199 *Off. Gaz. Pat. Office* 38 (June 10, 1997), and MPEP 601.01(a). Examination of the application does not begin until all the required parts (*e.g.*, filing fee, and oath/declaration) are received. *See* 37 CFR 1.53(h).

In addition, the PTO recently amended 37 CFR 1.41 and 1.53 (effective December 1, 1997) to provide that the names of the inventors are no longer required in order for an application to meet the minimum requirements to be accorded a filing date. *See Changes to Patent Practice and Procedure;* Final Rule Notice, 62 FR 53131, 53186–88 (October 10, 1997), 1203 *Off. Gaz. Pat. Office* 63, 111–13 (October 21, 1997). The names of all the inventors are taken from an executed oath/declaration timely submitted in compliance with 37 CFR 1.63, with the inventive entity being set at that time, 37 CFR 1.41(a)(1). The filing receipt is mailed even if an oath/declaration in compliance with 37 CFR 1.63, the application filing fee, or the actual names of the inventors have not been submitted on filing. In an application which is entitled to a filing date but not naming the actual inventors on filing, an identifier (*e.g.*, the attorney's docket number, or all or a part of the names of the actual inventors) may be used to identify the application, 37 CFR 1.41(a)(3). In the past, upon the filing of an oath/declaration in compliance with 37 CFR 1.63, the PTO did not issue a corrected filing receipt, but only updated PTO records as to the actual inventors for the application. If (1) the inventive entity being submitted by the later filed oath/declaration was different from the identifier/inventive entity used to identify the application on filing and (2) applicant(s) desired a corrected filing receipt containing the corrected information or correction of any other information contained thereon (not due to PTO error), then applicant(s) had to request such in a separate paper filed with the PTO along with the requisite fee under 37 CFR 1.19(h). Further, where a proper small entity statement was not submitted until after the mailing of the filing receipt and a corrected filing receipt was desired to show small entity status based on the small entity statement submitted after the mailing of the filing receipt, a request for such a corrected filing receipt must have been filed along with the requisite fee under 37 CFR 1.19(h).

Separate surcharges: The cost for processing these missing parts applications has increased. Further, the separate submission of each missing part in a delayed manner causes the PTO to perform double the amount of work, as the application would be twice processed for a submitted missing part, with presently only one surcharge being required. Those who delay in submitting either of the items noted above should bear the costs. Patent Business Goal (5) is to assess fees commensurate with resource utilization and customer efficiency. In support of that goal, it is being considered that a separate surcharge be required for the filing of an oath/declaration in compliance with 37 CFR 1.63, and for the payment of the application filing fee on a date later than the application filing date. Therefore, if both the oath/declaration and the application filing fee were submitted on a date later than the application filing date, a payment of $260 ($130 for the late filing of the oath/declaration, and $130 for the late filing of the application filing fee) in current fees would be due on the application.

No incentive currently exists for the submission of the basic filing fee on filing if an executed oath or declaration is not also available for submission.

This change would encourage applicants to submit the basic filing fee on filing, even if an executed oath or declaration is not available for submission. Patent Business Goal (1) is to reduce PTO processing time to twelve months or less for all inventions. This change, in combination with the change under consideration in topic 3, would reduce pre-examination processing time, since it would encourage the submission on filing of an application in condition for examination, even if an executed oath or declaration is not available for submission on filing.

Three new services: While the PTO would be charging a separate surcharge for each missing part submitted in a delayed manner, the PTO would also be providing three new user-friendly services which were requested by our customers and provide benefits that are desired by our customers. As a first new service, in addition to the filing receipt being mailed at the time the application is accorded a filing date, a corrected filing receipt would always be mailed to reflect receipt of the oath/declaration in compliance with 37 CFR 1.63, and/or the payment of the application filing fee when they are submitted. No longer would applicant have to file a request for a new filing receipt, to pay a separate fee for it per 37 CFR 1.19(h), or submit a status letter to see if PTO records were updated due to the filing of the oath/declaration. The corrected filing receipt should reflect the actual inventive entity of the application, if it was mailed in response to the receipt of the oath/declaration in compliance with 37 CFR 1.63. Patent Business Goal (4) is to exceed our customers' quality expectations, through the competencies and empowerment of our employees. This new service would be in support of that goal. The PTO has begun this first new service in anticipation of the increase in surcharge fees and to better serve our customers' needs.

As a second new service, if there is an error in the data printed on the filing receipt and a request for a corrected receipt is submitted, the PTO would issue a corrected filing receipt without a fee and without a question as to fault. Patent Business Goal (1) is to reduce PTO processing time to twelve months or less for all inventions. Patent Business Goal (4) is to exceed our customers' quality expectations, through the competencies and empowerment of our employees. Without having to determine who caused the error in the filing receipt, corrected filing receipts would be issued faster and with less inconvenience to all, which would be in support of those goals. Further, the PTO has received substantial feedback that timely receipt of an accurate filing receipt is of great importance to our customers. This second new service is in direct response to this repeated message. Again, the PTO has already begun this second new service in anticipation of the increase in surcharge fees and to better serve our customers' needs.

As a third new service, every time a filing receipt is issued, the PTO would place a copy of the filing receipt in the application file as evidence thereof. Today, a copy of a filing receipt is not placed in the application file, irrespective of the reasons for its issuance. By always placing a copy of the filing receipt in the application file, it will be easier to later determine whether there is still an error in the filing receipt in question, or whether a filing receipt or a corrected filing receipt was actually mailed. Further, since a copy of the filing receipt would now be located in the application file, the time for the PTO to answer questions regarding a particular filing receipt would be greatly reduced. Patent Business Goal (4) is to exceed our customer's quality expectations, through the competencies and empowerment of our employees. This would be in support of that goal.

3. Permitting delayed submission of an oath or declaration, and changing the time period for submission of the basic filing fee and English translation (37 CFR 1.52, 1.53)

Summary: The PTO is considering amending 37 CFR 1.53 to provide that an executed oath or declaration for a nonprovisional application would not be required until the expiration of a period that would be set in a ''Notice of Allowability'' (PTOL–37). The PTO is also considering amending 37 CFR 1.52 and 1.53 to provide that the basic filing fee and an English translation (if necessary) for a nonprovisional application must be submitted within one month (plus any extensions under 37 CFR 1.136) from the filing date of the application.

Specifics of Change Being Considered: The PTO is considering amending 37 CFR 1.53 to provide that an executed oath or declaration for a nonprovisional application would not be required until the applicant is notified that it must be submitted within a one-month period that would be set in a ''Notice of Allowability,'' provided that the following are submitted within one month (plus any extensions under 37 CFR 1.136) from the filing date of the application: (1) the name(s), residence(s), and citizenship(s) of the person(s) believed to be the inventor(s); (2) all foreign priority claims; and (3) a statement submitted by a registered practitioner that: (a) an inventorship inquiry has been made, (b) the practitioner has sent a copy of the application (as filed) to each of the person(s) believed to be the inventor(s), (c) the practitioner believes that the inventorship of the application is as indicated by the practitioner, and (d) the practitioner has given the person(s) believed to be the inventor(s) notice of their obligations under 37 CFR 1.63(b). In addition, the PTO is considering requiring an applicant to file a continuing application to file an executed oath or declaration naming an inventorship different from that previously stated by the practitioner once prosecution in an application is closed.

The PTO is also considering amending 37 CFR 1.52 and 1.53 to provide, by rule, that the basic filing fee and an English translation (if the application was filed in a language other than English) for a nonprovisional application must be submitted within one month (plus any extensions under 37 CFR 1.136) from the filing date of the application. Applicants will not be given a notice (*e.g.*, a ''Notice To File Missing Parts'' (PTO–1533)) that the basic filing fee is missing or insufficient, unless the application is filed with an insufficient basic filing fee that at least equals the basic filing fee that was in effect the previous fiscal year. Finally, the filing receipt will indicate the amount of filing fee received and remind applicants that the basic filing fee must be submitted within one month (plus any extensions under 37 CFR 1.136) from the filing date of the application.

These changes will permit the PTO to virtually eliminate the current practice of mailing notices (*e.g.*, a ''Notice To File Missing Parts'') during the initial processing of a nonprovisional application to require submission of an oath or declaration, basic filing fee, or an English translation.

Background: As discussed above, 37 CFR 1.53(b), as amended effective December 1, 1997, does not require that a nonprovisional application under 35 U.S.C. 111(a) include an executed oath or declaration under 37 CFR 1.63, the names of the inventor(s), any filing fee, or English language application papers for the application to meet the minimum requirements to be accorded a filing date. The PTO, however, does not examine the application until an executed oath or declaration under 37 CFR 1.63 (naming the inventor(s)), the filing fee, and English language application papers are submitted. If an

executed oath or declaration under 37 CFR 1.63, filing fee, or English language application papers are not submitted with the filing of a nonprovisional application, the PTO will mail a notice requiring that they be filed (with a surcharge) within two months from the mail date of the notice (plus any extensions under 37 CFR 1.136) to avoid abandonment.

The PTO has received numerous comments from the public indicating that there is great difficulty in filing an executed oath or declaration (*e.g.*, at times it is difficult to determine the names of the actual inventor(s) or it may be difficult to locate the inventor(s)), and that pre-examination processing of a nonprovisional application is a long burdensome process. Difficulty in obtaining the signatures of all the inventor(s) has often resulted in a petition (and fee) under 37 CFR 1.47 (filing when an inventor refuses to sign or cannot be reached). The PTO cannot eliminate the requirement for an oath or declaration in a nonprovisional application without a statutory change. *See* 35 U.S.C. 111(a)(2)(C) and 115. The Commissioner, however, has latitude as to when an oath or declaration and the filing fee must be submitted for a nonprovisional application. *See* 35 U.S.C. 111(a)(3).

Discussion: The PTO is considering amending 37 CFR 1.53 to provide that an executed oath or declaration for a nonprovisional application is not required until the expiration of a period that would be set in a ''Notice of Allowability'' (plus extensions under 37 CFR 1.136), rather than prior to examination of the application. Permitting delayed submission of the oath or declaration until the expiration of a period set in the mailing of a ''Notice of Allowability'' would allow practitioners additional time to have the oath or declaration executed by all the inventor(s). In addition, if the invention turns out to be unpatentable, no signatures for the oath or declaration would ever be needed.

If an oath or declaration is not submitted within one month (plus any extensions under 37 CFR 1.136) from the filing date of the application, the PTO will require that within this period a registered practitioner: (1) submit the name(s), residence(s), and citizenship(s) of the person(s) believed to be the inventor(s); (2) submit all foreign priority claims; and (3) make and submit a statement that he or she has made an inventorship inquiry (*i.e.*, ascertain the inventorship of the application to the best of his or her knowledge) and that he or she believes that the inventorship is in fact those person(s) so identified as the person(s) believed to be the inventor(s). In addition, the practitioner must state that he or she has sent such person(s) a copy of the application (specification, including claims, and drawings) filed in the PTO, and given such person(s) notice of their obligations to review and understand the contents of the application and of their duty to disclose to the PTO all information known to the person to be material to patentability under 37 CFR 1.56. *See* 37 CFR 1.63(b).

The surcharge set forth in 37 CFR 1.16(e) would also be required if the oath or declaration is submitted on a date later than the filing date of the application, regardless of whether the oath or declaration is filed before a ''Notice of Allowability'' is mailed.

For examination purposes, it would be presumed that the inventive entity is that set forth by the practitioner in the application as forwarded to the examiner. As discussed above, all claims for foreign priority benefits under 35 U.S.C. 119 or 365 would be submitted prior to examination. The examiner needs this foreign priority claim information to determine whether an additional ''back-up'' rejection is appropriate. *See* MPEP 904.02. If an oath or declaration is omitted on filing, the first Office action would inform applicant(s) (*e.g.*, through an attached Notice of Informal Application, PTO–152) that an oath or declaration is outstanding.

37 CFR 1.48(f)(1) would continue to provide that, in an application not including an executed oath or declaration, the submission of an executed oath or declaration (such as in reply to a ''Notice of Allowability'') naming an inventorship different from that previously indicated by the practitioner as the person(s) believed to be the inventor(s) would operate to correct the inventorship without the need for the filing of a petition under 37 CFR 1.48. Nevertheless, this action may cause examination-related problems with the application, in that upon entry of such an oath or declaration the examiner would have to consider whether new rejection(s) are necessary under, for example, 35 U.S.C. 102(a) (''invention * * * by others''), or 102(e) (''invention * * * by another''), or 103/102(a) or (e). Therefore, the PTO is considering requiring a processing fee (in addition to the surcharge) for submission of such an oath or declaration after the first Office action but before the close of prosecution on the merits. In addition, if such an oath or declaration necessitates that a new ground of rejection be made, the next Office action containing the new ground of rejection, absent anything to the contrary, may be made final. *See* MPEP 706.07(a). The PTO is also considering prohibiting the submission of such an oath or declaration that names an inventorship different from that previously indicated by the practitioner as the person(s) believed to be the inventor(s) after prosecution on the merits has closed (*e.g.*, after a final Office action, allowance, or action under *Ex parte Quayle*, 1935 Dec. Comm'r Pat. 11 (1935)), and requiring that a continuing application be filed in order to permit entry of such an oath or declaration.

The right to prosecute an application (*e.g.*, appoint a representative by a power of attorney or authorization of agent) flows from ownership of the application, which in turn flows from inventorship. In the absence of an assignment the inventor has the right to conduct prosecution of the application (even if the application was prepared and filed by the company for whom the inventor works). Where there is an assignment, the assignee may intervene pursuant to 37 CFR 3.71 and conduct the prosecution to the exclusion of the named inventors. In a large percentage of applications, inventors execute an assignment when the oath or declaration under 37 CFR 1.63 is executed, and appoint representatives as part of the oath or declaration.

Delaying execution of the oath or declaration will, most likely, also encourage delaying execution of the assignment. 37 CFR 3.71 requires an actual assignee of record and does not provide a right of prosecution for parties having an expectation of assignment (*e.g.*, based on an employment contract or a shop right). Hence, since a delay in executing the oath or declaration under 37 CFR 1.63 will probably cause a delay in executing an assignment, an assignee may be unable to avail itself of controlling prosecution under 37 CFR 3.71.

A registered practitioner may take some actions in a patent application by providing his registration number on the paper. *See* 37 CFR 1.34(b). However, only an attorney or agent that is of record, the inventor, or the assignee of the entire interest can take certain actions in an application. For example, only an attorney or agent that is of record can change the correspondence address. *See* 37 CFR 1.33(a). In addition, only an attorney or agent that is of record may execute a power to inspect. *See* 37 CFR 1.14(e)(2).

The PTO is also considering amending 37 CFR 1.34(b) to include in the definition of ''attorney or agent of record'' the attorney or agent that filed

the application. With such a change, an appointment as a representative would not be required before the attorney could change the address in the application file or authorize another to inspect the patent application file, among other things. In addition, 37 CFR 1.34(b) would be amended to provide that a *pro se* inventor who signs a transmittal letter for an application is considered to represent all inventors for the purposes of prosecuting the patent application. *Pro se* inventors frequently do not realize that all inventors need to sign each piece of correspondence to the Office (*e.g.,* each amendment, *see* MPEP 714.01(a)) and a *pro se* inventor will frequently have difficulty obtaining the other inventor's signature during the time provided. With such a change, *pro se* applicants that do not have the foresight of appointing a single representative will have an easier time filing a response to Office actions.

Additionally, the PTO is considering amending 37 CFR 1.52(d) and 1.53 to provide that an English language translation (if the application was filed in a language other than English) and the basic filing fee be submitted no later than one month from the filing date of the nonprovisional application. This one-month period would be extendable under 37 CFR 1.136. The current process of mailing notices (*e.g.,* a ''Notice To File Missing Parts'' (PTO–1533)) which gives a period (*e.g.,* two months) for submitting the basic filing fee or English translation in a nonprovisional application would be eliminated, as: (1) the basic filing fee would be due on filing, or required with the surcharge under 37 CFR 1.16(e) within one month (plus extensions under 37 CFR 1.136) from the filing date of the application; and (2) any English translation (if the application was filed in a language other than English) would be required with the processing fee set forth in 37 CFR 1.17(k) within one month (plus extensions under 37 CFR 1.136) from the filing date of the application. Except for the situation discussed below, there is no apparent justification for the PTO continuing to mail notices to advise applicants of that which they should already know: (1) that they did not submit the basic filing fee with the application; or (2) that they did not file the application in English.

For example: (1) if the basic filing fee is submitted on filing, no surcharge under 37 CFR 1.16(e) or extension fee under 37 CFR 1.17(a) is required; (2) if the basic filing fee is not submitted on filing but is submitted within one month of the application filing date, the surcharge under 37 CFR 1.16(e) is required but no extension fee under 37 CFR 1.17(a) is required; and (3) if the basic filing fee is not submitted on filing or within one month of the application filing date, but is submitted within six months (the one month that would be provided by rule plus five additional months that may be obtained pursuant to 37 CFR 1.136) of the application filing date, the surcharge under 37 CFR 1.16(e) and appropriate extension fee under 37 CFR 1.17(a) are required. The processing fee set forth in 37 CFR 1.17(k) is required whenever the original application is filed in a language other than English, regardless of when the English translation is submitted.

Exception: In the situation in which an application is filed with an insufficient basic filing fee (due to a fee increase) that at least equals the basic filing fee that was in effect the previous Fiscal Year, the applicant will be given a filing fee deficiency notice, which notice will set a one-month period (extendable under 37 CFR 1.136) within which the balance of the current basic filing fee and the surcharge under 37 CFR 1.16(e) must be filed to avoid abandonment. In all other situations, the current basic filing fee, if not submitted on filing, must be submitted with the surcharge under 37 CFR 1.16(e) within one month (plus any extensions under 37 CFR 1.136) from the filing date of the application to avoid abandonment of the application. The filing receipt will indicate the filing fee received and would be modified to include language reminding applicants that the basic filing fee must be submitted within one month (plus any extensions under 37 CFR 1.136) from the filing date of the application.

For PCT international applications: The PTO is considering amending 37 CFR 1.494 and 1.495 to provide that an English translation of the international application, if filed in a language other than English (35 U.S.C. 371(c)(2)), would be required within one month of the expiration of the applicable twenty- or thirty-month period in 35 U.S.C. 371(b), which one-month period may be extended under 37 CFR 1.136. The PTO is also considering amending 37 CFR 1.494 and 1.495 to provide that an oath or declaration (35 U.S.C. 371(c)(4)) would not be required until the applicant is notified that it must be submitted within a one-month period that would be set in a ''Notice of Allowability,'' provided that the following are submitted within one month (which one-month period may be extended under 37 CFR 1.136) of the expiration of the applicable twenty-or thirty-month period in 35 U.S.C. 371(b): (1) the residence of each inventor (the name and citizenship of each inventor must be provided on the PCT Request); and (2) a statement submitted by a registered practitioner that: (a) the practitioner has sent a copy of the application (as filed) to each of the inventors, and (b) the practitioner has given the inventor(s) notice of their obligations under 37 CFR 1.63(b). The basic national fee (35 U.S.C. 371(c)(1)) would continue to be required by the expiration of the applicable twenty-or thirty-month period in 35 U.S.C. 371(b), which period is non-extendable.

Patent Business Goal (1) is to reduce PTO processing time to twelve months or less for all inventions. Reducing pre-examination cycle time of an application and forwarding applications for examination in a shorter period of time would be consistent with that goal. This change (in combination with the change to the period within which an oath or declaration must be submitted) will greatly reduce the number of notices that the PTO must issue during the pre-examination processing of new applications. These changes will also result in applications being initially processed and forwarded for examination in a shorter period of time, and reduce the amount of storage space used for and ease the tracking of applications in pre-examination processing.

The PTO considers the changes to permit delayed submission of an oath or declaration and to require the basic filing fee and any necessary translation within one month of the application filing date to be linked, in that together they will permit a great reduction in the number of notices that the PTO must issue during the pre-examination processing of new applications. Thus, comments opposing any change to require the basic filing fee and any necessary translation within one month of the application filing date should consider that the PTO will probably not adopt the change to permit delayed submission of an oath or declaration if the PTO does not also adopt the change to require the basic filing fee and any necessary translation within one month of the application filing date.

Questions: The PTO is specifically requesting comments on the following issues:

1. The submission of an oath or declaration after the first Office action which changes the names of the inventor(s) from those originally indicated by the practitioner may cause additional work to be performed by the PTO, in particular, by an examiner, as set forth above. As a result, the PTO is considering charging an additional processing fee for the submission of

such an oath or declaration, and prohibiting the submission of such an oath or declaration after the close of prosecution. Would the benefits gained by the ability to delay the filing of the oath or declaration outweigh the drawbacks resulting from: (1) the PTO charging a fee for the submission of such an oath or declaration after the first Office action but before close of prosecution; and (2) the PTO prohibiting the submission of an oath or declaration that names an inventorship different from that previously indicated by the practitioner as the person(s) believed to be the inventor(s) after the close of prosecution?

2. Over time, obtaining an executed oath or declaration from all of the inventors becomes increasingly difficult: inventors may forget about or lose interest in an application; they may leave the corporation; and they may become disgruntled. While delaying obtaining the inventor's signature on an oath or declaration may be initially beneficial to the practitioner, it would be more difficult for the practitioner to obtain all of the inventors' signatures on an oath or declaration at the time of allowance (which may be years after filing). National applications resulting from a PCT application entering the national stage have a higher incidence of petitions under 37 CFR 1.47 than national applications filed under 35 U.S.C. 111(a). This may be caused by delay in filing the oath or declaration, which could be thirty months after the filing of the PCT application. Therefore, permitting applicants to delay the submission of an oath or declaration until the expiration of a period set in a ''Notice of Allowability'' may result in an increase in the number of petitions filed under 37 CFR 1.47. Would the benefits gained by delaying the filing of the oath or declaration outweigh the drawbacks resulting from the increased difficulty in obtaining the inventor(s)' signatures on the oath or declaration, and an increased number of petitions under 37 CFR 1.47 due to the inability to obtain an inventor's signature? Is it a concern to applicants that these petitions under 37 CFR 1.47 will be filed during the publishing (and not pre-examination) process?

3. Delaying submission of the oath or declaration in a PCT application until the mailing of a ''Notice of Allowability'' would delay its entry into the national stage. A PCT application is not accorded a 35 U.S.C. 102(e) date until the applicant fulfills the requirements of 35 U.S.C. 371(c)(1), (2) and (4), which include filing an oath or declaration in compliance with 35 U.S.C. 115 and 37 CFR 1.497. *See* 35 U.S.C. 371(c)(4). Is it a concern that, if an applicant in a PCT application delays submission of the oath or declaration until the period set in a ''Notice of Allowability,'' the PCT application would be accorded a 35 U.S.C. 102(e) date as of the date the oath or declaration is submitted?

4. Assuming the above-noted change to 37 CFR 1.34(b) is made giving control of the prosecution to the filer (the attorney or agent that filed the patent application) and the attorney or agent's client is not the inventor, can the client (a potential assignee) take actions allowed an assignee, such as filing a reissue application under 37 CFR 1.172 and submitting a 37 CFR 3.73 statement establishing the right of an assignee to take action?

5. Assuming the above-noted change to 37 CFR 1.34(b) is made, how should an attempt by the inventor(s) to appoint another representative be treated? Should the inventor(s) first be required to file an oath or declaration under 37 CFR 1.63? Should an actual assignee of the inventor(s) be allowed to take action in an application and revoke the attorney of record if an executed oath or declaration of the inventor(s) has not been filed?

6. Notwithstanding any change to 37 CFR 1.34(a), where the inventors execute an assignment but not an oath or declaration under 37 CFR 1.63, is the assignment effective so that the assignee can control prosecution under 37 CFR 3.71 and take necessary action in accordance with 37 CFR 3.73? Note that if status under 37 CFR 1.47 is accorded, if the inventor who originally refused to execute the oath or declaration assigns his interest, the non-signing inventor's assignee cannot control prosecution of the application even if the inventor executes a declaration. Who should the attorney or agent be understood to represent absent an express authorization to act as a representative in the application, the persons indicated as the inventors or an actual or potential assignee?

4. Limiting the number of claims in an application (37 CFR 1.75)

Summary: The PTO is considering a change to 37 CFR 1.75 to limit the number of total and independent claims that will be examined (at one time) in an application.

Specific Change Being Considered: The PTO is considering a change to the rules of practice to: (1) limit the number of total claims that will be examined (at one time) in an application to forty; and (2) limit the number of independent claims that will be examined (at one time) in an application to six. In the event that an applicant presented more than forty total claims or six independent claims for examination at one time, the PTO would withdraw the excess claims from consideration, and require the applicant to cancel the excess claims. This change would apply to all non-reissue utility applications filed on or after the effective date of the rule change, to all reissue utility applications in which the application for the original patent was subject to this change, and to national applications filed under 35 U.S.C. 111(a), as well as national applications that resulted from a PCT international application.

Discussion: Applications containing an excessive number of claims present a specific and significant obstacle to the PTO's meeting its business goals of reducing PTO processing time to twelve months or less for all inventions. While the applications that contain an excessive number of claims are relatively few in percentage (less than 5%), these applications impose a severe burden on PTO clerical and examining resources, as they are extremely difficult to properly process and examine. The extra time and effort spent on these applications has a negative ripple effect, resulting in delays in the processing and examination of all applications, which, in turn, results in an increase in pendency for all applications. In view of the patent term provisions of 35 U.S.C. 154, as amended by the Uruguay Round Agreements Act (URAA), Pub. L. 103–465, 108 Stat. 4809 (1994), PTO processing time and pendency are concerns to the PTO and all applicants. Thus, the PTO considers it inappropriate to continue to permit the proclivity of a relatively low number of applicants (less than 5%) for excessive claim presentation to result in delays in examination and unnecessary pendency for the vast majority of applicants.

Approximately 215,000 utility applications were filed in the PTO in Fiscal Year 1997. PTO computer records indicate that the approximate number and percentage of applications filed in Fiscal Year 1997 containing the following ranges of independent and total claims breaks down as follows:

Applications filed in FY 1997 containing	Number	Percentage FY 1997 filings
Over 50 independent claims	11	00.005
Between 41 and 50 independent claims	23	00.011
Between 31 and 40 independent claims	77	00.358
Between 21 and 30 independent claims	275	00.128
Between 16 and 20 independent claims	536	00.249
Between 11 and 15 independent claims	1,887	00.878
Between 7 and 10 independent claims	7,024	03.267
Between 4 and 6 independent claims	27,147	12.627
Over 6 independent claims	9,833	4.896
Over 500 total claims	5	00.002
Between 201 and 500 total claims	88	00.041
Between 101 and 200 total claims	652	00.303
Between 61 and 100 total claims	2,514	01.169
Between 51 and 60 total claims	2,143	00.997
Between 41 and 50 total claims	4,056	01.887
Between 31 and 40 total claims	8,631	04.014
Between 21 and 30 total claims	23,323	10.848
Over 40 total claims	9,458	4.399

These numbers indicate that over 95% of all applications filed in Fiscal Year 1997 contained fewer than forty total claims and over 95% of all applications filed in Fiscal Year 1997 contained fewer than six independent claims. Thus, the rule change under consideration should not prevent the overwhelming majority of applicants from presenting the desired number of total and independent claims for examination. In addition, the rule change under consideration will benefit the overwhelming majority of applicants, since it will stop a relatively small number of applicants from occupying an inordinate amount of PTO resources.

While the problem with applications containing an excessive number of claims is now reaching a critical stage, this problem has long confronted the PTO. In 1926, Commissioner Robertson remarked that applications containing an excessive number of claims constitute the greatest abuse confronting the PTO (then the Patent Office). *See Ex parte McCullough*, 1927 Dec. Comm'r Pat. 12, 13 (1926). The issuance of patents containing an excessive number of claims has also long been considered an abuse of the courts and the public. *See Carlton* v. *Bokee*, 84 U.S. (17 Wall) 463, 471–72 (1873) (needless multiplication of nebulous claims deemed calculated to deceive and mislead the public); *Wahpeton Canvas Co.* v. *Frontier, Inc.*, 870 F.2d 1546, 1551 n.6, 10 USPQ2d 1201, 1206 n.6 (Fed. Cir. 1989) (presentation of the infringement issue on an overgrown claims jungle to a jury and judge at trial is an unprofessional exercise in obfuscation). Put simply, applications (and the resulting patents) that contain an excessive number of claims are a problem that has long confronted the PTO, the courts, and the public.

Historically, this problem (applications containing an excessive number of claims) has been dealt with on a case-by-case basis, in that the presentation of an unreasonable number of claims in an application may result in an undue multiplicity rejection. *See* MPEP 2173.05(n). The CCPA has affirmed rejections based upon undue multiplicity when the degree of repetition and multiplicity'' in the claims ''beclouds definition in a maze of confusion.'' *See In re Chandler,* 319 F.2d 211, 225, 138 USPQ 138, 148 (CCPA 1963); *see also In re Chandler,* 254 F.2d 396, 117 USPQ 361 (CCPA 1958). In subsequent decisions, however, the CCPA has declined to hold that the presentation of any particular number of claims is so excessive as to confuse or obscure the inventions defined by the claims. *See In re Wakefield,* 422 F.2d 897, 164 USPQ 636 (CCPA 1970); and *In re Flint,* 411 F.2d 1353, 162 USPQ 228 (CCPA 1969). These subsequent decisions have severely cut back on the use of rejections based upon undue multiplicity. *See Ex parte Sheldon,* 172 USPQ 319 (BPAI 1972).

After the 1970s, the PTO balanced the difficulty of making and defending undue multiplicity rejections with likelihood of its success on appeal against the burden of just examining applications containing an excessive number of claims, and generally chose to simply suffer the burden of examining such applications. Recently, however, this problem (applications containing an excessive number of claims) has been exacerbated by the advent of word-processing equipment, which significantly reduces the skill and effort required to draft and present a seemingly endless number of claims in an application. The change during the last twenty years to the index of claims in the application file wrapper illustrates this point: the file wrapper for the 1979 series (the 06 series) applications had an index for fifty claims; the file wrapper for the 1987 series (the 07 series) and 1993 series (the 08 series) applications had an index for 100 claims; the file wrapper for the 1998 series (the 09 series) now has an index for 150 claims.

For these reasons, it is now time for the PTO to act to limit the use of excessive numbers of claims in an application. The PTO is specifically proposing to deal with this problem now on a systemic basis by limiting, via rulemaking, the number of claims that will be examined in an application. This proposal supports the PTO business goals of reducing PTO processing time to twelve months or less for all inventions, and aligning fees to be commensurate with resource utilization and customer efficiency.

A rule limiting the number of claims in an application is within the PTO's rulemaking authority under 35 U.S.C. 6(a) if it ''is within the [PTO's] statutory authority and is reasonably related to the purposes of the enabling legislation * * * and does no violence to due process.'' *See Patlex Corp.* v. *Mossinghoff,* 758 F.2d 594, 606, 225 USPQ 543, 252 (Fed. Cir. 1985) (citations omitted).

35 U.S.C. 41(a)(1)(B) provides that an applicant must pay an additional fee for the presentation of each independent claim in excess of three and each claim in excess of twenty. This implies that an applicant is entitled to present more than three independent claims, and

more than twenty total claims, but it does not imply that the PTO may place no limit on the number of claims that an applicant may present. *See Ex parte Jenkins*, 1930 Dec. Comm'r Pat. 8 (1930) (that the patent statute now requires a fee for additional claims does not mean that there is no end to the number of claims that the applicant may present). In addition, PCT Rule 6.1 specifically states that ''[t]he number of claims shall be reasonable in consideration of the nature of the invention claimed.'' Placing a reasonable limit (*e.g.*, no more than six independent claims and no more than forty total claims) will: (1) permit the PTO to more equitably distribute its resources among the vast number of applications that must be examined each year (35 U.S.C. 131 and 132); and (2) assist the PTO, public, and the courts in ascertaining what it is that the applicant considers to be the invention (35 U.S.C. 112, ¶ 2).

35 U.S.C. 131 and 132 require the PTO to examine the more than two hundred thousand applications that are filed each year, and 35 U.S.C. 282 provides that each claim of the patents resulting from these applications is presumed to be valid, each independently of the others. It is the PTO's goal to issue patents containing claims whose validity is based not solely upon presumptions resulting from the patent statute and PTO regulations, but based upon the actuality that each claim of the applications resulting in such issued patents has been subjected to an effective, high-quality examination. In view of the ever increasing number of applications filed each year, the PTO has determined that it must place some limits on the number of total claims and independent claims that an applicant may present in a single application to ensure that the PTO continues to issue patents that contain only claims that have been subjected to such effective, high-quality examination.

Such a rule would bear a reasonable relationship to the provisions of 35 U.S.C. 112, ¶ 2, that an application conclude with one or more claims particularly pointing out and distinctly claiming the subject matter which the applicant regards as his invention. While 35 U.S.C. 112, ¶ 2, provides that the claims describe ''the subject matter which the applicant regards as his invention'' (emphasis added), it does not preclude the PTO from limiting the claims in regard to matters of form. *See Fressola* v. *Manbeck*, 36 USPQ2d 1211, 1214 (D.D.C. 1995).

As discussed above, the historical basis for undue multiplicity rejections was that the presentation of an excessive number of claims in an application generally operated to confuse or obscure the invention. This problem existed in the nineteenth century (*Carlton*) and remains a problem today (*Wahpeton Canvas*). Limiting the number of claims in an application will discourage applicants from presenting claims that confuse or obscure the point of the invention. Thus, such a rule would advance the statutory goal of 35 U.S.C. 112, ¶ 2, that an application or patent conclude with one or more claims particularly pointing out and distinctly claiming the subject matter which the applicant regards as his invention. *See Fressola*, 36 USPQ2d at 1214.

Any change to 37 CFR 1.75 to limit the number of claims in an application must also take into account the situation in which a single claim is, in actuality, a plurality of claims (*e.g.*, multiple dependent claims, *Markush* claims (*see Ex parte Markush*, 1925 Dec. Comm'r Pat. 126 (1924)), claims referencing plural sequence listings (*see* MPEP 2422.04), and claims setting forth (non-*Markush*) alternative limitations (*see* MPEP 2173.05(h)). A multiple dependent claim will be counted as the number of claims to which direct reference is made in that multiple dependent claim. *See* 37 CFR 1.75(c). Limits (for a claim to be counted as a single claim) would also be placed on: (1) the number of species that may be embraced within a *Markush* claim; (2) the number of sequence listings that may be referenced in a single claim; and (3) the number of alternative limitations that may be included in a claim.

The PTO is considering only a limit on the number of claims that will be examined in a single application, not a limit of the number of claims that may be presented for the invention(s) disclosed in an application. Forty total claims with six independent claims should be sufficient for an applicant to obtain adequate coverage for an invention. An applicant who is unable to limit him or herself to forty total or six independent claims in a single application may effectively obtain examination of additional claims in another application. As the PTO would expend more of its scarce processing and examination resources on ten applications containing forty claims each than the PTO would expend on a single application containing four hundred claims, the PTO's objective is not to have applicants to spread-out excessive numbers of claims among multiple applications to increase fee revenue. The PTO's objective is to encourage the few applicants who currently present an excessive number of claims in an application to place reasonable limits on the number of claims presented for examination.

Nevertheless, an applicant would effectively be permitted to present any number of claims for examination by filing any number of continuing applications, each application presenting no more than forty total or six independent claims for examination. Thus, the PTO's refusal to examine more than forty total or six independent claims in a single application is not tantamount to a rejection of such claims, as the excess claims would be examined if presented in another application. *See In re Fressola*, 22 USPQ2d 1828, 1831–32 (Comm'r Pat. 1992) (an objection or other requirement is not a rejection if it does not interfere with applicant's substantive right of expression).

In the extraordinary situation in which it would be more beneficial to the PTO, the public, and the applicant to permit the applicant to maintain more than forty claims in a single application (*e.g.*, numerous species claims depending from a single allowable genus claim), the applicant may file a petition under 37 CFR 1.183 requesting a waiver of this limitation. Such petitions would be decided on a case-by-case basis, and would be subject to such other requirements as may be imposed. *See* 37 CFR 1.183.

5. Harmonizing standards for patent drawings (37 CFR 1.84)

Summary: The PTO is considering harmonizing the requirements for patent drawings in 37 CFR 1.84 with the requirements for drawings in the Patent Cooperation Treaty (PCT).

Specifics of Change Being Considered: Amending 37 CFR 1.84 to be more similar to PCT Rule 11.13.

Discussion: The PTO is considering amending 37 CFR 1.84 to harmonize the standards for drawings in U.S. national applications with the standards for drawings in Patent Cooperation Treaty (PCT) applications, which is a well-known and widely accepted standard. The PTO has received a number of comments complaining that the same drawings which were approved and printed in PCT published applications have been objected to under 37 CFR 1.84 in U.S. national applications. This inconsistency is not understood by patent applicants who feel that a drawing that is acceptable for publication of a PCT application should also be acceptable for publication in a U.S. patent. Making corrections to drawings to comply with unnecessary requirements increases the cost to the applicant and the time required to respond to an Office action, both of

which patent applicants would like to reduce. In response to these comments, the PTO is looking into replacing 37 CFR 1.84 with the PCT standards for drawing requirements.

The requirements for drawings in a PCT application are set forth in four places, namely: (1) PCT Article 7; (2) PCT Rules 7, 9, 10, 11, and 12; (3) the PCT Applicant's Guide, Vol. I/A, pages 24–25 (paragraphs 133–141); and (4) the ''Guidelines for Drawings Under the Patent Cooperation Treaty (PCT),'' published in the *PCT Gazette* (No. 7/1978).

Current PTO processing of applications with drawings results in some unnecessary delays in the handling of those applications contrary to Patent Business Goal 1 (reducing PTO processing time). For example, petitions are now required in order to accept black and white photographs, color drawings or color photographs, and the PTO processing of these petitions delays the handling of the application by the examiner. The PCT permits black and white photographs, but does not permit color photographs or color drawings. Thus, to harmonize with the PCT, which does not require a petition to allow black and white photographs, the PTO is considering deleting the requirement for a petition while providing instead that black and white and color photographs and color drawings would be permitted where it is impossible to present in a drawing what is to be shown (*e.g.*, crystalline structures). The examiner, however, may require drawings, where it is possible to present the subject matter in a drawing. For example, a syringe may be drawn. Thus, an examiner would require an applicant who has submitted an application for a syringe and which included a photograph of the syringe to submit a drawing to replace the photograph. The PTO does not currently envision an examiner requiring color drawings or photographs in a design or utility application where black and white drawings or photographs have been submitted.

Question: The drawing standards for PCT applications may not be clearly understood or known because the requirements are set forth in the previously identified four different documents, and not everyone has easy access to these documents. Nonetheless, it is apparent that compliance with the PCT is easier given the experience of many patent applicants of having drawings approved in a PCT application, but objected to in a United States application. Accordingly, if adoption of the PCT standards for drawings is not supported, comments are requested as to whether the PTO should keep 37 CFR 1.84 as is, or how it should be modified, or should the PTO adopt some other standard for the drawings?

6. Printing patents in color (37 CFR 1.84)

Summary: The PTO is considering printing design and utility patents that have color drawings or color photographs in color, along with imposing a fee to cover the extra processing and publication costs.

Specifics of Change Being Considered: The PTO is considering deleting the current requirement for a petition (and $130 petition fee) to accept color drawings or photographs. The PTO is also considering printing in color design and utility patents with color drawings or color photographs, and charging a fee to recover the PTO's cost of processing and printing design and utility patents with such color drawings or color photographs. The cost to the public for ordering color copies would continue to be governed by 37 CFR 1.19(a)(2) (for plant patents) and 1.19(a)(3) (for utility patents).

Discussion: The PTO is considering amending 37 CFR 1.84(a) and (b) to delete the current requirement for a petition (and $130 petition fee) to accept color drawings or photographs. The PTO is also considering amending 37 CFR 1.84 to provide for processing and printing design and utility patents having color drawings or color photographs in color rather than in black and white. A fee will be required. Utility and design patents with color drawings or color photographs are currently printed in black and white, with a note indicating that color drawings or photographs were present in the application. Where color is part of applicant's invention, such as where color is a feature of the claimed invention in a design application, a member of the public seeking to understand the subject matter that is claimed or an examiner seeking to understand the invention disclosed in evaluating the patent as prior art during examination of another application would have to order a color copy of the patent drawings, thereby incurring delays for the special handling required. If design and utility applications were to be printed in color in the same manner as plant patents are printed in color, the copy of the patent in the search files would be a color copy and members of the public and examiners would not have to take additional steps to understand the disclosure of the patent and the scope of the claims. Patents printed in color would continue to have legends indicating that drawings are in color so that a person inspecting a black and white copy thereof would have notice as to the existence of the color drawings.

Processing a patent in color would incur costs separate from those incurred in the printing process in that identification of applications filed in color would need to be made so that the printing contractor would know the color printing was required. The PTO currently scans the originally filed application papers in black-and-white images, and may begin scanning color drawings or photographs included with originally filed application paper in color images. The examination process may also be more complex due to questions relating to the accuracy of the color depiction in color photographs. In addition, printing a patent in color would currently require an expensive photographic process to ensure the proper coloring of the drawings, as is currently required for plant patents. Pursuant to 35 U.S.C. 41(d), the PTO may recover the cost of the service of making color copies of color drawings or photographs included in an application as originally filed available as scanned images and preparing color drawings or photographs as part of the patent publication process. Charging a fee for such additional costs (as compared to the normal patent publication process) would be consistent with Business Goal 5 (assess fees commensurate with resource utilization).

Accordingly, if design and utility patents are to be printed in color, patentees would be required to pay the additional fee, and would not be allowed to not pay the fee or request that the patent be printed only in black and white. In addition, the two-tier fee system, in which a higher fee is charged for color copies of a patent (37 CFR 1.19(a)(3)) than for a copy without color (37 CFR 1.19(a)(1)(i)), for patent copy sales would continue so that customers could obtain a black and white copy of a patent with color drawings for a reduced fee.

While plant patents are currently printed in color, electronic copies of plant patents currently displayed with the Automated Patent System or from CD ROM products are in black and white. The Office has an ongoing project to create color images of plant patents for electronic searching and dissemination. Accordingly, if design and utility patents are printed in color, they also would be available in color electronically.

7. Reducing time for filing corrected or formal drawings (37 CFR 1.85)

Summary: The PTO is considering reducing the time period for submitting corrected or formal drawings from three months to one month from the mailing of the ''Notice of Allowability'' (extensions of time under 37 CFR 1.136 being permitted). The PTO is also requesting comment on the advisability of requiring submission of corrected or formal drawings upon an indication of allowable subject matter.

Specifics of Change Being Considered: The PTO is considering amending 37 CFR 1.85(c) to require either that: (1) corrected or formal drawings be submitted within one month of the mailing of the ''Notice of Allowability'' (extensions of time under 37 CFR 1.136 being permitted); or (2) formal drawings be submitted in reply to any Office action indicating allowable subject matter, and, if a drawing correction has been required, requiring that corrected drawings be submitted in reply to the next Office action indicating allowable subject matter.

Discussion: Currently, 37 CFR 1.85(c) requires corrected or formal drawings to be filed within a period of three months of the mailing date of the ''Notice of Allowability,'' which period may be extended up to six months under 37 CFR 1.136. This causes many problems. First, permitting corrected or formal drawings to be filed as late as six months after the mailing of the ''Notice of Allowability'' leads to a lengthy delay in issuance of patents. Second, the corrected or formal drawings may be submitted after the payment of the issue fee (which must be paid within three months from the mail date of the ''Notice of Allowance and Issue Fee Due''). Thus, if formal or corrected drawings are not filed before payment of the issue fee, the application must still be stored and tracked to await the required drawings. This results in increased processing costs to the PTO, as greater storage space is needed along with continued tracking and monitoring functions. Thus, the current process not only causes delays in issuing patents which is inconsistent with Patent Business Goal 1, reducing PTO processing to twelve months or less, but it also increases our costs which is inconsistent with Patent Business Goal 5, assessing fees commensurate with resource use.

The PTO hopes to address these problems in the following three ways. First, as discussed with regard to 37 CFR 1.84, the PTO would like to make drawing requirements consistent with those of the PCT so as to make it easier to submit drawings which will be approved by the PTO draftspersons and thereby reduce the burden on the applicant. If drawing requirements are consistent with those of the PCT, as proposed with respect to 37 CFR 1.84, applicants would be more likely to submit formal drawings upon filing or while the application is being examined, but prior to allowance. These formal drawings should have a greater chance of being approved by the PTO Draftsperson. Thus, this should reduce the number of applications that are allowed with drawings that are not accepted by the PTO Draftsperson. Second, the PTO intends to encourage drawing corrections and/or formal drawings to be submitted earlier in the examination process. This is because the PTO intends to deploy draftspersons into each of the technology centers where it will be easier for the Draftsperson to review such corrected or formal drawings without interrupting the examination process. Thus, this should also reduce the number of applications with drawings that have not been approved by the PTO Draftsperson. Third, with the current proposal, the PTO proposes to reduce the time for submitting drawings to one month from the Notice of Allowability. By reducing the window for submitting drawings to one month, and then charging for extension of time fees, applicants will be encouraged to quickly submit the drawings within the one month period and, more than likely, before payment of the issue fee, in order to avoid extension of time fees, which rapidly increase as more extensions are requested. Thus, the change in the period for submitting corrected/formal drawings under consideration should have the effect of reducing the number of applications that have drawing corrections or formal drawings submitted after the payment of the issue fee.

Question: Should the PTO require corrected or formal drawings to be filed in reply to an Office action indicating allowable subject matter?

8. Permitting electronic submission of voluminous material (37 CFR 1.96, 1.821)

Summary: The PTO is considering rule changes to permit the voluntary submission of large computer program listings and nucleotide and/or amino acid sequence listings in only a machine-readable form. This would save the handling of heavy and voluminous paper listings.

Specifies of Change Being Considered: Suitable changes would be made to 37 CFR 1.96 and 1.821 *et seq.* to: (1) permit machine readable computer program listings to be submitted as the official copy provided it is submitted in an appropriate archival medium; (2) permit a machine-readable submission of the nucleotide and/or amino acid sequence listings as the official copy provided it is submitted in an appropriate archival medium; and (3) no longer require the voluminous paper submissions of computer program listings or nucleotide and/or amino acid sequence listings.

Background: Since 1990, the PTO has required the submission of the nucleotide and/or amino acid sequence listings (sequence listings) associated with biotechnology applications to be presented in computer readable form on floppy disks, as well as in paper. The sequence listings, which are often over ten thousand bases in length, are not susceptible to human eye-searching. The magnetic storage and processing is therefore the only practical means for examining this very important branch of technology, which grew by fifty percent in 1997 and is expected to undergo sustained growth. Not only are the number of pending applications multiplying, but the number of sequence listings per application and the size of the sequence listings themselves have grown by one-hundred percent each year. The PTO recently received a submission containing twenty-two thousand sequence listings, which required eight boxes of paper for the sequence listing. The PTO is also starting to see very long individual sequence listings of over one million residues. As the genome projects complete more of the genomes of various organisms, the PTO will see more of these voluminous applications.

This sequence size expansion has had a significant effect on electronic storage, but even worse has created paper files of gross size which are very difficult to manage. The paper printouts are often over five thousand pages in length, and require boxes to contain them. Carts carry the applications to the examiners for processing. For example, the Expressed Sequence Tags (EST) applications include up to several thousand sequence listings and may be over a foot thick. In some applications, the file wrappers are falling apart and contain only the sequence listing, with the specification separately preserved. Physically storing the applications becomes problematic because the entire file takes up several cubic feet of space. Since each examiner may have twenty or more of these applications, the applications may take up the bulk of an examiner's office. The magnitude of these problems is expected to increase. For example, an application with ten

thousand sequence listings could result in one thousand applications of ten sequence listings each. *See* MPEP 803.04. Considering that the growth rate of sequence listings is such that they now approach one foot per application, this would require one thousand linear feet of shelf space. With each rack holding twenty-four linear feet, the PTO would need forty-two (1000/24) racks for the applications resulting from that one application. Clearly, something needs to be done to address this onslaught of paper.

The current regulations at 37 CFR 1.821(e) indicate that the electronic version of the sequence listing is a ''copy'' of the paper sequence listing, and that the paper sequence listing is the official copy. In practice, however, the electronic version is the one that enters the computer database of references, and serves as the basis for examination, printing and copies. The concurrence of the electronic and paper version is assured only by a statement of the registered attorney or agent, and cannot be readily checked without the expensive and laborious effort usually reserved only for litigation.

Considering the difficulty of maintaining the two independent versions of the sequence listing, and the irony that the official paper copy is effectively ignored while the unofficial electronic copy is the only one that is used, the PTO is proposing that the paper copy be eliminated in favor of the useful, handy and verifiable computer readable version.

Difficulties with massive amounts of paper also plague the computer arts. One of the major problems facing the computer areas is the filing of applications having several boxes of printed material, which may include computer program listings, appendices and boxes of prior art. Often a single examiner may have several similar applications containing multiple boxes of paper (*i.e.*, programs, appendices and prior art). Just the short-term storage of these boxes is becoming more of a headache. For example, if an examiner has three or four of these applications, he or she may be required to store six to eight boxes of paper. These boxes are stored either in the examiner's office or in an empty room if one is available. The examiner is expected to: (1) keep track of these boxes of materials; (2) physically haul them to his or her office; and (3) consider and be familiar with thousands of sheets of paper. Often when related applications are transferred to another Art Unit, these boxes of materials are misplaced and the applicant is forced to resubmit the boxes of papers.

Computer program listings often come to the office on numerous sheets of microfiche. However, the microfiche films are often copied to paper before printing when a patent is allowed. Since the copies from the microfiche are not copied to the standards of 37 CFR 1.52, the applications are often sent back to the examiner as a printer rush, slowing the publication of the patent.

The PTO may accept electronically filed material in a patent application, regardless of whether it is considered ''essential'' or ''nonessential.'' The patent statute requires that ''[a]n application for patent shall be made * * * **in writing** to the Commissioner.'' 35 U.S.C. 111(a)(1) (emphasis added). With regard to the meaning of the ''in writing'' requirement of 35 U.S.C. 111(a)(1), ''[i]n determining any Act of Congress, unless the context indicates otherwise * * *, 'writing' includes printing and typewriting and **reproduction of visual symbols** by photographing, multigraphing, mimeographing, manifolding, or otherwise.'' 1 U.S.C. 1 (emphasis added); *see also* Fed. R. Evid. 1001(1) (writing defined as including magnetic impulse and electronic recording). An electronic document (or an electronic transmission of a document) is a ''reproduction of visual symbols,'' and the ''in writing'' requirement of 35 U.S.C. 111(a)(1) does not preclude the PTO from accepting an electronically filed document. Likewise, there is nothing in the patent statute that precludes the PTO from designating an ''electronic'' record of an application file as the PTO's ''official'' copy of the application.

The recognition of the electronically stored version of the sequence listings as the official copy is expected to have a minor consequence on our processing of these applications. Sequence listings are already required to be submitted in electronic form, and a receipt system is already in place to handle the acceptance and storage of the electronic versions. Currently the machine-readable version is the copy of choice for search, for printing and for reference purposes.

The submission of machine readable versions of computer program listings, or other voluminous materials, would require the PTO to establish an appropriate system for accepting and using such submissions such that the paper versions of such information will no longer be needed. The submitted archival media may be transferred to centralized electronic office systems to facilitate in-house processing of the information.

Discussion of change under consideration: The PTO is considering revising 37 CFR 1.821 *et seq.* to permit the voluntary submission of a machine readable version of the sequence listings to be the official copy provided it is presented in an appropriate archival medium. The PTO cannot simply make the current submissions of diskettes the official copy in view of the regulations requiring a true archival medium (36 CFR 1228.28(3) and 1234.30). In addition, the PTO is considering revising 37 CFR 1.96 to permit the voluntary submission of all computer program listings in machine readable form provided they are in an appropriate archival medium.

The changes contemplated for sequence listings and computer program listings would eliminate the need for submissions of voluminous paper sequence listings and hard to handle and reproduce microfiche computer program listings. To focus specifically on the PTO's difficult paper handling problem, and to simplify this project so it can be deployed in a short time span, only the nucleotide and/or amino acid sequences and the computer program listings would be accepted in machine readable format. The rest of the specification of a nonprovisional application will be submitted in paper in the conventional manner, subject to 37 CFR 1.52 and other applicable regulations.

In addition to permitting the above-mentioned submissions in nonprovisional applications, the PTO is also considering changing the rules of practice to permit provisional applications to be submitted *in toto* in a machine readable format, again provided that it is presented in an appropriate archival medium.

This initiative is in support of the Patent Business Goal to reduce PTO processing time to twelve months or less for all inventions (Goal 1) and to receive applications and publish patents electronically (Goal 3). Specifically, it would reduce the time and effort required to scan into our electronic archival systems the text of sequence listings and of computer program listings included in the applications as filed.

Appropriate Archival Media: Regulations promulgated by National Archives and Records Administration define the acceptable archival media and formats for transfer and storage of information. *See* 36 CFR 1234.30 and 1228.28.

Relationship to PTO automation plans: These changes being considered are understood to be temporary

solutions to a difficult PTO paper-handling problem.

It should be noted that the PTO is planning for full electronic submission of applications and related documents by Fiscal Year 2003. The changes described above are a smaller step in that direction, permitting the essential, but bulky parts of some applications to be submitted on an acceptable archival medium.

Question: Other materials may also be subject to these large submissions, and part of this endeavor would be the identification and inclusion of definable entities from other technologies that are of a similar nature. The PTO is requesting the public to suggest examples. In considering responses to this question, issues of practical implementation will be given weight. For example, elements of Technical Appendices or documents of an Information Disclosure Statement may be flowcharts, bound books or other items not suitable yet for electronic submission.

9. Imposing limits/requirements on information disclosure statement submissions (37 CFR 1.98)

Summary: The PTO is considering revising 37 CFR 1.98 to establish new requirements and/or limits on information submitted as part of an Information Disclosure Statement (IDS).

Specifics of Change Being Considered: In order to limit IDS submissions to relevant information and to ensure full consideration of an IDS by the PTO, the PTO is considering imposing the following additional requirements for IDS submissions: (1) a statement in the IDS that each citation has been personally reviewed by the registered practitioner who represents applicant, or by at least one inventor where applicant is not represented by a registered practitioner; (2) a copy of each cited U.S. application; and (3) a unique description of each citation's importance relative to each independent claim, or specific dependent claim(s) if that is why it was cited, except that a description would not be required for: (a) any ten citations, and (b) any item cited in a corresponding application by a foreign patent office, PCT international searching authority (ISA), or PCT international preliminary examining authority (IPEA), provided the search report or office action in the English language is also submitted.

The description of each citation would have to set forth a teaching or showing of a feature relative to the claimed invention which is not taught or shown by other citations in the IDS or is taught in a different manner. The description of each citation must be unique to that citation, in that an applicant would not be permitted to provide a description of a citation that is merely cumulative to that of other citations.

Background: Under the current rules (37 CFR 1.56, 1.97 and 1.98), the PTO is being overwhelmed with voluminous IDS submissions which, in many situations, make it very difficult, if not impossible, for an examiner to fully evaluate all of the citations that have been submitted. This is especially true when the citations involved are large in size and/or when large numbers of citations have been submitted. The submission of large numbers of citations and of the entire content of large citations may be due to the public's perception that it must submit, in order to ensure compliance with the duty to disclose requirements of 37 CFR 1.56, even questionable or marginally related citations (*i.e.*, cited items that are clearly not material to patentability). The public appears to have taken the view that it should submit, in compliance with 37 CFR 1.97 and 1.98, even questionable citations in order to ensure that applicant is viewed by the courts as having satisfied the duty of disclosure requirements. MPEP 2001.04 points out as to noncompliance with 37 CFR 1.97 and 1.98 that ''the applicant will have assumed the risk that the failure to submit the information in a manner that will result in its being considered by the examiner may be held to be a violation'' by the courts. MPEP 2004 adds: ''When in doubt, it is desirable and safest to submit information. Even though the attorney, agent, or applicant doesn't consider it necessarily material, someone else may see it differently and embarrassing questions can be avoided''. Thus, an environment has been established that promotes submission of citations which might in some way be considered to be sufficiently relevant to breach the duty of disclosure (once applicant or applicant's counsel becomes aware of the citation) in order to avoid an inference of intentional noncompliance. Applicant presumably does not wish to be placed in a position (in court) of having to explain why a particular document of which applicant was aware was not deemed relevant enough to submit. Therefore, even a document of very questionable relationship to the claims may very well be submitted by applicants (the public), in order to err on the side of caution.

This approach has created an enormous burden on the PTO and seriously jeopardizes the PTO's ability to examine applications in a timely and efficient manner, or achieve its Business Goal to reduce PTO processing time (cycle time) to twelve months or less for all inventions (Goal 1). Applicants frequently cite large numbers of unrelated documents in citation ''dumps'' where applicant does not wish to expend the time to weed out the unrelated documents from large groups of documents (for example those obtained by a pre-search or found in a related U.S. application). In addition, large citations such as compendiums are submitted where only one or two small unidentified portions are relevant.

While it may have been intended under 37 CFR 1.97 and 1.98 that applicant submit questionably related citations, it was never intended that large numbers of unrelated documents be submitted solely to save applicant the effort of reviewing each of them to determine their relevance. Likewise, it was not intended that the entire volume of a large citation be submitted so that applicant need not take the trouble to target the one or two relevant portions.

A further concern arises in those situations where current 37 CFR 1.98 permits applicants to not supply copies of cited U.S. applications. It is a real burden on the examiner to locate and copy one or more pending applications, and this activity (removal of a cited application for copying) has the potential for interfering with the processing and examination of the cited application.

The following are examples of IDS submissions which have placed inordinate demands on the PTO:

(1) For one family of related applications (of several hundred applications), applicants have cited almost three thousand items in each of the several hundred applications.

(2) In another family of five related applications, more than one thousand items were cited in IDS submissions in each of the applications. The items cited were not the same for each application. The five related applications are the children of numerous other applications, each of which had IDS submissions citing at least seven hundred items. The examiner presently has in his office sixteen containers of cited items for these applications, and stacks of cited items which would fill at least eight more containers.

(3) A pending application contains a citation of ten related U.S. applications. Additionally, about eighty-five documents were cited, including text citations which included sixty-nine pages from one text book and 137 pages from another. The Examiner noted in his Office action that these texts appeared to be background related to the general area of the invention. In addition, some of the cited documents were listed in more than one of multiple IDSs submitted, and the additional listings had to be located and crossed through on the appropriate form PTO–1449 accompanying the IDS.

While these three examples represent some of the more extreme IDS submissions, submissions of this nature are not infrequent nor are they isolated occurrences. Also, the PTO frequently receives IDS submissions which are not only large submissions, but they contain unrelated or non-relevant material, thereby making it difficult to identify and evaluate the more significant citations. In conjunction with this, there is a practical limit to the number of citations an examiner can effectively consider, especially where the citations have not been described and copies have not been supplied (and the more significant citations are scattered throughout the lengthy IDS submission).

Although the PTO remains sensitive to the need for applicants to comply with their duty of disclosure under 37 CFR 1.56, the PTO must deal with the growing burden on PTO resources to handle IDS submissions. The PTO obviously does not desire to receive bulky, irrelevant IDSs and ''dumps'' of citations in an application. Also, to the extent that these burdensome submissions are in fact received, it is the intent of the PTO to make the information contained in them as useful to the examiner as is effectively possible. Accordingly, the PTO is considering imposing new limitations to (a) reduce both the number as well as the size of citations that are submitted in IDSs, and (b) impose requirements as to the citations which will make them more usable by the examiner.

Proposal: The PTO is considering revising 37 CFR 1.98 to impose three new requirements/limitations as follows:

I. A Statement of Personal Review of Each Citation Submitted in the IDS Would Be Required

The IDS submitter would be required to state that he/she has personally reviewed each submitted IDS citation to determine whether or not that citation is relevant to the claimed invention(s) and is appropriate to cite to the PTO in the IDS. This statement of personal review would have to be made by:

A registered practitioner, where applicant is represented by a registered practitioner, or

At least one of the inventors where applicant is not represented by a registered practitioner.

II. A Copy of Each Cited U.S. Application Would Have To Be Supplied

The current exception in 37 CFR 1.98(a)(2)(iii) for pending U.S. applications would be eliminated. Accordingly, 37 CFR 1.98(a)(2) would require that an IDS include a legible copy of each cited pending U.S. application.

III. Each Citation Submitted in the IDS Would Have To Be Uniquely Described

Applicant would have to compare each of the citations to each of the independent claims, or specific dependent claim(s), in a meaningful way that is unique to each citation. The description of each citation would have to point out why applicant believes the citation to be unique in its teaching/showing relative to the claimed invention(s).

Exceptions to the unique description requirement for each of the citations are:

(a) An item does not have to be described if—

The item was previously cited (i) by a foreign patent office, and/or (ii) in a PCT ISA search report or IPEA office action, in a corresponding application; and

Applicant submits a copy of the search report or office action where the item was cited (issued by the foreign patent office or PCT) in the English language;

(b) In addition, up to ten citations do not have to be described.

It should be noted that no exception to the unique description requirement will be made for items which were cited in a related U.S. application, even if that related application claims 35 U.S.C. 120 priority from, or provides 35 U.S.C. 120 priority to, the application in which the IDS is submitted. In addition, an exception will not be made for items cited in litigation related to the application.

As to the exception to the unique description requirement made for ten citations of any type: Where more than one IDS submission is made in one application, all of the submitted IDS documents will be taken together as one consolidated IDS. Thus, applicant would not be able to circumvent the exception for up to ten citations by submitting multiple but separate IDS submissions. For example, if six U.S. applications and four patents are cited without descriptions in a first IDS submission, then all additional items included in any subsequent IDS submission must be described or they will not be considered by the PTO.

It should be noted that the choice of which ten citations would be submitted without the unique description is that of the IDS submitter, and there should be no negative inference as to compliance with the provisions of 37 CFR 1.56 where it is chosen to submit the more relevant citations without any description.

Copies of Citations Contain Confidential Information

Pending U.S. applications are an example of items containing confidential information which might be submitted in an IDS. In accordance with MPEP 724.02, IDS citations containing confidential information (*e.g.*, that which is considered by the party submitting same to be either trade secret material or proprietary material, and any such information which is subject to a protective order) are to be clearly labeled as such and are to be filed in a sealed, clearly labeled, envelope or container. The party submitting an IDS citation containing information which is confidential may subsequently petition to expunge that citation from the record as set forth in MPEP 724.05.

Explanation of the Unique Description Requirement for Each Citation

Each item must be individually and uniquely described relative to each of the independent claims, or, if appropriate, to one or more of the dependent claims, in a meaningful way. When determining whether reexamination may be ordered in compliance with *In re Portola Packaging, Inc.*, 110 F.3d 786, 42 USPQ2d 1295 (Fed. Cir. 1997), the PTO would consider a citation described in this manner during a prior related PTO proceeding to have had ''its relevance to patentability of any claim discussed.'' *See Request for Comments on Interim Guidelines for Reexamination of Cases in View of In re Portola Packaging, Inc., 110 F.3d 786, 42 USPQ2d 1295 (Fed. Cir. 1997);* Notice and Request for Public Comments; 63 FR 32646, 32646, 1212 *Off. Gaz. Pat. Office* 13, 13 (July 7, 1998).

Examples of ways to describe a citation (any of which would be acceptable) are as follows:

(1) For the closest or most related citation(s): Point out the features of the citation which are similar to the features of each independent claim. For example—''Of the six ingredients recited in the claim 1 breakfast beverage, Citation A teaches beverage ingredients which are similar to the claimed protein, salt and gum. Citation B teaches beverage ingredients which are similar to claimed protein, sugar and carbonating agent.''

(2) Point out how the citation contains or teaches the general inventive concept of each independent claim. For example—''Citation C teaches the coating method of claim 4 using light to cure the coating shortly after it is cooled in a wind tunnel.''

(3) Point out how the citation represents the invention upon which the independent claim is an improvement. For example—''Citation D shows the entire conveying

system of claim 7, except for the inventive friction roller placed between the two mergers.''

(4) Indicate how the citation teaches at least one feature which is similar to a claim feature that is not already taught. For example—''Citation E shows a valve that is the same type of valve set forth in dependent claim 7.''

(5) Indicate where the citation teaches, in a different way, an already-taught feature which is similar to a claim feature. For example—''Citation F teaches a force-cooling of the exiting material (similar to that of dependent claim 8) as opposed to citation X which taught the cooling as an inherent result of the material exiting into the air.''

In each situation, an additional explanation would be required of how each independent claim (or dependent claim(s), if the citation was for same) patentably defines over the citation.

It is not necessary that the description for each citation be given as related to all claims of the application. Rather, each citation would be described as to its relevance vis-a-vis each independent claim (or specific dependent claim(s) if that is why it was cited). Further, it is contemplated that the closest citations would be described in the greatest detail, and the remaining citations compared to the closest citations.

Impact of Compliance With 37 CFR 1.98, as it Would be Amended

The examiner will fully consider each citation in an IDS which is in compliance with 37 CFR 1.97 and with 1.98 as it would be amended. Conversely, the examiner would not be required to consider any citation in an IDS where the citation is not presented in compliance with 37 CFR 1.97 and 1.98 as it would be amended. It should be noted that the three requirements set forth above would apply to any citation in an IDS. Thus, for example, if a related U.S. application is cited in an IDS and a copy of the specification, including the claims, and the drawings are not provided, the examiner would not be required to consider that U.S. application. Further, the PTO will discard copies of any citations that are submitted where a unique description is required but is not supplied, or where the statement of personal review is not made.

Prior to discarding the citations, the PTO would notify applicant that the citations have been refused further consideration. In the notice to applicant, the PTO would point out why consideration has been refused and how the submission of the citations could be corrected. As is currently the practice, the notice may, at the examiner's option, be set forth in the next Office action on the merits issued by the examiner or be provided in a separate notice giving the applicant an opportunity to correct the IDS. *See* MPEP 609. Thus, the examiner could delay action on the merits until the corrected IDS is received or the time for correction has expired. If the notice is included in the next Office action on the merits, then the application status would advance with the issuance of that action on the merits. Thus, the timeliness of the citations (and refusal of consideration for lack of timeliness) would quite possibly become dependent on a more limiting subsection of 37 CFR 1.97. For example, if the action on the merits is a first Office action, 37 CFR 1.97(b) will apply to the corrected IDS submission, while 37 CFR 1.97(a) would have applied to the original IDS submission (had it been in order). If appropriate correction is made and the submission is considered timely under 37 CFR 1.97, the citations will then be considered. If not, the citations would be removed from the record and discarded. In such a situation, the list of citations (e.g., PTO–1449) which was submitted with the IDS (the citations which were not considered being lined through by the examiner) would be retained in the application file to serve as a permanent record of what item(s) was/were cited.

Rationale as to the Contemplated Revision:

I. Statement of personal review of each citation submitted in the IDS

With the requirement for personal review of each citation, applicants must review an item so that applicant can then make an informed decision that the item is relevant and appropriate to cite to the PTO. This would be effected by requiring the attorney, or where there is no attorney, at least one of the inventors, to do the personal review. In addition, the examiner should only be required to consider a citation where the person submitting the citation to the PTO has first reviewed that citation and determined that the citation is relevant to the claimed invention(s). If the submitter reviews the citation in its entirety and determines that the citation is relevant to the claimed invention(s), then the examiner should consider that citation in its entirety. If only a portion of the citation is pertinent and thus only that portion of the citation has been reviewed by the IDS submitter, then that portion alone should be cited to the PTO, and that portion alone will be considered by the examiner.

The personal review of each citation is a subjective and individual determination of which citations the submitter wishes to make of record, and the reason for doing so is not subject to review. It is envisioned, however, that the very act of making this determination should function as a screening process to effectively filter out marginally related and unrelated citations. As to the requirement to describe each citation relative to the claims, the PTO believes that imposing this requirement is reasonable and fair, and is also highly desirable, because this requirement (coupled with a requirement for personal review of each citation) would enable the PTO to achieve the relief it desires by:

(1) Providing meaningful, useful and relevant information to the examiner, which would greatly facilitate the examiner's evaluation of each IDS citation and the examiner's making a patentability determination on each of the independent and dependent claims. Thus, it would improve the quality of examination, while improving the efficiency of the examination process;

(2) Providing an incentive to cite only the most relevant citations (to avoid having to describe marginally related and unrelated citations). Thus, the citation of large numbers of marginally related and unrelated items would be diminished or eliminated; and

(3) Reducing the overall number of IDS citations that are submitted by eliminating the marginally related and the unrelated citations.

II. A copy of each U.S. application would have to be supplied

Applicants often do not submit copies of cited pending U.S. applications listed in IDSs. Applicant may list multiple application citations in an IDS (sometimes as many as ten or twenty are listed), and if no copies are supplied, the examiner must make a time-consuming effort to obtain and copy all of the cited pending applications so that they can be considered. This will interrupt the examination of the application whenever the file of a cited pending application is not available for inspection and copying. In addition, obtaining and removing the cited application for copying will also interrupt the examination of the cited application.

III. IDS citations would have to be uniquely described

The present proposal would permit filers of small IDSs (*i.e.*, ten or less citations) to continue filing IDSs without any description, as they are currently filed under 37 CFR 1.98. While it is believed to be unreasonably burdensome for the PTO to consider unduly large numbers of IDS citations which are not described, the PTO is amenable to dealing with ten (or less)

IDS citations which are not described, even though the examiner has no guidance from applicant as to what is actually shown or disclosed in the ten citations.

PTO Goals to be Furthered: The proposal being considered is important to the PTO Goals of reducing PTO processing time (PTO Goal 1) and enhancing the quality of examination (PTO Goal 4). Requiring copies of all citations will reduce delays and help the PTO meet its twelve-month pendency goal. The presence of the copies of cited documents will permit those citations to be considered by the examiner at the earliest possible point after their submission and thereby enhance the quality of the examination. The descriptions of citations will provide for better quality because the examiner will have a better understanding of why applicant considers the citation to be relevant (*i.e.*, the citation will be made more useful to the examiner). Imposing a requirement of a statement of personal review of the citations will force applicants to evaluate all possible items being considered for citation to the PTO such that only the most relevant items will be cited to the PTO, and correspondingly, it should cut down on or eliminate the large dumps of citations that the PTO is now receiving. This will save the examiner time which is presently expended to read and evaluate cumulative and minimally relevant citations. This time can be better spent evaluating the more relevant citations, thus resulting in a higher quality of examination.

The PTO has determined that it must do something to reduce the size of the voluminous IDS submissions. Suggestions of other options are welcomed. If another option is suggested, it should explain why and how that option would be better.

The PTO expects that many will oppose the above-described proposal for a variety of reasons. These reasons may include, for example, concerns as to the burden being imposed on applicant to prepare the IDS, the conflicting time requirements that will create problems (the need to submit the IDS by a certain date conflicts with the extra time needed to prepare the descriptions which would be required before the IDS could be submitted), and concerns about not properly analyzing or describing a citation (or all the features, embodiments or parts of the entire disclosure of the citation) or even overlooking a relevant citation. The comments, however, should be constructive and address how (and why) some other option(s) would be better, or as effective, while being more acceptable to the public.

10. Refusing information disclosure statement consideration under certain circumstances (37 CFR 1.98)

Summary: The PTO is considering revising 37 CFR 1.98 to reserve the PTO's authority to not consider submissions of an Information Disclosure Statement (IDS) in unduly burdensome circumstances, even where all the stated requirements of 37 CFR 1.98 are met.

Specifics of Change Being Considered: An unduly burdensome IDS submission may be denied consideration even though it complies with 37 CFR 1.98. For example, extremely large documents and compendiums may not be accepted if submitted. Applicant will, however, be notified and given an opportunity to modify the submission to eliminate the burdensome aspect of the IDS.

Background: 37 CFR 1.97 states that information will be considered by the PTO if it satisfies the provisions of 37 CFR 1.97 and 1.98. In the above proposal to revise 37 CFR 1.98 (see above), the PTO is contemplating revision of 37 CFR 1.98 to deal with unduly burdensome IDS submissions by imposing new requirements/limitations.

It should be noted that even if the rules of practice are revised as per the above proposal for 37 CFR 1.98, applicants may still cite compendiums, such as compilations of individual articles, entire magazines, journals, encyclopedia or technical dictionary volumes, textbooks, and volumes of technical abstracts. In addition, if a compendium is submitted as one of the ''excepted ten citations,'' no description would be required as to the entire compendium. Even though such a submission might comply with the letter of 37 CFR 1.98, consideration of the submission would be unduly burdensome to the examiner. It clearly would not further the PTO mission and goals to have the examiner consider the entire text of the compendium. Rather, applicant should be required to submit and describe the specific section(s) or portion(s) of the compendium which applicant deems to provide the basis for making the citation, and such a specific citation would be acceptable.

Therefore, the PTO should have a mechanism to deal with unusual IDS circumstances where consideration of all or some part of an IDS would be unduly burdensome to the examiner.

Proposal: The PTO is contemplating revision of 37 CFR 1.98 to reserve the authority of the examiner to refuse consideration of an IDS submission, or any part of it, where such consideration would be unduly burdensome to the examiner (such that the PTO mission and goals would not be furthered by requiring the examiner to provide consideration).

When an unduly burdensome IDS is submitted, the PTO would notify applicant that the IDS, or a particular portion of it, has been refused further consideration. In the notice to applicant, the PTO would point out why it would be unduly burdensome for the examiner to consider the IDS (or portion thereof) and how the IDS could be modified to eliminate its burdensome aspect. As is currently the practice, the notice may, at the examiner's option, be set forth in the next Office action on the merits issued by the examiner or be provided in a separate notice giving the applicant an opportunity to correct the IDS. *See* MPEP 609. Thus, the examiner could delay action on the merits until the corrected IDS is received or the time for correction has expired. If the notice is included in the next Office action on the merits, then the application status would advance with the issuance of that action on the merits. Thus, the timeliness of the citations (and refusal of consideration for lack of timeliness) would quite possibly become dependent on a more limiting subsection of 37 CFR 1.97. For example, if the action on the merits is a first Office action, 37 CFR 1.97(b) will apply to the corrected IDS submission, while 37 CFR 1.97(a) would have applied to the original IDS submission (had it been in order). If appropriate correction is made and the submission is considered timely under 37 CFR 1.97, the re-submitted citations will then be considered. If not, the IDS documents objected to as unduly burdensome would be removed from the record and discarded. In such a situation, the list of citations (*e.g.*, PTO–1449) which was submitted with the IDS (the citations which were not considered being lined through by the examiner) would be retained in the application file to serve as a permanent record of what item(s) was/were cited.

Examples: Presented are some examples of IDS submissions (in addition to the compendium submission which is discussed above) that comply with the letter of 37 CFR 1.98, yet the PTO would, most likely, regard as unduly burdensome to the examiner:

(1) An IDS presents ten or less citations; however, one or more of the presented citations is a patent containing more than one hundred pages. There is no explanation as to the nature of the relevance of the patent(s) and no specific columns with lines are identified.

(2) An IDS presents ten related U.S. applications with copies of voluminous

records (including litigation documents) and there is no explanation as to the nature of the relevance nor is there an identification of specific parts of the application records.

(3) An IDS presents five hundred citations, each uniquely described relative to the carving-member feature of claim 5 in a slightly different manner.

(4) Applicant submits five hundred citations to a foreign patent office in a foreign application. Applicant then submits the five hundred citations in the corresponding U.S. application as citations previously cited by a foreign patent office (see the above discussion of 37 CFR 1.98) together with a copy of the foreign patent office search report that does not identify relevancy as to the citations, and without any citation description in the IDS.

The above are non-limiting examples of burdensome IDS submissions where consideration would be appropriately denied by the examiner.

PTO Goals to be Furthered: This revision being considered is important to PTO Goals of reducing PTO processing time (PTO Goal 1) and enhancing the quality of the examination (PTO Goal 4). At present, non-conforming and unduly burdensome IDSs are interfering with the PTO effectively carrying out its function of fully considering IDS documents. This second proposal for revision of 37 CFR 1.98 (coupled with the above-presented first proposal) would enable the PTO to reject abusive IDSs and thus permit examination of others in greater detail.

11. Providing no cause suspension of action (37 CFR 1.103)

Summary: The PTO is considering adding an additional suspension of action practice, under which an applicant may request deferred examination of an application without a showing of ''good and sufficient cause,'' and for an extended period of time. The applicant would be required to waive the confidential status of the application under 35 U.S.C. 122, and agree to publication of the application.

Specifics of Change Being Considered: Prior to the first Office action of an application, the applicant may request deferred examination provided the application is entitled to a filing date, the filing fee has been paid, any needed English-language translation of the application has been filed, and all ''outstanding requirements'' have been satisfied, except that the oath or declaration need not be submitted. If an oath or declaration has not been submitted, the names of all of the persons believed to be the inventors must, in good faith, have been identified. Upon request by the applicant, the PTO may defer examination for a period not to exceed three years. Applicant would be required to waive his or her right to have the application kept in confidence under 35 U.S.C. 122, and pay a fee for publication of the application.

Discussion: Under 37 CFR 1.103(a), an applicant may request suspension of action of an application ''for good and sufficient cause and for a reasonable time specified.'' There may be times, however, when suspension of action is desired by the applicant even though ''good and sufficient cause'' is not present, and also for a period greater than the six months permitted under MPEP 709. For example, an applicant may desire deferred examination to obtain time to align funding, or to resolve ownership or potential licensing issues. To provide applicants some flexibility in their business affairs, and a degree of relief from any business constraints due to the ongoing pendency of an application, the PTO is considering permitting applicant to request deferred examination solely at the discretion of the applicant, and for a period of extended length. A showing of ''good and sufficient cause'' would not be required.

This program is intended to provide better service to the public by making it possible to defer action on an application merely by asking, and paying a fee for it to be deferred. The PTO would benefit as well as the PTO would be better able to redirect its limited examining and processing resources to other applications in need of more immediate processing. The suspension may also allow search and/or examination results on counterpart cases in other countries to be received and considered.

In contrast to suspension of action under 37 CFR 1.103(a), which may not be granted for a period exceeding six months without approval of the group director (*see* MPEP 709), deferred examination under this option would continue until applicant requests resumption of prosecution, or the maximum time permitted for such deferral has expired.

A request for deferred examination under this option would only be granted if, in addition to satisfying the formal requirements and paying the required fee (set to recover PTO costs), applicant waives his or her right to have the application kept in confidence under 35 U.S.C. 122 and agrees to publication of the application.

The PTO is considering imposing the following requirements for this deferred examination program

(1) The application must be entitled to a filing date.

(2) The basic application filing fee must have been paid.

(3) Any needed English-language translation of the application must have been filed.

(4) All ''outstanding requirements'' (*e.g.*, requirements to a Notice to File Missing Parts) must have been satisfied, except that the oath or declaration need not be submitted. See the related discussion on 37 CFR 1.53 where it is indicated that the PTO is considering changing the rules of practice to permit submission of the oath or declaration to be deferred until payment of the issue fee.

(5) If an oath or declaration has not been submitted, the names of all of the persons believed to be the inventors must, in good faith, have been identified.

(6) A first Office action on the merits must not have been mailed in the application, or any prior application assigned the same application number if the application is continued prosecution application under 37 CFR 1.53(d).

(7) Applicant must submit ''A Request for Deferred Examination'' under this program which includes:

(a) A waiver of his or her right to have the application kept in confidence under 35 U.S.C. 122, and payment of the fee for publication of the application;

(b) Payment of the required fee for deferred examination; and,

(c) In a design application, a utility application filed before June 8, 1995, or a plant application filed before June 8, 1995, a terminal disclaimer dedicating to the public a terminal part of the term of any patent granted thereon equivalent to the period of suspension of the application (this terminal disclaimer must also apply to any patent granted on any continuing design application that contains a specific reference under 35 U.S.C. 120, 121, or 365(c) to the suspended application).

The PTO considered not making this suspension of action provision inapplicable to any application not subject to the twenty-year patent term provisions of 35 U.S.C. 154(a)(2). Rather than excluding such applications from this program, the PTO is considering simply requiring that a terminal disclaimer for the period of suspension be filed as a condition of granting a suspension of action under this program in an application not subject to the twenty-year patent term provisions of 35 U.S.C. 154(a)(2).

The PTO is further considering the establishment of the following program guidelines

1. *Maximum period of suspension.* Because deferral of action would delay development of final claim form, and in view of the public's right to early knowledge of patent rights, a maximum time for suspension would be set. The maximum time period of suspension would be measured from the filing date of the application, not the date a request for suspension is granted. The PTO favors a maximum period of three years from the filing date or earliest filing date for which a benefit is claimed under 35 U.S.C. 119, 120, 121, or 365. A longer period would seem excessive, and is seen as permitting an applicant to unduly delay issuance of the patent.

2. *Time of publication.* The PTO favors publication as soon as practicable after the PTO grants the request. This would make the specification a publication at the earliest possible time.

3. *Form of publication.* The PTO intends to publish a notice of the application, and of the suspension of action in the *Official Gazette.* The notice would include bibliographic information, an abstract of the invention, a drawing figure and at least one representative claim. A copy of the application, as filed, will be produced and made available to the public in a manner similar to the present Statutory Invention Registration (SIR) publications. This would include placement in the PTO's Automated Patent System (APS) and classified search files. Copies would be fully available to the public.

4. *Effect of Publication.* The application would be open to the public on the date of publication. An application, indexed or classified according to a classification system, and open to public inspection, with a publication document including an abstract and claim arranged with other such documents according to the classification system is available as a prior art publication under 35 U.S.C. 102/103 (*i.e.*, is ''published''). *See In re Wyer*, 655 F.2d 221, 210 USPQ 790 (CCPA 1981); *see also In re Hall*, 781 F.2d 897, 900, 228 USPQ 453, 456 (Fed. Cir. 1986) (a dissertation in a library open to public inspection by the general public, and indexed and cataloged with the other documents in the library, is available as a publication under 35 U.S.C. 102/103). The published application would not be prior art under 35 U.S.C. 102(e) effective from the filing date of the so-published application. Obviously, if the application is subsequently issued as a patent, the patent would be available as prior art under 35 U.S.C. 102(e).

Comments on the Following Questions Are Solicited

1. Should a maximum period for suspension be set for a period of other than three years?

2. Should the application be required to include an executed oath or declaration before a request for suspension of action may be granted? It is noted that the Office is also considering changing 37 CFR 1.53 to permit submission of the oath or declaration to be deferred.

3. Would publication of the application, coupled with the knowledge that a patent may be issued in the future, have a chilling effect on others active in the same field so as to freeze their activities in this area?

12. Requiring a handling fee for preliminary amendments and supplemental replies (37 CFR 1.111)

Summary: The PTO is considering imposing a handling fee for certain preliminary amendments and for all supplemental replies.

Specifics of Change Being Considered: The PTO is considering replacing the current practice of allowing unlimited preliminary amendments and multiple supplemental replies to be filed without requiring any fee with a new practice where a handling fee would be charged for each preliminary amendment filed later than a specified time period after the filing date of the application, and for each supplemental reply that is filed after the initial reply to an Office action has been filed.

Background: Preliminary amendments and supplemental replies cause the PTO to perform administrative processing, the cost of which is not covered by the filing fee. Some preliminary amendments and supplemental replies cause the PTO to perform examiner rework resulting in increased pendency time for the application when such submissions are timely filed but do not reach the examiner prior to the examiner acting on the application. For example, if a preliminary amendment or supplemental reply crosses in the mail with a PTO Office action, the PTO must perform rework including technical support processing of the submission, and further examination of the application by the examiner, and a new or supplemental Office action will most likely have to be prepared and mailed. If the preliminary amendment or supplemental reply is received by the examiner after the examiner has begun to examine the application, or even after the examiner's action has been prepared, but before the Office action was mailed, the examiner would still have to reconsider, and then revise or even redo the action, whether it was ready to be mailed or not, in light of the preliminary amendment or supplemental reply. This may also require an additional search or that the previous search be redone. *See* MPEP 714.05. Accordingly, the PTO is considering revising its patent rules of practice to impose a handling fee for the filing of certain preliminary amendments and for supplemental replies to recover the costs associated with these activities.

Such a change to the patent rules of practice would support the PTO's business goals of reducing the PTO processing time to twelve months or less for all inventions, and assessing fees commensurate with resource utilization and customer efficiency. Processing time in the PTO would be reduced in that applicants would have an incentive to promptly file preliminary amendments and to timely file complete replies to Office actions. The assessment of a handling fee for each preliminary amendment filed outside of a specified time period, and each supplemental reply, will offset the costs accrued by the PTO for extra technical support and examination processing, including the time spent by the examiner to reconsider, and (re)process, such submissions. The PTO anticipates that charging a handling fee for such preliminary amendments and supplemental replies will discourage such filings, thus resulting in a reduction in the amount of time it normally takes to complete the examination of an application, which now includes delays associated with such preliminary amendments and supplemental replies.

The PTO is therefore considering charging a handling fee for each preliminary amendment filed later than a specified time period after the filing date of the application and each supplemental reply rather than banning them in their entirety.

Preliminary Amendments: Current practice permits an applicant to file preliminary amendments any time prior to the mailing of a first Office action. This practice often results in a preliminary amendment crossing in the mail with an Office action. Current practice has also resulted in complaints (petitions) by applicants when the PTO has refused to issue a new Office action when a preliminary amendment is not filed in the PTO before the mailing date of an Office action, but was mailed to the PTO before the applicant received

the Office action, since such a preliminary amendment did not cross in the mail within the meaning of MPEP 714.05. Another area of concern with preliminary amendments is that some preliminary amendments are received at the PTO before the mail date of the first Office action, but not far enough in advance of such mail date that the amendment can be associated with the application file before the examiner has completed the first Office action (*i.e.*, filed a few weeks before the mail date of the Office action). In either scenario, a hardship is caused on both the Office and applicant due to the preliminary amendments not being considered. Preliminary amendments also cause the Office to incur extra expenses in technical support processing of the amendments, and in most instances, the examiner having to modify and mail a new Office action. The applicant suffers by having to inquire about the preliminary amendment not acted upon by the examiner and from having to request a new examiner's action when a timely filed preliminary amendment did not reach the file before the examiner's action was mailed.

An application should be ready for examination when filed, and an applicant may expect the PTO to take up an application for examination shortly thereafter. When the PTO reduces its cycle time to twelve months, applications will receive a first Office action in less than six months after filing. Therefore an effort should be made to have all preliminary amendments before the examiner at the time the application is filed. In the case of a continuing prosecution application (CPA), since the application could be ready for the examiner to review in as little as one day from the date the CPA is filed, the timely submission of a preliminary amendment is of even greater importance.

Accordingly, the PTO is considering charging a handling fee for each preliminary amendment filed: (1) later than one month from the expiration of the applicable twenty-or thirty-month period in 35 U.S.C. 371(b) in a PCT application ; (2) later than one month from the filing date of the application in an application filed under 37 CFR 1.53(b); and (3) later than the filing date of the application in a continued prosecution application (CPA) filed under 37 CFR 1.53(d). These time periods would not be extendable. This handling fee will offset the handling costs incurred by the PTO, and act as an incentive for applicants to file an application in condition for examination. If the handling fee is not paid, the preliminary amendment would merely be made of record in the file but would not be entered.

Exceptions: Not every preliminary amendment filed outside this time period would require a handling fee. For example, no handling fee would be required for any paper submitted in reply to a requirement by the PTO, either written or oral, such as a request to submit a signed copy of a paper previously submitted, but which was not signed. Another example would be when a preliminary amendment is required (*e.g.*, filing of an English translation from a foreign filed application) as a result of a ''Notice To File Missing Parts of Application'' (37 CFR 1.53(f)). Any amendments filed in reply to a ''Notice To File Correct Application Papers'' would also not require a handling fee. It should be noted, however, that if any other type of amendment were to be submitted with the reply to the PTO requirement, which was not specifically required, then a handling fee would be required for that reply. No handling fee would be required for any preliminary amendment which is filed solely for the purpose of reducing the number of claims in an application to be examined, but amendments deleting some claims and adding new, or substitute, claims would have to pay a handling fee even if the net result of the amendment is that fewer claims would be present.

Supplemental Replies: Under current practice, an applicant must file a timely reply to avoid abandonment under 35 U.S.C. 133 and 37 CFR 1.135, but may then file one or more supplemental replies (which may include additional arguments, amendments, evidence, or other material) up until the mailing of the next Office action. This practice encourages the filing of a reply that, while satisfying the requirements of 37 CFR 1.111, may not include all of the amendments or evidence that the applicant seeks to be considered, since the original reply may be supplemented. 37 CFR 1.111(b), however, provides that a proper reply by an applicant to an Office action ''must reply to every ground of objection and rejection in the prior Office action.'' Thus, no more than one reply to an Office action should be necessary in most situations.

Accordingly, the PTO is considering a change to the patent rules of practice to require that all supplemental replies to a non-final Office action must be filed with a handling fee to be entitled to consideration. Under this practice, an applicant would still be permitted to file supplemental replies to an Office action but all additional costs associated with the processing of the supplemental reply would be offset by the handling fee that would have to be paid. If the handling fee is not paid, the supplemental reply would merely be made of record in the file but would not be entered.

Exceptions: A handling fee would not be required for supplemental replies filed after a final Office action as such replies are not automatically entitled to entry. A handling fee would also not be required when the supplemental reply is filed after reaching an agreement for such with the examiner.

An example in which a handling fee would not be required would be when a supplemental reply is filed in response to an agreement reached with an examiner. In this situation the examiner's interview summary record should indicate that the filing of a supplemental reply was approved, and the supplemental reply should clearly indicate that it was filed after receiving approval from the examiner in order to not be subject to payment of the handling fee. It should be noted that the examiner will not be under any obligation to permit the submission of a supplemental reply without a handling fee.

Handling Fee: As earlier indicated, the PTO is taking the approach of charging a handling fee for certain preliminary amendments filed after the application was filed and for each supplemental reply rather than considering banning them in their entirety.

The PTO incurs costs associated with processing preliminary amendments and supplemental replies. Depending on when such papers are filed the costs include not only technical support processing time, but also additional time on the part of the examiner. In order to offset the costs accrued by the PTO in processing certain preliminary amendments filed after the application was filed, or supplemental replies, the handling fee will be set at the aggregate cost to the PTO for both administrative and examiner processing time required for the average preliminary amendment or supplemental reply. It is important to note that the paying of the handling fee does not guarantee that the submission forwarded therewith will be considered by the examiner, as all submissions must still meet the timeliness limitations which currently exist.

13. Changing amendment practice to replacement by paragraphs/claims (37 CFR 1.121)

Summary: The PTO is considering changing the manner of making amendments to require that all amendments to the specification including the claims be presented in the

form of replacement paragraphs and claims, respectively.

Specifics of Change Being Considered: The PTO is considering replacing the current system for making amendments in non-reissue applications with amendment to the specification by replacement paragraphs and amendment to a claim by a replacement claim. This would eliminate the PTO's need to enter changes by handwriting in red ink. Deletions of a paragraph or a claim would be by instruction to cancel. Replacement paragraphs and claims would be a clean copy that is printer-ready, which can be optical character recognition (OCR) scanned during the publishing process. A marked-up copy of the changed paragraphs or claims, using the applicant's choice of mark-up system, would also be supplied as an aid to the examiner. All paragraphs in the specification, including charts, tables, equations, *etc.*, would have to be numbered. An option to provide substitute specifications would be retained for submission of extensive changes.

Background: 37 CFR 1.121(a) permits an applicant to amend the specification, and to a limited degree, the claims, by instructing the PTO to make insertions or deletions at precise points in the specification or claims. Alternatively, applicant may choose to cancel a claim or rewrite a claim in amended form with underlining and bracketing, designating additions or deletions, respectively. Under these rules, amendments are often many pages long, involve extensive and numerous changes to the specification and/or claims, have complex entry instructions, and sometimes include typographical errors. Entry of these amendments, especially when words and phrases must be inserted in hand-written red ink, and many such changes are being made, is very time-consuming and difficult to perform, frequently leading to entry errors (including spelling, wording, and entry locations). In addition, no clean copy of the specification or claims is available for scanning as part of the patent publication process. Thus, the current amendment process leads to printed patents being issued which contain many errors, which is an unsatisfactory situation for both the PTO and applicants/patentees for a number of reasons. First, the PTO has to expend valuable resources to make needed corrections via Certificates of Correction. Second, applicants/patentees want their patents to be correctly printed, without errors, and they are very disappointed when they receive patents that do contain errors. Further, while Certificates of Correction are issued at no cost to applicants/patentees if the errors are the fault of the PTO, applicants/patentees must expend a substantial amount of time and effort carefully reviewing their printed patents, then preparing and submitting requests to the PTO for any needed corrections. It can be readily seen, therefore, that the PTO and its customers both feel that there is a real need for changes to be made to the current system for making amendments so as to reduce the number and causes of Certificates of Correction.

The PTO has been considering changes to the procedure for making amendments to an application for several years. *See Notice of Public Hearing and Request for Comments on 18-Month Publication of Patent Applications;* Advance Proposed Rule Notice, 59 FR 63966, 63970 (December 12, 1994); 1170 *Off. Gaz. Pat. Office* 390, 393–94 (January 3, 1995). The PTO made a specific proposal for changing the procedure for making amendments to an application in late 1996. *See 1996 Changes to Patent Practice and Procedure;* Proposed Rule Notice, 61 FR 49819, 49830–31, 49852–54 (September 23, 1996); 1191 *Off. Gaz. Pat. Office* 105, 113–14, 133–34 (October 22, 1996). This proposal, however, was withdrawn for further study in view of the public comments received. *See Changes to Patent Practice and Procedure;* Final Rule Notice, 62 FR 53131, 53153 (October 10, 1997); 1203 *Off. Gaz. Pat. Office* 63, 82 (October 21, 1997).

Comments received to date in response to both notices have been taken into account in arriving at the currently proposed procedure for making amendments.

Discussion: The preferred option under consideration is a change to 37 CFR 1.121 eliminating the current system for making amendments in non-reissue applications and requiring applicants to present amendments in the form of replacement paragraphs for changes to the specification and replacement claims for any changed claims. The replacement paragraphs/claims would be entered by the PTO as substitute inserts for the paragraphs in the specification or for the affected claims. Should an applicant merely wish to cancel a claim, a specific instruction to cancel or delete the claim would be sufficient. Similarly, a paragraph of the specification could be canceled by a specific instruction to cancel or delete. Except as currently provided, no claim would be canceled by the PTO without specific and direct instructions from the applicant to do so.

In order for the replacement paragraph system to work, all the paragraphs, including headings, charts, graphs, tables, and equations in the specification would have to be numbered. Thus, it is further contemplated that, in conjunction with the change to 37 CFR 1.121, a change to 37 CFR 1.52 may be necessary in order to provide a requirement for the numbering of paragraphs of the specification. Once all the paragraphs are numbered, amendments would be made merely by submitting a replacement paragraph (with the same number) with the desired changes made in the replacement paragraph. If an amendment results in the addition or deletion of one or more paragraphs, an arrangement for identifying any such added or deleted paragraphs shall be established so that the numbering of other paragraphs shall not have to be changed.

It should be noted that the PTO will retain the option of being able to require the submission of a substitute specification, as well as permitting the submission of a substitute specification. 37 CFR 1.125.

In addition to submitting a replacement paragraph/claim to make an amendment, applicant would also be required to submit a marked-up copy of the paragraph/claim to show the differences between the original and the replacement. The marked-up copy would be generated by any method applicant chooses, such as underlining and bracketing, redlining, or by whatever system is available with the compare function of applicant's software. However, it must be clear enough to be readily understood by the examiner.

The replacement paragraph/claim, which would be a clean version without any underlining or bracketing, would be able to be completely scanned as part of the printing process in the Office of Patent Publications which will result in a higher quality of printed patents. Complete scanning of amended portions of the specification and amended claims is not possible today because insertions of words, phrases or sentences made by handwriting in red ink and deletions made by words which have been lined through with red ink are ignored by the scanner. Further, while text marked with underlining and bracketing can be scanned, extra processing is required to delete the brackets and the text within the brackets and to correct misreading of letters caused by the underlining. Thus, using clean replacement paragraphs and claims would permit complete scanning which is a faster and more accurate method of capturing the application for printing while eliminating an extensive amount of key-entry of subject matter.

This should result in patents with fewer errors in need of correction by certificate of correction, which clearly would be a benefit to the patentees while also conserving PTO resources.

When an amendment in the future is presented in an Electronic File Wrapper (EFW) environment, applicants would only have to submit a single clean copy of the replacement paragraph/claim, as the PTO's system (software) would be designed to allow the examiner to see the differences between the original and the amended versions.

Adoption of the preferred option would make the amendment process simpler, reduce processing time and operating costs, and reduce the opportunity for error associated with amendment entry. In addition, it would be consistent with the PTO objective of standardizing processing of amendments in both paper and electronic format in anticipation of a total EFW environment, which is currently under development. Further, the changes being considered are consistent with the PTO's efforts to harmonize with PCT practice and any changes being contemplated for that system.

The change in amendment procedure being considered would have a significant impact on several of the PTO's business goals. Specifically, amendment entry practice would be much easier and would increase efficiency in the technical support area with better resource utilization (Business Goal 5) and a reduction in cycle time (Business Goal 1). In addition, the changes proposed herein are consistent with the PTO's concurrent development of receiving applications and publishing patents electronically (Business Goal 3), in that they provide for enhanced and more efficient paper processing, in addition to establishing the groundwork for transition into a full EFW environment. Further, the simplified amendment entry practice would exceed our customers' quality expectations (Business Goal 4) by saving applicants a substantial amount of time and resources as: (1) it will be easier and take less time for applicants to prepare amendments to be submitted to the PTO; (2) it will be easier and take less time for applicants to enter amendments into and update their own application files; and (3) the printed patents should have less typographical errors, reducing the need for requesting Certificates of Correction.

A secondary option under consideration is that of replacement sections of the specification and claims. A standardized form of section and heading identification would also be required to achieve uniformity in practice. Parts of the specification, as well as individual claims, would be defined as ''sections'' and would be replaced in a manner similar to that described above for replacement paragraphs/claims. While the procedure seems viable for electronic processing, it does not lend itself to paper format, primarily due to the larger number of replacement sheets which might be required.

One other option that was considered involved replacement pages of the specification and/or claims. Although this procedure currently enjoys limited success in PCT amendment practice in paper format, its future in electronic filing raises some apprehension. In an electronic environment, page numbering is dependent on word processing style and formatting and can be inconsistent; thus, sequential page numbering as in paper format would not be possible. For this reason, this option is not being further pursued.

It is noted that 37 CFR 1.121 is primarily directed to setting forth the procedural requirements for making amendments. Thus, consideration is being given to shifting several of the more substantive sections of this rule to more appropriate sections of the rules. For example, the provisions of 37 CFR 1.121(b)(2)(iii) and (b)(5), which are specific to reissue requirements, may be relocated to 37 CFR 1.173, and the provisions of 37 CFR 1.121(a)(6) relating to new matter may be relocated to 37 CFR 1.111.

14. Providing for presumptive elections (37 CFR 1.141)

Summary: The PTO is considering a change to restriction practice to eliminate the need for a written restriction requirement and express election in most restriction situations.

Specifics of Change Being Considered: The PTO is considering a change to restriction practice to provide: (1) that if more than one independent and distinct invention is claimed in an application, the applicant is considered to have constructively elected the invention first presented in the claims; (2) for rejoinder of certain process claims in an application containing allowed product claims; and (3) for rejoinder of certain combination claims in an application containing allowed subcombination claims. This will, in most restriction situations, eliminate the need for a written restriction requirement separate from an Office action on the merits and an express election by the applicant, which will reduce pendency and PTO cycle time. This change would apply to nonreissue applications filed under 35 U.S.C. 111(a), and would not apply to reissue applications or applications filed under the PCT.

Discussion: The PTO is considering amending the rules of practice (37 CFR 1.141 *et seq.*) to avoid the delays inherent under current restriction practice. Specifically, when claims to more than one independent and distinct related invention are presented in an application, current practice is to require restriction and an express election by the applicant prior to an action on the merits. *See* 37 CFR 1.142(a). The PTO is considering amending restriction practice to provide, by rule, that if claims to more than one independent and distinct related invention are presented in an application, the applicant is considered to have constructively elected the invention first presented in the claims. That is, the PTO is considering adopting a PCT-type practice in regard to how the PTO determines the invention to be examined when multiple inventions are presented in an application. *See* PCT Article 17(3)(a) (when the unity of invention requirement is not met, the search report shall be established on the parts of the application that relate to the invention first mentioned in the claims unless additional fees are timely paid). This change should eliminate the need for a requirement for an express election prior to action on the merits in many restriction situations, and would support the PTO's business goal to reduce PTO processing time to twelve months or less for all inventions.

The PCT practice of permitting an applicant to obtain examination of additional inventions in a single application upon payment of additional fees is not currently under consideration. Except for the specific authorization in § 532(a)(2)(B) of Pub. L. 103–465 for the practice set forth in 37 CFR 1.129(b), there is currently no statutory authority for the PTO to simply charge the patent fees set forth in 35 U.S.C. 41(a) for the examination of additional inventions in a single application. 35 U.S.C. 41(d) would authorize the PTO to examine additional inventions in an application for a fee that recovers the estimated average cost to the PTO of such further examination; however, as 35 U.S.C. 41(h) is applicable only to fees under 35 U.S.C. 41(a) and (b), the PTO would not be authorized to provide a small entity reduction in regard to such fee. Thus, the only mechanism by which the PTO may provide examination of additional inventions for a fee to which the small entity reduction is applicable is via the divisional application practice.

The PTO is also considering providing, by rule, that the PTO will examine the claims to the product if either: (1) the first presented claims are claims to a product; or (2) the first presented claims are claims to a process of either using or making a product and the application contains claims to the product. If the claims to the product are determined to be allowable over the prior art, the PTO will also examine (permit joinder of) the corresponding process of making claims or the corresponding process of using claims (if the application contains claims to the process of using or making the product) that depend from or otherwise include all the limitations of the product claims that are allowable over the prior art. *See Guidance on Treatment of Product and Process Claims in light of In re Ochiai, In re Brouwer, and 35 U.S.C. 103(b),* 1184 *Off. Gaz. Pat.* Office 86 (March 26, 1996).

The process of making claims or the process of using claims that do not depend from or otherwise include all the limitations of the product claims that are allowable over the prior art will, by rule, be treated as constructively non-elected due to the presentation of product claims. If the claims to such product are not determined to be allowable over the prior art, then, by rule, the presentation of product claims will be treated as a constructive election of the product for examination. Thus, a process claim will, by rule, be treated as constructively non-elected due to the presentation of a product claim in either of the following two situations: (1) if no constructively elected product claim is allowable over the prior art; or (2) if the process claim does not depend from or otherwise include all the limitations of a constructively elected product claim that is allowable over the prior art.

The PTO is also specifically considering providing, by rule, that the PTO will examine the claims to the subcombination if either: (1) the first presented claims are claims to a subcombination; or (2) the first presented claims are claims to a combination and the application contains claims to the subcombination. If the claims to the subcombination are determined to be allowable over the prior art, the PTO will also examine (permit joinder of) the corresponding combination claims (if the application contains claims to the combination) that depend from or otherwise include all the limitations of the subcombination claims that are allowable over the prior art.

Restriction is currently not permitted in the situation in which the combination includes all the limitations of the subcombination (*i.e.,* the subcombination is essential to the patentability of the combination), unless there is at least one combination claim that does not include all the limitations of the subcombination (*i.e.,* a claim that evidences that the applicant does not consider the subcombination is essential to the patentability of the combination or an ''evidence claim''). *See* MPEP 806.05(c). Restriction may be permitted in the situation in which the combination does not include all the limitations of the subcombination (*i.e.,* the subcombination is not essential to the patentability of the combination). *See id.*

The combination claims that do not depend from or otherwise include all the limitations of the subcombination claims that are allowable over the prior art will, by rule, be treated as constructively non-elected due to the presentation of subcombination claims. If the claims to the subcombination are not determined to be allowable over the prior art, then, by rule, the presentation of subcombination claims will be treated as a constructive election of the subcombination for examination. Thus, a combination claim will, by rule, be treated as constructively non-elected due to the presentation of a subcombination claim in either of the following two situations: (1) if no constructively elected subcombination claim is allowable over the prior art; and (2) if the combination claim does not depend from or otherwise include all the limitations of a constructively elected subcombination claim that is allowable over the prior art.

The examiner would still be required to set forth the restriction requirement in the first Office action, and would then follow the requirement with an indication of which claims were constructively elected. If the applicant disagrees with the propriety of the restriction requirement, the applicant would continue to have the right to request reconsideration (37 CFR 1.143) and review (37 CFR 1.144) of the restriction requirement. The only change is that an applicant's election would be a constructive election based upon the order of presentation, rather than an express election in reply to a restriction requirement.

This change would apply to nonreissue applications filed under 35 U.S.C. 111(a), and would not apply to applications filed under the PCT. The PTO is also considering changes to restriction practice for reissue applications, which are discussed below. The discussion in this topic applies solely to restriction practice for a nonreissue application.

15. Creating a ''rocket docket'' for design applications (37 CFR 1.155)

Summary: The PTO is considering an expedited procedure to reduce the processing time for the examination of design applications.

Specifics of Change Being Considered: The PTO is considering a change to the rules of practice, so that design applicants may for a fee (roughly estimated at approximately $900) request to have their applications expedited. The applications will be individually examined with priority and the clerical processing will be conducted by special expediters and/or monitored by special expediters to achieve expeditious processing through initial application processing and the Design Examining Group.

Discussion: Because of the marketplace, there is a need for rapid protection of certain articles which are easy to copy, such as athletic shoes, toys or consumer goods. Consequently, the time spent securing patent protection may severely erode the benefit of design patent protection, since if the process is lengthy, once the design is patented, the damage in the form of infringement may already be done. Currently the ''Petition to Make Special—Accelerated'' procedure set forth at MPEP 708.02(VIII) provides an under-utilized process for applicants seeking timely examination. Presumably this is because the procedure required to grant a Petition to Make Special is time-consuming in that the petitions must first be located from amongst the application papers and oft-times a considerable amount of time may transpire before the petition is acted upon by the required high-level official. Utilizing the proposed expedited procedure, this will be solved by having the request hand-delivered to the Director's Office where the PTO can be assured that it will be acted upon quickly. Moreover, the current Petition to Make Special procedures are primarily directed to prioritizing the application while it is on the Examiner's docket as opposed to decreasing time spent routing the application and clerical processing time. Certain design applicants have requested that additional measures, for an additional cost, be made available to design applicants so that their applications may be processed and/or monitored by expediters, who will assure hand-carrying of the applications between processing steps and top priority clerical processing of the applications. This is consistent with the PTO's goals of reducing the cycle time for applications (Goal 1) and exceeding customers' expectations (Goal 4).

Accordingly, there is a need for a separate, streamlined, expedited procedure for designs.

Consequently, the PTO is considering amending 37 CFR 1.155 to create an additional avenue for design applicants seeking expedited processing during examination before the PTO. The fee for this expedited processing is that fee necessary to recover the PTO's cost of providing such expedited examination. *See* 35 U.S.C. 41(d). The initial estimate (approximately $900) is for the additional cost of: (1) hand-carrying/walking an application through processing stages in initial application processing and the Design Examining Group; (2) prioritizing the processing of the application and (3) individually searching and examining the application by itself and not along with other design applications.

Unlike utility and plant applications, design applications are generally searched (and examined) in groups of ten to twenty which reduces the search and examination time needed for each design application, which in turn permits a relatively low design application filing fee. Under this practice, the general procedure results in all applications being searched before any are completed and mailed. Given that expedited cases will be searched and examined individually by themselves rather than with many other design applications, a higher processing fee is justified.

The expedited procedure for design cases will afford expeditious treatment from the date of filing to the date of issuance or abandonment, except if the application is appealed or if a petition is filed there is no expedited treatment while the application is within the jurisdiction of the Board of Patent Appeals and Interferences (BPAI) or Special Program Law Office (SPLO) under the proposed 37 CFR 1.155. As to processing during the printing cycle, the time for processing prior to printing is expected to be reduced to eight weeks, so no special expedited procedure is deemed necessary.

Requirements

(1) The Request to Expedite along with the design application should be filed by hand in the Design Group Director's Office. If the application has been previously filed, the request, which must indicate the application number, should be hand-carried or faxed to the Group Director's Office.

(2) The Request to Expedite will be treated promptly but will not be considered until the application is complete (*i.e.*, includes the basic filing fee, executed oath or declaration and drawings).

(3) Applicant will be required to conduct a preexamination search. The results of the search must be reported as set forth in MPEP 708.02(VIII) ''Special Examining Procedure for Certain New Applications—Accelerated Examination.'' *See* MPEP 708.02(VIII) at 700–71.

(4) The requisite fee must accompany the Request to Expedite. The fee (roughly estimated at approximately $900) charged will be based on expenses for additional work and processing time (*e.g.*, search and examination on an individual application basis and special clerical processing/handling and stoppage of other work in progress). There will be no time limit on when the Request to Expedite may be filed, but the fee will be the same regardless of the point in the examination expedited status begins.

(5) Formal drawings are required for expedited status.

As to restriction practice, there will be a constructive election of the first presented invention. No right to traverse is to be provided. As an alternative, the applicant is given the right to traverse immediately following an Office action in which a constructive election has been set forth; but once the right to traverse is claimed, the expedited status under 37 CFR 1.155 will be terminated.

Benefits of Expedited Status

Once the Request to Expedite is granted, the application will be provided special expedited processing including (a) essentially walk-through processing through initial application and Design Examining Group stages and (b) processing out-of-turn on an immediate basis. There will be specially designated expediters for clerical processing who will personally perform certain processing steps where possible, and if not possible, will wait with the application for immediate performance of processing steps by regular personnel. The applications will be hand-carried from step to step. These special expediters might be designated employees in existing organizations or a special central clerical operation that would serve as expediters and do or oversee the processing for most other operations.

Examiner processing of expedited applications (for first as well as subsequent actions) will be given the highest priority for examination and each application will be searched and examined individually by themselves and not along with a batch of other applications. A courtesy copy of all Office actions (with references if feasible) will be faxed if a fax number is provided.

The design group will monitor application progress using the Patent Application Locating and Monitoring (PALM) system to ensure that expedited applications are not misplaced or delayed. Distinctive markings or tags will be placed on the filewrapper. The applications will be specially coded with a PALM transaction code and specially run PALM reports will be generated to ensure that any expedited application in the same status for more than a predetermined period of time will be noted and brought to the attention of the monitoring officials.

The PTO will set a one-month Shortened Statutory Period (SSP) for reply for each action.

In addition, the PTO envisions setting aside an adequate number of ''expedited status'' slots at the printer for expedited cases. However, the time for the printing process is expected to be reduced to eight weeks, so no special provision is expected to be required.

The PTO is interested in whether you find this program desirable and, if not, why not. Please include with your comments an estimate of the number of expedited requests that your office or firm expects to file, should the expedited procedure be implemented.

16. Requiring identification of broadening in a reissue application (37 CFR 1.173)

Summary: The PTO is considering a change to 37 CFR 1.173 to require reissue applicants to identify all occurrences of broadening of the claimed invention in the reissue application.

Specifics of Change Being Considered: Reissue applicants would be specifically required to point out all occurrences of broadening of the claims. This will alert examiners to consider issues involving broadening relative to the two-year limit and the recapture doctrine. While this requirement is being imposed on applicants, the examiner will still be expected to independently look for and to appropriately treat any broadening issues under 35 U.S.C. 251, ¶¶ 1 and 4. If applicant fails to note a broadening and the examiner does identify a broadening, the examiner would not be permitted to make any rejection or objection as to the failure of applicant to identify the broadening.

Discussion: 35 U.S.C. 251, ¶ 4, provides that no reissue patent may enlarge (broaden) the scope of the claims of the original patent, unless the reissue patent was applied for within two years from the grant of the original patent. *See In re Graff,* 111 F.3d 874,

877, 42 USPQ2d 1471, 1473–74 (Fed. Cir. 1997). The standard for determining whether there has been a ''broadening'' has been set forth by the Court of Appeals for the Federal Circuit as follows:

> a claim of a reissue application is broader in scope than the original claims if it contains within its scope any conceivable apparatus or process which would not have infringed the original patent * * *. A claim that is broader in any respect is considered to be broader than the original claims even though it may be narrower in other respects.

See In re Freeman, 30 F.3d 1459, 1464, 31 USPQ2d 1444, 1447 (Fed. Cir. 1994) (quoting *Tillotson Ltd.* v. *Walbro Corp.* 831 F.2d 1033, 1037 n.2, 4 USPQ2d 1450, 1453 n.2 (Fed. Cir. 1987)); *see also Westvaco Corp.* v. *International Paper Co.*, 991 F.2d 735, 741–42, 26 USPQ2d 1353, 1358–59 (Fed. Cir. 1993); *and In re Self,* 671 F.2d 1344, 1346–47, 213 USPQ 1, 3–4 (CCPA 1982).

Further, even if a broadened reissue is applied for within two years (of the patent grant date), any broadening must also be considered in view of the recapture doctrine which prevents a patentee from regaining through reissue subject matter that the patentee surrendered in an effort to obtain the original patent claims. *See, In re Clement,* 131 F.3d 1464, 1468, 45 USPQ2d 1161, 1164 (Fed. Cir. 1997); *see also Hester Indus., Inc.* v. *Stein,* 142 F.3d 1472, 1480–82, 46 USPQ2d 1641, 1648–49 (Fed. Cir. 1998) (arguments during prosecution of the original patent may, even in the absence of an amendment to the claims, give rise to a surrender that bars recapture by reissue). Therefore, to properly examine any reissue application, the examiner must be aware of all occurrences of broadening of the original patent claims.

While it is often clear when a reissue application contains one or more claims that are broader than the claims of the original patent, sometimes issues of claim interpretation arise where it is not clear that the reissue application contains claims that are broader than the claims of the original patent. For example, a reissue application changing the phrase ''perforation means'' in the original patent claims to ''perforations'' is a broadening change if that phrase in the original patent is considered to have invoked 35 U.S.C. 112, ¶ 6 *(Johnston* v. *Ivac Corp.*, 885 F.2d 1574, 1580, 12 USPQ2d 1382, 1386 (Fed. Cir. 1989) (35 U.S.C. 112, ¶ 6, operates to cut back on the types of means which could literally satisfy the claim language)), but is not a broadening if that phrase in the original patent is not considered to have invoked 35 U.S.C. 112, ¶ 6 (*Cole* v. *Kimberly-Clark Corp.,* 102 F.3d 524, 531, 41 USPQ2d 1001, 1006 (Fed. Cir. 1996) (presence of the word ''means'' in a claim does not necessarily invoke 35 U.S.C. 112, ¶ 6)). Thus, in a significant number of reissue applications, it is not readily apparent from an inspection of the claims in the reissue application whether they are broader than the original patent claims. *See Freeman,* 30 F.3d at 1464–65, 31 USPQ2d at 1448 (''we cannot agree with [applicant] that simply because [applicant] added words to [the] claims that those claims are further narrowed in scope * * * [t]he English language is not that simple'').

The PTO recently amended 37 CFR 1.175(a) (effective December 1, 1997) to require that a reissue applicant identify in his or her reissue oath or declaration only a single error being corrected in the reissue. *See Changes to Patent Practice and Procedure;* Final Rule Notice, 62 FR 53131, 53196 (October 10, 1997), 1203 *Off. Gaz. Pat. Office* 63, 121 (October 21, 1997). Thus, in a reissue application containing claims that have been both broadened and narrowed, the applicant may meet the literal requirements of 37 CFR 1.175(a) by identifying only the error involving the narrowing of the original patent claims, while still asserting a correction of ''more or less'' than applicant had a right to claim in the original patent and without addressing the issue of broadening. Without the identification of all occurrences of broadening, it may not be clear when a reissue application contains claims that are broader than the claims of the original patent.

Since this recent rule change did not specifically retain the requirement for indicating when an amendment (change to the original patent) will actually be a broadening amendment, or an attempt to be a broadening, amendment, the PTO is considering imposing a requirement for reissue applicants, at the time any changes are made, either at the time of filing or during the course of prosecution, to specifically identify the changes that involve, or may involve, broadening of the claims. Thus, applicants would be required to identify all occurrences of broadening of the patent claims in the reissue application. For example, a change from the term ''rigid material,'' which might appear in an original patent, to the term ''material'' in a corresponding reissue application, is an easily identifiable broadening of the claim. Another example would be a totally rewritten new claim in a reissue application which may not have an easily recognizable correspondence to any original patent claim.

The intent is to impose on applicant a burden to identify all instances of broadening so as to alert the examiner in a timely manner to the fact that broadening has occurred so that the examiner can consider the questions of whether the broadening has occurred outside the two-year time period or whether the broadening amounts to an attempt to recapture subject matter previously given up in obtaining the patent. The examiner, however, is not relieved of his/her obligation to fully evaluate and examine the reissue application, including any issues related to broadening, as required by 35 U.S.C. 251, ¶ 4.

If an applicant fails to identify any broadening but the examiner has detected occurrences of broadening, the burden on applicant has been satisfied and there would be no point to having the examiner object and require the applicant to identify the broadening already detected by the examiner. An objection or rejection under 37 CFR 1.173 (or under 35 U.S.C. 251) would not be warranted. While the examiner would not be required to indicate that broadening had been found if an examination issue is not present based on the broadening, the examiner would have the option of reminding applicant of the requirement for identification of all instances of broadening and request applicant to identify any instance of broadening not yet identified by the examiner. The intent of the change is not for the examiner to rely upon applicant's duty to identify each broadening, but to have the applicant and the examiner each have responsibility to address the issue.

An intentional failure to identify material broadening to the PTO may result in a court finding that the reissue applicant has violated the duty of candor and good faith to the PTO under 37 CFR 1.56. If, however, an applicant makes a good faith attempt to alert the examiner to where broadening has occurred in the reissue claims but inadvertently omits one or more instances of broadening, or the applicant in good faith does not identify any broadening in that the applicant had no intent to broaden, the applicant may not have the requisite intent necessary for a finding that the applicant violated 37 CFR 1.56. In any event, such issues would not be addressed by the PTO.

The change to 37 CFR 1.173 under consideration would support the PTO's Business Goal 1 (reduce PTO processing time to twelve months or less for all inventions) because it would lead to an early identification of issues of broadening (within two years),

recapture, and claim interpretation and, thereby, help to ensure that the examination process is efficiently performed. The change to 37 CFR 1.173 under consideration would also support the PTO's Business Goal 4 (exceed our customers' quality expectations, through the competencies and empowerment of our employees) because it would help to ensure that broadening and recapture doctrine issues are addressed. Since it is the reissue applicant (and not the PTO or the public) who is seeking to change (or broaden) the original patent claims, the reissue applicant is in the best position to identify such broadening. In addition, if it is not clear that the reissue application contains claims that are broader than the claims of the original patent, the applicant's identification on filing of all occurrences of broadening may assist the applicant in meeting the two-year statutory requirement in 35 U.S.C. 251, ¶ 4. *See Graff,* 111 F.3d at 877, 42 USPQ2d at 1473–74 (35 U.S.C. 251, ¶ 4, requires that a reissue applicant give notice of proposals to broaden the claims of a patent to the public within two years of issuance of the patent). Thus, it is appropriate to place some responsibility for identifying all occurrences of broadening in the reissue application on the reissue applicant (rather than solely on the PTO examiner or the public).

The recent amendment to 37 CFR 1.175, *inter alia,* eliminated the requirement that an applicant submit an oath or declaration setting forth detailed showings concerning each and every change being made to the patent via reissue. *See Changes to Patent Practice and Procedure,* 62 FR at 53165–66, 1203 *Off. Gaz. Pat. Office* at 92–93. The changes to 37 CFR 1.173 under consideration do not readdress the requirements of former 37 CFR 1.175 because: (1) 37 CFR 1.175 relates to oath/declaration requirements and the identification of all occurrences of broadening need not (but may) be provided in the reissue oath or declaration (*e.g.,* they may be identified by a preliminary remarks paper, or in the application transmittal letter); (2) the identification requirement applies only to broadening changes, not to all of the changes being made by reissue; and (3) the identification of all occurrences of broadening need not include a discussion of the nature of the broadening as was required by former 37 CFR 1.175.

17. Changing multiple reissue application treatment (37 CFR 1.177)

Summary: The PTO is considering an amendment to 37 CFR 1.177 to streamline the processing of divisional (or multiple) reissue applications.

Specifics of the Change Being Considered: The PTO is considering an amendment to 37 CFR 1.177 to: (1) eliminate the current requirements of 37 CFR 1.177 that multiple reissue applications be referred to the Commissioner and issue simultaneously; and (2) require that each of the multiple reissue applications contains a specific cross-reference to each of the other reissue applications. Each reissue application would have to present all original claims (amended, unamended, or deleted). Issuance of reissues where no changes have been made would not be permitted.

Discussion: 37 CFR 1.177 currently provides that divisional reissue applications: (1) must be referred to the Commissioner; and (2) will issue simultaneously, unless otherwise ordered by the Commissioner. The specifics of the exception processing given to divisional reissue applications is set out at MPEP 1451. The PTO has determined that it is unnecessary to give this exception processing to divisional (or multiple) reissue applications.

Therefore, the PTO is considering amending 37 CFR 1.177 to: (1) eliminate the requirements that multiple reissue applications be referred to the Commissioner and issue simultaneously; and (2) require that each of the multiple reissue applications contains (at the beginning of the specification) a specific cross-reference to each of the other reissue applications. This cross-reference would serve as a notification to the public that more than one reissue patent may/will replace the single original patent. If applicant fails to present such an amendment to the specification(s) when filed, or if the first reissue fails to include a cross-reference to a later filed second reissue application, and the error is not detected by the PTO before the reissue application issues, the PTO would issue a certificate of correction under either 37 CFR 1.322 or 1.323 to provide such notice in the issued reissue patent(s).

The numbering of the claims in the multiple reissue applications should follow a simple basic numbering scheme. For several reissue patent applications being filed from a single original patent, all claims of the original patent should be presented in each reissue application as either amended, unamended, or deleted (shown in brackets) claims, respectively, with each claim bearing the same number it had in the original patent. The same claim of the original patent should not be presented in its original unamended form for examination in more than one of such several reissue applications or a double patenting rejection under 35 U.S.C. 101 shall be made. Added claims may be presented in any of the several applications and should be numbered beginning with the next number following the highest numbered patent claim. For example, an original patent containing fifteen claims may be filed as three separate reissue applications, each presenting all fifteen of the original claims but, of the fifteen, a different five claims for examination. The selected five claims being presented for examination in each reissue application could be amended or unamended and they would still carry their original numbering. The ten respective deleted claims (appearing in brackets) would also appear in each reissue application. Any added claims, even if different in each of the applications, would be numbered ''16'' and above. Each of the printed reissue patents would include all of the original claims (with or without brackets) as well as any claims added only into that reissue patent.

If the same or similar claims were presented in more than one of the multiple reissue applications, statutory double patenting (35 U.S.C. 101) or non-statutory (judicially created doctrine) double patenting considerations would be made by the examiner during examination, and appropriate rejections made.

The amendment to 37 CFR 1.177 being considered would support Patent Business Goals 1 (reduce PTO processing time to twelve months or less for all inventions) by eliminating: (1) the processing time needed for a petition for non-simultaneous issuance of multiple reissue applications; and (2) the suspension time of a reissue application in order to provide for simultaneous issuance of the multiple reissue applications.

18. Creating alternative review procedures for applications under appeal (37 CFR 1.192)

Summary: The PTO is considering alternative review procedures to reduce the number of appeals forwarded to the Board of Patent Appeals and Interferences.

Specifics of Change Being Considered: The PTO is considering two alternative review procedures to reduce the number of appeals having to be forwarded to the Board of Patent Appeals and Interferences (Board) for decision. Both review procedures involve a review that would be available upon request and payment of a fee by the appellant, and would involve review by at least one other PTO official. The first review would occur after the filing of a notice

of appeal but before the filing of an appeal brief and involve a review of all rejections of a single claim being appealed to see whether any rejection plainly fails to establish a *prima facie* case of unpatentability. The second review would occur after the filing of an appeal brief and involve a review of all rejections on appeal.

Discussion: To expedite resolution of appeals, the PTO is considering two optional review procedures. The first review under consideration would take place prior to the filing of an appeal brief, and the second review under consideration would take place after the filing of an appeal brief. The procedures under consideration would be optional as to the appellant, in that the appellant need not request either such review as a prerequisite to obtaining a decision by the Board. The appellant, however, upon making a timely request accompanied by the appropriate fee, would be entitled to either such review (or even both such reviews) prior to the appeal going forward to the Board.

A patentee is entitled to patent term extension if, *inter alia*, ''the issue of a patent is delayed due to appellate review by the Board of Patent Appeals and Interferences or by a Federal court and the patent is issued pursuant to a decision in the review reversing an adverse determination of patentability.'' *See* 35 U.S.C. 154(b)(2). Since the appeal reviews under consideration would not be by either the Board or a Federal court, the issuance of a patent as a result of a decision reached during such an appeal review to withdraw a rejection would not entitle the patentee to patent term extension under 35 U.S.C. 154(b)(2). Nevertheless, this should not dissuade applicants from using these appeal review procedures because: (1) patent term extension under 35 U.S.C. 154(a)(2) is preconditioned upon a decision by the Board or a Federal Court in the review reversing an adverse determination of patentability, which is never certain; and (2) the appeal reviews under consideration will take place before the preparation of any examiner's answer, and, as such, will not result in the delays inherent in Board or court review.

The purpose of these review procedures is not to place applications in better condition for appeal, but to reduce the number of applications that must be forwarded to the Board for a decision. The PTO anticipates that the appeal reviews under consideration will lead to the elimination of the need for Board review in appeals involving weak rejections.

a. Limited pre-brief review

The PTO is considering an optional, limited review that would take place after a notice of appeal has been filed, but prior to the filing of an appeal brief. Under the limited pre-brief review, the appellant may file a request (accompanied by the requisite fee) for review of all of the rejections in the final rejection (or rejection being appealed if non-final) of a selected claim. The application will be given to a second primary examiner (reviewer) who will review the application to determine whether each rejection(s) of the selected claim plainly fails to establish a *prima facie* case of unpatentability. The reviewer is expected to make an independent evaluation of the merits of the appealed rejection(s), but may consult with the primary examiner (or examiner responsible for the application if not a primary examiner).

The limited pre-brief review would be based on the final rejection (or rejection being appealed) without the need for the filing of an appeal brief. All that would be required is a request for such a review and an identification of the claim to be reviewed. Arguments would, of course, be permitted, but the review would be limited to whether the rejection(s) plainly failed to establish a *prima facie* case of unpatentability of the identified claim. For example, a request for a review of whether affidavits or declarations under 37 CFR 1.132 overcome a *prima facie* case of unpatentability would exceed the limits of the limited pre-brief review under consideration.

The limited review would focus on whether the rejection(s) of the selected claim plainly fails to establish a *prima facie* case of unpatentability. In determining whether a rejection plainly fails to establish a *prima facie* case of unpatentability, the reviewer will evaluate the record (*e.g.*, the applied references) to determine whether it is plain that the primary examiner has failed to meet the burden of establishing a *prima facie* case of unpatentability, but will not evaluate the adequacy of the expression of the appealed rejection in the action. Obviously, if the reviewer must change the basic thrust of an appealed rejection as applied in the action to avoid the conclusion that it plainly fails to establish a *prima facie* case of unpatentability, the reviewer will consider the rejection to plainly fail to establish a *prima facie* case of unpatentability, since changing the basic thrust of a rejection would require a new ground of rejection and the reopening of prosecution. Thus, such a limited review is expected to lead to the withdrawal of clearly meritless rejections, but may also lead to either the suggestion of amendments which could be made to avoid the rejection(s), or to a reopening of prosecution.

Although the reviewer would not have the authority to overrule the primary examiner, that primary examiner would be made aware of situations in which another experienced examiner (the reviewer) not only disagreed with any or all of the rejections of the selected claim, but considered such rejection(s) to plainly fail to establish a *prima facie* case of unpatentability. It is generally expected that the primary examiner would withdraw such a rejection. Unless the review resulted in the withdrawal of all rejections and allowance of the application, the PTO would provide a notice to the appellant advising the appellant: (1) that the review occurred and that the period set in 37 CFR 1.192 for filing an appeal brief runs from the mail date of such notice (see discussion below); and (2) of any rejection(s) that is withdrawn as a result of the review.

Consideration is also required for the time frames for this type of review. Under the current rules, the mere filing of a such request would not satisfy the requirement for the filing of an appeal brief (and its fee) to avoid dismissal of the appeal. The PTO could, however, amend 37 CFR 1.192 to, in effect, stay the period for filing an appeal brief (and its fee) until completion of the review. Obviously, once an appellant has requested such a limited pre-brief review, the appellant would not be permitted to stay the period for filing an appeal brief by requesting another such limited review, but would be required to timely file an appeal brief to avoid dismissal of the appeal.

The benefit to applicants of a limited pre-brief review is that it permits the appellant to obtain review of what is considered a rejection that plainly fails to establish a *prima facie* case of unpatentability, while saving the costs involved in preparing an appeal brief. The PTO expects that this type of limited pre-brief review would be most useful in the situation in which there is a single representative claim upon which the appeal hinges, and the appellant considers the rejection(s) of such claim to be deficient on its face. In such a situation, a prompt resolution of the disagreement(s) as to that claim would in all likelihood lead to a resolution of all other issues. Specifically, the PTO anticipates that an appellant using this procedure would choose the narrowest claim that the appellant would be willing to accept (which may be a dependent claim) as

the selected claim, and that the limited review would either lead to the examiner being informed by an experienced examiner that one or more rejections plainly fail to establish a *prima facie* case of unpatentability, or the appellant being informed by another experienced examiner that the rejection(s) do not plainly fail to establish a *prima facie* case of unpatentability.

b. Post-brief review

The PTO is also considering adding an optional review that would take place after an appeal brief has been filed. Under the post-brief review, the appellant may file a request (accompanied by the requisite fee) and the application will be given to a second primary examiner (reviewer) who will review the application, focusing on the final rejection (or rejection being appealed) and the appeal brief. After this review, the primary examiner (and the examiner responsible for the application if not a primary examiner) and the reviewer will confer prior to mailing of an examiner's answer to review the appealed rejections and the brief. The conference would thus include at least two PTO officials, but may also include an examiner who is not a primary examiner. Such a post-brief review would focus on the tenability of the appealed rejection(s) and, accordingly, is expected to lead to the withdrawal of rejections of doubtful merit. Such a review may also lead to either the suggestion of amendments which could be made to avoid the rejections of record, or to reopening of prosecution.

Although the reviewer would not have the authority to overrule the primary examiner responsible for the appeal, that primary examiner would be made aware of weaknesses in his or her position as perceived by another experienced examiner. It is generally expected that the primary examiner will withdraw those rejections which another experienced examiner considers unlikely to be successful on appeal. If, however, a reasonable difference of opinion exists among the examiners as to the merits of the rejection(s), it should be expected that appeal will go forward to the Board. Unless the review resulted in the withdrawal of all rejections and allowance of the application, the examiner's answer would be initialed by the reviewer and would indicate: (1) that the review occurred; and (2) any rejection(s) that is withdrawn as a result of the review.

c. Issues for public comment

The PTO requests public comment on each of the above-mentioned procedures, since the PTO may implement neither, one, or both procedures depending upon the public comments and internal feasibility concerns.

The PTO also desires public comment on the pool of PTO employees from which the reviewer for both reviews is taken. For example, the PTO could select as the reviewer: (1) a primary examiner from the same or related art; (2) a primary examiner from a different art; (3) a manager (*e.g.*, a Supervisory Patent Examiner, Group Special Program Examiner, or Quality Assurance Specialist); (4) a Legal Advisor from the Special Program Law Office; or (5) a Quality Review Examiner.

The PTO also desires public comment on whether it should establish a uniform procedure for both reviews to be used throughout the Examining Corps, or whether each technology center should be free (within specified guidelines) to establish its own procedures for such reviews.

19. Eliminating preauthorization of payment of the issue fee (37 CFR 1.311)

Summary: The PTO is considering amending 37 CFR 1.311(b) to eliminate the option of filing an authorization to charge an issue fee to a deposit account before the notice of allowance is mailed.

Specifics of Change Being Considered: 37 CFR 1.311(b) currently permits an authorization to be filed either before or after the mailing of a notice of allowance. The PTO is considering an amendment to 37 CFR 1.311(b) to permit an authorization to be filed after, but not before, the notice of allowance is mailed.

Discussion: Generally, it is in applicant's best interest not to pay the issue fee at the time the notice of allowance is mailed, since it is much easier to have a necessary amendment or an information disclosure statement considered if filed before the issue fee is paid than after the issue fee is paid. *See* 37 CFR 1.97 and 1.312(b). Also, once the issue fee has been paid, applicant's window of opportunity for filing a continuing application is reduced and the applicant no longer has the option of filing a continuation or divisional application as a continued prosecution application (CPA) under 37 CFR 1.53(d). Many applicants find the time period between the mailing date of the notice of allowance and the due date for paying the issue fee useful for re-evaluating the scope of protection afforded by the allowed claim(s) and for deciding whether to pay the issue fee and/or to file one or more continuing applications.

Therefore, the PTO is considering amending 37 CFR 1.311(b) to permit an authorization to be filed after, but not before, the notice of allowance is mailed. This change in procedure would support the PTO's business goal to reduce PTO processing time to twelve months or less for all inventions.

37 CFR 1.311 (b), as currently written, causes problems for the PTO that tend to increase PTO processing time. The language used by applicants to authorize that fees be charged to a deposit account often varies from one application to another. As a result, conflicts arise between the PTO and applicants as to the proper interpretation of authorizing language found in their applications. For example, some applicants are not aware that it is current PTO policy to interpret broad language to ''charge any additional fees which may be required at any time during the prosecution of the application'' as authorization to charge the issue fee on applications filed on or after October 1, 1982. *See Deposit Account Authorization to Charge Issue Fee;* Notice, 1095 *Off. Gaz. Pat. Office* 44 (October 25, 1988), reprinted at 1206 *Off. Gaz. Pat. Office* 95 (January 6, 1998).

Even when the language pre-authorizing payment of the issue fee is clear, the pre-authorization can present problems for both the PTO and practitioners. For example, it may not be clear to the PTO whether a pre-authorization is still valid after the practitioner withdraws or the practitioner's authority to act as a representative is revoked. If the PTO charges the issue fee to the practitioner's deposit account, the practitioner may have difficulty getting reimbursement from the practitioner's former client.

When the issue fee is actually charged at the time the notice of allowance is mailed, a notice to that effect is printed on the notice of allowance (PTOL–85) and applicant is given one month to submit/return the PTOL–85B with information to be printed on the patent. However, applicants are sometimes confused by the usual three-month time period provided for paying the issue fee and do not, therefore, return the PTOL–85B until the end of the normal three-month period. Because the PTO recognizes that the information provided on the PTOL–85B is needed in order to print the assignee and the attorney information on the patent, the failure to respond within the one month period is waived and the later

submission of the PTOL–85B is accepted. Thus, even though the issue fee was paid early, the issue process is delayed until the PTOL–85B is actually returned, or three months from the mail date of the notice of allowance passes, whichever occurs first. If no PTOL–85B is timely returned, the patent is published without the information provided on a PTOL–85B.

If prompt issuance of the patent is a high priority, applicant may promptly return the PTOL–85B (supplying any desired assignee and attorney information) and pay the issue fee after receipt of the notice of allowance. In this way, the PTO will be able to process the payment of the issue fee and the information on the PTOL–85B as a part of a single processing step. Further, no time would be saved even if the issue fee was pre-authorized for payment as the PTO would still have to wait for the return of the PTOL–85B. Thus, while it is not seen that the proposal to eliminate the pre-authorization to pay the issue fee would have any adverse effects on our customers, comments on this proposal are requested.

20. Reevaluating the Disclosure Document Program

Summary: The PTO is seeking customer feedback to assess the value of the Disclosure Document Program. From a preliminary evaluation it appears that: (1) it is unclear whether many inventors actually get any benefit from this program; (2) some inventors use this program as a result of actions by invention promotion firms which mislead them into believing that they are actually filing an application for a patent; and (3) better benefits and protection are afforded to inventors if they file a provisional application for patent instead.

Specifics of Change being Considered: The PTO is evaluating the Disclosure Document Program under the Paperwork Reduction Act (44 U.S.C. ch. 35) in order to determine if it is serving the needs of those inventors who have been using it and whether the PTO can encourage use of provisional application practice instead of the practice of filing a Disclosure Document and, subsequently, filing either a provisional or nonprovisional application.

Discussion: The PTO implemented the Disclosure Document Program in 1969 in order to provide a more credible form of evidence of conception of an invention than the ''self-addressed envelope'' form of evidence formerly used by inventors. *See Disclosure Document Program;* Notice, 34 FR 6003 (April 2, 1969), 861 *Off. Gaz. Pat. Office* 1 (May 6, 1969). An inventor may, under the Disclosure Document Program, file in the PTO a Disclosure Document which includes a written description and drawings of his or her invention in sufficient detail to enable a person of ordinary skill in the art to make and use the invention to establish a date of invention in the United States prior to the application filing date under 35 U.S.C. 104. The inventor must sign the Disclosure Document and include a separate signed cover letter identifying the papers as a Disclosure Document. A Disclosure Document does not require a claim in compliance with 35 U.S.C. 112, ¶ 2, nor an inventor's oath under 35 U.S.C. 115, and is not accorded a patent application filing date. A Disclosure Document is supposed to be destroyed by the PTO after two years unless it is referred to in a separate letter in a related provisional or nonprovisional application filed within those two years. The filing fee for a Disclosure Document set forth in 37 CFR 1.21(c) is $10. *See* MPEP 1706.

The PTO currently processes Disclosure Documents as follows: Each Disclosure Document is assigned an identifying number, the identifying number is stamped on the actual Disclosure Document, and the Disclosure Documents are stored in sequential number order. The PTO also prepares and mails a notice with the identifying number and date of receipt in the PTO to the customer. When a paper referring to a Disclosure Document is filed in a patent application within two years after the filing of a Disclosure Document, a retention label is attached to the Disclosure Document and the applicant is notified that the Disclosure Document will be retained. The paper filed by the applicant which referred to the Disclosure Document is retained in the application file.

Lately, the PTO has been receiving approximately twenty-five to thirty-five thousand Disclosure Documents per year. Of all the Disclosure Documents filed each year, however, only about 0.1% (about thirty per year) are actually retained at the inventor's request. The PTO perceives that inventors often file Disclosure Documents to establish a date of invention before exploring the feasibility of their ideas and disclosing their inventions to major corporations, prototype builders, investors, patent attorneys, patent depository library staff, prospective partners, or small business development companies to guard against misappropriation of their inventions. The vast majority of these inventions may simply be put aside if the inventors are unsuccessful at attracting interest and are not pursued until they do get support or interest in their inventions. The PTO also perceives that inventors file a Disclosure Document on each incremental modification of a basic invention. This may result in a dozen or more Disclosure Documents being filed before a patent application is filed, if ever, on the ''final'' version of the invention.

In 1995, Pub. L. 103–465 amended title 35, U.S.C., by providing for the filing of a provisional application for patent. A provisional application must contain a specification in compliance with 35 U.S.C. 112, ¶ 1, and drawings, if drawings are necessary to understand the invention described in the specification. A provisional application must name the inventors and be accompanied by a separate cover sheet identifying the papers as a provisional application. The basic filing fee for a provisional application by a small entity is $75 (37 CFR 1.16(k)). The filing fee and the names of the inventors may be supplied after the provisional application is filed, but a surcharge is required. A provisional application does not require a claim in compliance with 35 U.S.C. 112, ¶ 2, or an inventor's oath under 35 U.S.C. 115. While a provisional application is automatically abandoned twelve months after its filing date, the file of an abandoned provisional application is retained by the PTO for at least twenty years, or longer if it is referenced in a patent. A provisional application is considered a constructive reduction to practice of an invention as of the filing date accorded the application, if it describes the invention in sufficient detail to enable a person of ordinary skill in the art to make and use the invention and discloses the best mode known by the inventor for carrying out the invention. In other words, except for adding the best mode requirement, the disclosure requirements for a provisional application are identical to the disclosure requirements for a Disclosure Document and provide users with a filing date without starting the patent term period. Thus, almost any paper filed today as a proper Disclosure Document can now be filed as a provisional application with the necessary cover sheet.

A provisional application is, however, more valuable to an inventor than a Disclosure Document. A provisional application, just like a nonprovisional application, establishes a constructive reduction to practice date for any invention disclosed therein in the manner required by 35 U.S.C. 112, ¶ 1, and can be used under the Paris Convention to establish a priority date for foreign filing. On the other hand, a

Disclosure Document may only be used as evidence of a date of conception of an invention under 35 U.S.C. 104. A Disclosure Document is not a patent application and the filing of a Disclosure Document does not establish a constructive reduction to practice date for an invention described in the Document. As a result, in order to use a Disclosure Document to establish prior invention under 35 U.S.C. 102(g) or under 37 CFR 1.131, an inventor may rely on the Disclosure Document to demonstrate that he or she conceived of the invention first, but the inventor must then demonstrate that he or she was reasonably diligent from a date just prior to: (1) the date of conception by the other party in an interference proceeding; or (2) the effective date of a reference being used by the PTO to reject one or more claims of an application until the inventor's actual or constructive reduction to practice. A provisional application, however, may be used to establish prior invention all by itself (without any need to demonstrate diligence) simply by its filing date being before the earliest actual or constructive reduction to practice date of the other party or the effective date of the reference.

Under 35 U.S.C. 102(b), any public use or sale of an invention in the U.S. or description of an invention in a patent or a printed publication anywhere in the world more than one year prior to the filing of a patent application on that invention will bar the grant of a patent. In addition, many foreign countries have what is known as an ''absolute novelty'' requirement which means that a public disclosure of an invention anywhere in the world prior to the filing date of an application for patent will act as a bar to the granting of any patent directed to the invention disclosed. Since a Disclosure Document is not a patent application, it does not help an inventor avoid the forfeiture of U.S. or foreign patent rights. For example, an inventor offers to sell his invention in the U.S. in March 1996. In April of 1996, the inventor files a Disclosure Document. In April of 1997, the inventor files a nonprovisional application referring to the Disclosure Document. Because the inventor did not file either a provisional or a nonprovisional application within twelve months of the first offer to sell in the U.S., the inventor has forfeited all U.S. patent rights. On the other hand, if the inventor files a provisional application in April of 1996 instead of a Disclosure Document, the offer to sell in March of 1996 would not be a bar under 35 U.S.C. 102(b) to any invention claimed in the nonprovisional application filed in April 1996 which is disclosed in the provisional application in the manner required by 35 U.S.C. 112, ¶ 1. Thus, a provisional application protects inventors from losing patent rights whereas a Disclosure Document does not.

Based on a sampling of Disclosure Documents filed in 1997, approximately 56% were filed by inventors with the assistance of an invention promotion firm. A recent Federal Trade Commission (FTC) consumer alert entitled ''So You've Got a Great Idea? Heads Up: Invention Promotion Firms May Promise More Than They Can Deliver'' (July 1997), warned that some invention promotion firms were using the Disclosure Document Program to mislead independent inventors into believing that a Disclosure Document affords some form of patent protection. In requesting a temporary restraining order against a number of invention development companies, the FTC indicated that:

> In a large number of cases, the [defendant invention development company] promises that it will ''register'' the inventor's idea with the U.S. Patent Office's Disclosure Document Program, and that doing so will ''protect'' the idea for 2 years. In fact, filing with this program provides no patent protection whatsoever. In some instances, customers are promised a patent application, but no such application is every [*sic.*, ever] prepared or filed.

See Plaintiff's Mem. In Support of Application for a T.R.O. at 13–14, *FTC* v. *International Product Design, Inc.*, Civ. Act. No. 97–1114–A (E.D. Va., filed July 14, 1997) (footnotes omitted).

Patent Business Goal (4) is to exceed our customer's service expectations. The Disclosure Document Program is being evaluated because it has been brought to the PTO's attention that this program has been the subject of numerous abuses and complaints, and therefore may be detrimental to the interests of a vast majority of the PTO's customers. This evaluation of the Disclosure Document Program is in support of that goal.

In view of the very small number of Disclosure Documents requested to be retained each year (less than one-tenth of one percent) versus the twenty-five to thirty-five thousand Disclosure Documents filed each year, the minimum benefits provided to an inventor by a Disclosure Document, the misuse of the Disclosure Document Program by some invention promotion firms and the better benefits and protection afforded by the provisional application option (which was not available when the Disclosure Document Program was initiated in 1969), the PTO is soliciting the opinion of its customers on whether the Disclosure Document Program should be continued in its present form, terminated, or substantially revised to serve their needs better.

Replies to the Following Questions are Solicited

1. As substantially fewer than one percent of the Disclosure Documents that are filed each year are requested by inventors to be retained by the PTO and the PTO does not know of any substantial reliance being had on Disclosure Documents, is there any factual evidence that Disclosure Documents do provide meaningful benefits and value to those who file Disclosure Documents? If so, please supply a copy of such evidence with your comments.
2. Does the Disclosure Document Program create a worthwhile sense of security? If so, why?
3. Do you know of a Disclosure Document that has actually been relied on in a nonprovisional application to successfully establish a conception date in an interference proceeding or in a 37 CFR 1.131 affidavit or declaration? If so, please identify the Disclosure Document number and whether it was successfully relied on in an interference proceeding or in a 37 CFR 1.131 affidavit or declaration.
4. Is the Disclosure Document Program addressing any need that is not being addressed by the provisional application practice? If so, please identify such needs.
5. In what ways can the PTO better address the needs of those who use the Disclosure Document Program that are not being addressed by provisional applications without the risks associated with the existing Disclosure Document Program? If so, please elaborate.
6. Do you know of any instance in which an invention development firm misled an inventor into believing that a Disclosure Document provides more benefit (patent protection) than it actually does? If so, please indicate what, if any, harm this caused?

21. Creating a PTO review service for applicant-created forms

Summary: The PTO is considering establishing a new service, where the PTO would review, for a fee, a form prepared by a member of the public that is intended to be used for future correspondence to the PTO.

Specifies of Change Being Considered: A form intended to be used for future correspondence with the PTO could be submitted to the PTO for review. The

PTO would charge a fee (roughly estimated at approximately $200) for each form up to four pages long for this review service. After the review is completed, the PTO would send the submitter a written report, including comments and suggestions, if any, even though the PTO will not formally ''approve'' any form. The form and all related documents submitted for the review would also be returned to the submitter. If a (reviewed) form is modified in view of a PTO written report, comments and/or suggestion, the revised form could be resubmitted to the PTO for a follow up review for an additional charge (roughly estimated at approximately $50). After a form has been reviewed and revised, as may be needed, to comply with the PTO's written report, it will be acceptable for the form to indicate if it is a substitute for a PTO form and/or that it has been ''reviewed by the PTO.''

Background: Currently, the PTO prepares and makes available forms (*e.g.,* application transmittal forms) for use by our customers when submitting correspondence to the PTO. The PTO forms are formatted to induce one to supply specific information. There is no requirement, however, that such PTO forms be used. Frequently members of the public, in particular, law firms and corporations, modify the PTO forms to include matter specific to their law firm or corporation, or find it convenient to create forms of a different nature or layout specific to their needs. A PTO form properly modified by a member of the public should induce one to supply at least the same information as the PTO form that was modified.

In the future, the submissions to the PTO would be either by specially formatted paper templates or by electronic transmission. However, until such efficiencies become the norm, many of our customers will be relying on pre-printed forms, created either by the PTO or by our customers themselves. While fully supporting the move to standardized formats and electronic submissions, it is important to today's customers to have complete and accurate forms for their daily work.

New Service: PTO Review of Applicant's forms: To better serve our customer's needs, the PTO is considering providing a new service where, upon request and payment of a non-refundable fee, the PTO will review blank forms prepared by a member of the public that are intended to be used for future correspondence to the PTO. Non-English language forms will *not* be reviewed. The PTO will *not* formally ''approve'' any forms that are submitted. The rationale for not formally approving a form that is submitted for review by the PTO is the following: (1) a form designed/reviewed for a specific purpose may actually be used for a different purpose, and the PTO cannot control how a form may be used after it is reviewed (*e.g.,* filing a patent application under 37 CFR 1.53(b) using a Continued Prosecution Application (CPA) Request Transmittal form); (2) forms that have been reviewed may become out-of-date and be rendered obsolete due to subsequent changes in the patent statute (35 U.S.C.), rules of practice (37 CFR) and office policy and procedure as set forth in the MPEP; (3) any approval of a form would tend to discourage improvements in the form by the customer; and (4) non-approval of any form avoids the appearance that the PTO endorses a person, a product (*e.g.,* a particular form) or supports a business.

The PTO would primarily review the submitted forms to note any non-compliance (*e.g.,* errors, problems, defects, inaccuracies) with the patent statute (35 U.S.C.), rules of practice (37 CFR) and established office policy and procedure as set forth in the MPEP, and give a written report which would also include comments or suggestions. The PTO may also give advice as to matters which are related to the usefulness of the forms. Patent Business Goal (1) is to reduce PTO processing time to twelve months or less for all inventions. This new service would be in support of that goal since a properly prepared and used form by a member of the public would reduce the chance for error and the need for correction, and result in reduced PTO processing time. Patent Business Goal (4) is to exceed our customers' quality expectations, through the competencies and empowerment of our employees. The proactive role the Office will take in this area would be in support of that goal since this service will help our customers create better forms.

In general, modified versions of PTO forms associated with PCT practice (*e.g.,* ''REQUEST FOR FILING A CONTINUATION OR DIVISIONAL APPLICATION OF AN INTERNATIONAL APPLICATION'' (PTO/SB/13/PCT) and ''PETITION FOR REVIVAL OF AN INTERNATIONAL APPLICATION FOR PATENT DESIGNATING THE U.S. ABANDONED UNINTENTIONALLY UNDER 37 CFR 1.137(b)'' (PTO/SB/64/PCT)) would be subject to review. However, user-generated versions of the PCT Request (PCT/RO/101) and the Demand (PCT/IPEA/401) would be excluded from this new review service at this time because they are subject to further review, study and consultation with the International Bureau (IB), as the IB has control over these forms.

The PTO is considering charging a flat fee (roughly $200) to recover the cost of the review of and report on any one form containing up to a limit of four pages, with a further charge (again roughly $200) for each additional four pages or portion thereof. The fee is based upon an in-office, activity-based cost analysis. All fees submitted for this new service would be non-refundable. Only complete forms, not parts of forms, would be reviewed. Therefore, all pages of a multiple page form would need to be submitted together. Forms for review would have to be submitted to the PTO with the required fee, as a separate wholly contained mailing and not with other papers for another purpose to keep handling and paper processing time to a minimum. However, multiple forms could be submitted at the same time, with the cost for each form being as set forth above. Anyone who submits a blank form (and the requisite fee) for review would also be encouraged to submit a completed form and a cover letter. The cover letter would provide the PTO with clear guidance as to what was intended to be reviewed. The completed form would aid the PTO in the review process as it would provide the PTO with guidance as to how the form was intended to be completed and used. Resubmission of a (reviewed) form, which was modified in view of the PTO written report, and comments and/or suggestions made by the PTO in their review of the form, for a second (follow up) review would require an additional charge (again roughly $50). The resubmission would need to include a resubmission of all documents (copies are acceptable) submitted for the review, and a submission of the previously reviewed form containing any PTO comments or suggestions thereon and any review papers (review sheet) prepared by the PTO. See discussion on the matter below. Patent Business Goal (5) is to assess fees commensurate with resource utilization and customer efficiency. The charging of a fee for this new service would be in support of that goal since the fee charged would recover both the cost of the review and the preparation of the report.

Any form submitted to the PTO for review would need to be formatted as it is intended to be submitted to the PTO; and must: (1) be either 21.0 cm. by 29.7 cm. (DIN size A4) or 21.6 cm. by 27.9 cm. (8½ by 11 inches, commonly referred to as ''letter size''), (2) have a left side margin of at least 2.5 cm. (1 inch), and a top, right, and bottom

margin of at least 2.0 cm. (3/4 inch), and (3) have writing on only one side. *See* 37 CFR 1.52.

Forms intended to be a substitute for a PTO form would be permitted to contain an indication thereon that the form is a substitute for a particular PTO form. To properly identify the particular PTO form, such indication should include, among other things, the form's actual PTO form number and the PTO's version date (which may be located in the upper right hand corner of the form), and the PTO form's actual title (*e.g.*, ''*SUBSTITUTE* for PTO/SB/05 (4/98), UTILITY APPLICATION TRANSMITTAL,'' with the words ''*SUBSTITUTE for*''being separated from (on a different line from) the rest of the header to particularly denote that the form is a substitute for a PTO form.). The indication that the form is a substitute for a PTO form should be in a header, in the *upper right hand corner* of the form. See Example 1 below. Forms submitted for review are encouraged to include a header indicating that the form is a substitute for a particular PTO form. It should be noted that the other verbiage contained in the header of the PTO forms should not be reproduced on any PTO form that would be modified.

Example 1: A sample first header to be placed in the upper right hand corner of the form containing an indication that the form is a substitute for a PTO form. Note that the words ''*SUBSTITUTE for*'' are on a different line from the rest of the header to specifically denote that the form is a substitute for a PTO form.

SUBSTITUTE for PTO/SB/05 (4/98),
UTILITY APPLICATION TRANSMITTAL

The PTO will review each submitted form and prepare a report, which will include a review sheet, and then return the original form with the completed review sheet to the submitter of the form. In the PTO review report, the PTO will identify, among other things, items or changes that are deemed to be critical. Also, the reviewed form itself may be marked up with comments by the PTO. The PTO will not retain a copy of any reviewed form. The PTO will, however, keep a record of the reviewing process. If the submitter of a form for review has a question about the review of the form after the review process has been completed and the reviewed form is no longer in the possession of the PTO, a submission of, among other things, (a copy of) of the reviewed form containing any PTO comments or suggestions thereon, all documents (copies are acceptable) submitted for the review, and any review papers (review sheet) prepared by the PTO may be necessary. Any form that has been reviewed by the PTO and has been modified to include, among other things, the items or changes that are deemed to be critical by the PTO, may include an indication on the form that the form has been reviewed by the PTO, provided that the date of the review is also included (*e.g.*, ''*REVIEWED by PTO on XX/XX/XX*'' (Date)). The indication that the form has been reviewed by the PTO should be in a header, in the upper left hand corner of the form. See Example 2 below. Forms submitted for review are encouraged to include a header indicating that the form has been reviewed with the date left blank. If the items or changes noted in the review report as being critical are not adopted, no indication may be placed on the form that the form has been reviewed. Since the PTO will not formally ''approve'' any forms that are submitted, the use of the word ''APPROVED'' on any form that has been reviewed would be misleading and must not be used.

Example 2: A sample second header to be placed in the upper left hand of the form containing an indication that the form has been reviewed.

Reviewed by PTO on XX/XX/XX

Note: When the first and second headers contained in Examples 1 and 2 are used together, it is recommended that the left hand header in Example 2 (''*Reviewed by PTO on XX/XX/XX*'') be on the same line with, but spaced from the first line of the right hand header in Example 1 (''*SUBSTITUTE for*''). See Example 3 below.

Example 3: A single header combining the first and second headers set forth in Examples 1 and 2.

Reviewed by PTO on XX/XX/XX
SUBSTITUTE for PTO/SB/05 (4/98),
UTILITY APPLICATION TRANSMITTAL

Any PTO form that has been modified by a member of the public to be a substitute for a PTO form, but has not been submitted for review, would be permitted to contain an indication thereon, as set forth above, that the form is a substitute for a particular PTO form. Since such modified PTO form has not been reviewed, no indication may be placed on the form that the form has been reviewed. See Example 1 above.

Any pending form submitted for review is not subject to the confidentiality requirements of 35 U.S.C. 122, and may be subject to a request under the Freedom of Information Act (5 U.S.C. 552).

It should be recognized that the ultimate responsibility for complying with statutory and regulatory requirements lies with an applicant(s) and their attorney, whether they utilize a form prepared by the PTO or some other form which may or may not have been reviewed by the PTO.

It is predictable that the largest number of requests for a review of forms would come at a time when there has been a change in the PTO rules and/or procedures. The turn-around time for review of any form will be based on the workload of the area of the PTO selected to perform the review. Anyone desiring a form to be reviewed should allow ample time for PTO review. No assurances can be given that any form will be reviewed in a particular amount of time. Further, subsequent rule changes may render unusable a form that was previously used and/or reviewed by the PTO.

To jump-start this new service, and to avoid problems with electronic incompatibility that can take a lot of time to resolve, the PTO will only review forms that have been properly submitted in either paper form or by facsimile transmission. In the future, the PTO will consider expanding the service to include submission of the forms in an electronic format.

Current PTO Forms Availability

PTO forms are available on the PTO Home Page, and are available either individually or in a single zip-compressed file from the PTO ftp server at ftp://ftp.uspto.gov/pub/forms/. Individual forms for patent and trademark submissions can also be requested from 800–PTO–8199 or 703–308–HELP. A specimen book of Patent Forms can be purchased for $25 from the Office of Electronic Information Products, telephone number 703–306–2600.

Conclusion

This is a new service that the PTO is considering and would involve significant start-up costs. Therefore, absent positive feedback on the matter, the PTO does not intend to implement this new service.

Dated: September 28, 1998.

Bruce A. Lehman,

Assistant Secretary of Commerce and Commissioner of Patents and Trademarks.

[FR Doc. 98–26429 Filed 10–2–98; 8:45 am]

BILLING CODE 3510–16–P

federal register

Monday
October 5, 1998

Part III

Department of Transportation

Federal Aviation Administration

14 CFR Part 61 et al.

Licensing and Training of Pilots, Flight Instructors, and Ground Instructors Outside the United States; Final Rule

DEPARTMENT OF TRANSPORTATION

Federal Aviation Administration

14 CFR Parts 61, 67, 141, and 142

[Docket No. FAA–1998–4518; Amendment Nos. 61–105, 67–18, 141–11 & 142–3]

RIN 2120–AG66

Licensing and Training of Pilots, Flight Instructors, and Ground Instructors Outside the United States

AGENCY: Federal Aviation Administration, DOT.

ACTION: Final rule; request for comments.

SUMMARY: This final rule removes language from the Federal Aviation Regulations that restricts the licensing of foreign persons outside of the United States and that restricts the operation of pilot schools and training centers that are located outside of the United States. The restrictive language was originally placed in the regulations because of administrative concerns that are no longer applicable. The restrictive language was identified during harmonization efforts currently underway between the Federal Aviation Administration (FAA) and the European Joint Aviation Authorities (JAA) as an obstruction to harmonization. Failure to harmonize FAA and JAA rules on licensing and training could be detrimental to FAA pilot schools and training centers that seek to train students from the JAA member states. As part of the FAA's commitment to reduce restrictions that are not safety driven and to further harmonize our regulations with our European neighbors, the FAA is removing this restrictive language.

DATES: This final rule is effective October 5, 1998. Comments must be submitted on or before November 4, 1998.

ADDRESSES: Comments on this final rule should be mailed or delivered, in duplicate to: U.S. Department of Transportation Dockets, Docket No. FAA–98–4518, 400 Seventh Street, SW, Room Plaza 401, Washington, DC 20590. Comments may also be sent electronically to the following Internet address: 9–NPRM–CMTS@faa.dot.gov. Comments may be filed and/or examined in Room Plaza 401 between 10 a.m. and 5 p.m. weekdays except Federal holidays.

FOR FURTHER INFORMATION CONTACT: Warren Robbins, Certification Branch (AFS–840), General Aviation and Commercial Division, Flight Standards Service, Federal Aviation Administration, 800 Independence Avenue, SW., Washington, DC 20591; telephone (202) 267–8196.

SUPPLEMENTARY INFORMATION:

Comments Invited

This final rule is being adopted without prior notice and prior public comment. The Regulatory Policies and Procedures of the Department of Transportation (DOT) (44 FR 1134; February 26, 1979), however, provide that, to the maximum extent possible, operating administrations for the DOT should provide an opportunity for public comment on regulations issued without prior notice. Accordingly, interested persons are invited to participate in this rulemaking by submitting such written data, views, or arguments, as they may desire. Comments relating to environmental, energy, federalism, or international trade impacts that might result from this amendment also are invited. Comments must include the regulatory docket or amendment number and must be submitted in triplicate to the address above. All comments received, as well as a report summarizing each substantive public contact with FAA personnel on this rulemaking, will be filed in the public docket. The docket is available for public inspection before and after the comment closing date.

The FAA will consider all comments received on or before the closing date for comments. Late filed comments will be considered to the extent practicable. This final rule may be amended in light of the comments received.

Commenters who want the FAA to acknowledge receipt of their comments submitted in response to this final rule must include a preaddressed, stamped postcard with those comments on which the following statement is made: ''Comments to Docket No. FAA–1998–4518.'' The postcard will be date-stamped by the FAA and mailed to the commenter.

Availability of Final Rule

Any person may obtain a copy of this final rule by submitting a request to: FAA, Office of Rulemaking, Attention: ARM–1, 800 Independence Avenue, SW., Washington, DC 20591; or by telephoning (202) 267–9680. Individuals requesting a copy of this final rule should identify their request with the amendment number or docket number.

An electronic copy of this final rule may be downloaded, by using a modem and suitable communications software, from: the FAA regulations section of the FedWorld electronic bulletin board service (telephone: (703) 321–3339); the Government Printing Office's electronic bulletin board service (telephone: (202) 512–1661); or the FAA's Aviation Rulemaking Advisory Committee Bulletin Board service (telephone: (202) 267–5948.

Internet users may reach the FAA's web page at *http://www.faa.gov,* or the Government Printing Office's web page at *http://www.access.gpo.gov/nara,* for access to recently published rulemaking documents.

Small Entity Inquiries

The Small Business Regulatory Enforcement Fairness Act of 1996 (SBREFA) requires the FAA to report inquiries from small entities concerning information on, and advice about, compliance with statutes and regulations within the FAA's jurisdiction, including interpretation and application of the law to specific sets of facts supplied by a small entity.

If you are a small entity and have a question, contact your local FAA official. If you do not know how to contact your local FAA official, you may contact Charlene Brown, Program Analyst Staff, Office of Rulemaking, ARM–27, Federal Aviation Administration, 800 Independence Avenue, SW, Washington, DC 20591, 1–888–551–1594. Internet users can find additional information on SBREFA in the ''Quick Jump'' section of the FAA's web page at http://www.faa.gov and may send electronic inquiries to the

following Internet address: 9–AWA–SBREFA@faa.dot.gov.

Background

Over the past several years, the FAA has been involved in harmonization efforts with the JAA and the European Civil Aviation Conference (ECAC). During this time, the JAA has been finalizing the Joint Aviation Regulations (JAR) on Flight Crew Licensing (FCL), which are scheduled to go into effect in July 1999. The development of the JAR FCL has led the FAA and JAA to compare and contrast one another's pilot licensing and training regulations to determine where harmonization would be appropriate. As a result of this harmonization effort, the FAA and JAA have identified certain restrictive language in the FAA regulations and the JAR FCL. The restrictive language, if not removed, provides an obstruction to the harmonization efforts underway between the FAA and the JAA.

FAA Restrictions

The restrictive language in the FAA Regulations concerns the licensing and training of foreign pilots outside of the U.S. In particular, the FAA regulations do not allow pilot certificates or medical certificates to be issued outside of the U.S. to persons who are not U.S. citizens or resident aliens of the U.S. (14 CFR 61.2 and 67.5, respectively). In addition, foreign students may not take the practical test for a pilot certificate outside of the U.S. (14 CFR 61.2). There are a few exceptions to these requirements, but they generally apply only to support U.S. concerns (e.g., a certificate may be issued when the Administrator finds that the certificate is needed for the operation of a U.S.-registered aircraft).

Also, the FAA regulations do not allow FAA-certificated pilot schools to have a base or other facility located outside the U.S. unless that base or facility is needed for the training of U.S. citizens (14 CFR 141.15). FAA-certificated training centers are allowed to be located outside of the U.S., but they are subject to special rules that limit what they can offer foreign students (14 CFR section 142.19). For example, an FAA-certificated training center located outside of the U.S. may prepare and recommend foreign applicants, whom already hold FAA certificates, only for additional authorizations, endorsements, and ratings. An FAA-certificated training center located outside of the U.S. may prepare and recommend U.S. applicants, whether they already hold an FAA certificate or not, for pilot certificates, ratings, authorizations, and endorsements.

The FAA placed the above restrictive language into the FAA regulations in 1982 in response to administrative concerns. Specifically, the FAA was concerned with staffing and budgetary resources for FAA activity outside of the U.S. Additionally, the FAA wanted to encourage foreign governments to develop aeronautical codes and administrative capabilities of their own that would permit them to conduct their own certification functions.

Over the past decade and a half, the FAA has expanded its international activity and now has the staffing resources overseas to address certification and oversight concerns. In addition, in 1980 the U.S. Congress passed the International Air Transportation Competition Act of 1979, which directed the FAA to collect fees for airman and repair station certificates issued outside the U.S. Based on this Act,the FAA established fixed fees for the issuance of airman certificates to foreign nationals outside of the U.S. (14 CFR part 187, appendix A). This fee collection provision has enabled the FAA to overcome the budgetary concerns of issuing certificates to foreign airman outside of the U.S. Finally, foreign countries have developed their own aviation programs, including certification of airman.

Therefore, after reviewing the purpose and intent of the restrictive language, the FAA has determined that the administrative concerns that justified placing the geographic limitations into the FAA regulations are no longer applicable.

JAA Restrictions

The restrictive language in the JAR FCL provides, in pertinent part, that an applicant for a JAA certificate must receive training from a Flying Training Organization (FTO) or Type Rating Training Organization (TRTO) approved by a member state of the JAA. No such approval will be granted unless the FTO or TRTO principal place of business for training and registered office are located in that JAA member state, and the FTO or TRTO is owned directly or through majority ownership by a JAA member state or a national of a JAA member state or both. The JAR FCL does not allow for the crediting of training time received from an unapproved FTO or TRTO.

The JAR FCL also does not allow for the conversion of a non-JAA State license to a JAA license unless an arrangement exits between the JAA and the non-JAA member state. At this time, there is not an arrangement between the FAA and the JAA for conversion of airman licenses. Such a conversion arrangement is one area that the FAA and JAA are discussing as part of the harmonization efforts. These harmonization efforts, however, have become more difficult as a result of the geographic restrictions in one another's regulations. The JAA has indicated that they may remove the JAR FCL restrictive language once the FAA removes the restrictive language in the FAA regulations.

Affect on U.S. Schools

If the FAA does not remove the restrictive language in the FAA regulations discussed above, the JAA will not remove the restrictive language in the JAR FCL. Consequently, there could be a potentially detrimental affect on FAA-certificated pilot schools and training centers that seek to train students from the JAA member states or any person interested in obtaining a JAA license. FAA-certificated pilot schools and training centers would not meet the geographic or ownership requirements necessary to gain JAA approval as an FTO or TRTO. As a result, training received at FAA-certificated pilot schools or training centers could not be credited toward a JAA license.

In addition, as discussed above, the JAR FCL provide that a license issued by a non-JAA State may be converted to a JAA license only if an arrangement exists between the JAA and the non-JAA State. At this time, there is not a conversion arrangement between the FAA and the JAA and if the JAR FCL restrictive language is not removed the harmonization efforts underway may not produce such a conversion arrangement. As a result, FAA pilot certificates could not converted to JAA licenses.

Currently, FAA-certificated pilot schools and training centers provide a significant amount of training to individuals from JAA member states. If the JAR FCL goes into effect with the restrictive language in July 1999, significant economic hardship may be endured by many FAA-certificated pilot schools and training centers, since students from JAA member states would no longer seek FAA certificates or training from them.

Accordingly, the FAA is recommending to the JAA that they remove the restrictive language from the JAR FCL before it goes into effect. To support this, the FAA must show good faith by removing licensing and training restrictions in the FAA regulations that are not safety driven. The removal of the restrictive language is urgently needed as the implementation date of the JAR FCL is July 1999; the JAA FCL

Committee will meet in September 1998 to consider amendment of the language in the JAR FCL, which goes before the full JAA Committee for adoption in October 1998.

Section-by-section Analysis

Part 61 Certification: Pilots, Flight Instructors, and Ground Instructors

Section 61.2 Certification of Foreign Pilots, Flight Instructors, and Ground Instructors

This section currently provides that an airman certificate may not be issued to a person who is not a citizen of the U.S. or a resident alien of the U.S. unless that person passes the appropriate practical test within the U.S. There are five exceptions to this restriction for specific needs; that is, the certificate must be needed for the operation of U.S.-registered aircraft. This section also provides that FAA-certificated training centers located outside the U.S. may prepare and recommend only U.S. citizens for airman certificates and may only issue certificates to U.S. citizens.

This section was originally established in 1982 (47 FR 35690; August 16, 1982) in response to ''the continuous expansion in worldwide demand for FAA certification services'' and the ''undue burden [the demand was placing] on FAA budgetary and manpower resources.'' These administrative concerns, and the potential fear that ''[o]verly free exportation of U.S. certificates could deter the development of competent, indigenous certification programs,'' convinced the FAA to restrict the certification of foreign nationals outside of the U.S. The FAA found support for this decision in 49 U.S.C. section 44703(d), which gives the Administrator of the FAA the discretion to restrict or prohibit the issuance of airman certificates to aliens. In 1996, the FAA implemented the new regulations concerning the certification and operating rules for FAA-certificated training centers (61 FR 34508; July 2, 1996). As part of that rule, section 61.2 was amended to provide that FAA-certificated training centers located outside the U.S. may prepare and recommend only U.S. citizens for airman certificates and may issue certificates only to U.S. citizens. That amendment carried forward the policy of the FAA not to issue certificates to foreign nationals outside the U.S., and did not consider whether this policy was still appropriate.

The FAA/JAA harmonization effort over the past several years has identified this section as one of the obstructions to the harmonization efforts.

As noted in the general discussion above, the FAA has determined that the original concerns behind promulgating this section are no longer applicable. The FAA has put in place the appropriate resources to handle FAA certification services outside the United States, and the agency is no longer concerned about creating a disincentive for foreign airman certification programs. Accordingly, the FAA is removing this section in its entirety and will be reserving this section for future needs.

Part 67 Medical Standards and Certification

Section 67.5 Certification of Foreign Airmen

This section provides that a person who is neither a citizen of the U.S., nor a resident alien of the U.S., may not be issued an FAA medical certificate outside the U.S. unless the Administrator finds that the certificate is needed for the operation of a U.S.-registered aircraft.

This section was established at the same time as 14 CFR 61.2, discussed above, in 1982 (47 FR 35690). As stated above, that rule was adopted in response to administrative concerns and to encourage foreign governments in the development of competent, indigenous airman certification programs. As these concerns are no longer applicable, and to encourage harmonization with our European neighbors where possible, the FAA is removing airman licensing requirements that are not safety driven. As a result, the FAA is removing and reserving this section in its entirety.

Part 141 Pilot Schools

Section 141.15 Location of Facilities

This section provides that FAA-certificated pilot schools or provisional pilot schools may not have a base or facility located outside of the U.S. unless the Administrator finds the location of that base or facility is needed for the training of students who are U.S. citizens.

This section was established as part of an overall revision to the standards for the certification of FAA-certificated pilot schools in 1974 (39 FR 20146; June 6, 1974). In the preamble to that rule, the FAA stated that the restriction on the location of FAA-certificated pilot schools outside the U.S. reflected a long-standing FAA policy that merely was being stated in the regulation. The FAA also stated that ''the purpose of certificated pilot schools is to provide pilot training for citizens of the U.S.''

As previously discussed, this long-standing FAA policy restricting the training and certification of foreign nationals outside of the U.S. was based mostly on administrative concerns that are no longer applicable. In addition, as FAA-certificated pilot schools have been, and currently are, providing training to a significant number of foreign nationals within the U.S., the purpose of FAA-certificated pilot schools has expanded to train both U.S. citizens and foreign nationals. For many FAA-certificated pilot schools the training of foreign students provides a major source of income.

The JAA and the ECAC have determined that this section is not only a roadblock to harmonization efforts but has encouraged them to place similar geographic restrictions in the JAR FCL. As discussed earlier in the background section of this preamble, if the JAA maintains the restrictive language in the JAR FCL, foreign nationals of JAA member states will no longer seek training from FAA-certificated schools as that training would not longer be recognized by the JAA. Because the FAA has determined that this geographic limitation is no longer necessary and is an obstruction to harmonization as indicated by the JAA and the ECAC, the FAA is removing and reserving this section in its entirely.

Part 142 Training Centers

Section 142.15 Facilities

This section primarily addresses the physical characteristics of the facilities that a training center is required to provide. The last paragraph of this section (14 CFR 142.15(e)), however, provides that a training center certificate may be issued to an applicant having a business office or training center located outside of the U.S. This permissive language in unnecessary since without this provision, it would be clear that there are no geographic restrictions in part 142 for FAA-certificated training centers. The FAA is removing it to avoid any possible confusion.

Section 142.17 Satellite Training Centers

This section provides the requirements that must be met for a training center to conduct training at a satellite training center located in the U.S. This section was limited to satellite training centers located within the United States because the FAA provided special rules for training centers located outside the United States under 14 CFR section 142.19.

As discussed below, the FAA is removing section 142.19 in its entirety.

As there will no longer be special rules for FAA-certificated training centers located outside of the United States, the FAA is removing the limitation in this section that references only satellite training centers located within the United States. FAA-certificated training centers, whether located within or outside of the United States, that want to operate satellite training centers must meet the requirements under this section.

Section 142.19 Foreign Training Centers: Special Rules

This section currently provides that a training center located outside of the U.S. is subject to special rules that limit what training they can provide to foreign students. As already discussed above, an FAA-certificated training center located outside of the United States may only prepare and recommend foreign applicants, whom already hold FAA certificates, for additional authorizations, endorsements, and ratings. An FAA-certificated training center located outside of the U.S. may prepare and recommend U.S. applicants, whether they already hold an FAA certificate or not, for pilot certificates, ratings, authorizations, and endorsements.

The FAA placed this restrictive language into this section for the same reason as that for section 61.2. As discussed above, section 61.2 was established in response to administrative and potential ''over-dominance'' concerns that are no longer applicable. Section 142.19 was identified as a possible obstruction to harmonization. For the same reason the FAA is removing section 61.2, the FAA is removing and reserving this section in its entirety.

Good Cause for Immediate Adoption

Sections 553(b)(3)(B) and 553(d)(3) of the Administrative Procedures Act (APA) (5 U.S.C. 553(b)(3)(B) and 553(d)(3)) authorize agencies to dispense with certain notice procedures for rules when they find ''good cause'' to do so. Under section 553(b)(3)(B), the requirements of notice and opportunity for comment do not apply when the agency for good cause finds that those procedures are ''impracticable, unnecessary, or contrary to the public interest.'' Section 553(d)(3) allows an agency, upon finding good cause, to make a rule effective immediately, thereby avoiding the 30-day delayed effective date requirement in section 553.

The FAA finds that notice and public comment to this final rule are impracticable, unnecessary, and contrary to the public interest. The provisions in this final rule remove restrictive language affecting the licensing and training of foreign pilots outside of the U.S. The removal of the restrictive language will not adversely affect the licensing and training of U.S. pilots either within or outside of the U.S. In addition, as discussed above, the removal of the restrictive language will not have a safety impact, because the language was adopted to meet administrative concerns that are no longer applicable. As a result, the FAA has determined that notice and public comment are unnecessary because the FAA believes that the public will not be interested in this rulemaking.

The FAA has determined that there is a need to remove the restrictive language immediately, to provide an inducement for the JAA to consider removing its restrictions on licensing and training. Without this reciprocal JAA action, there could be economic losses the FAA-certificated pilot schools and training centers that seek to continue to train foreign students from the JAA member states, both inside and outside of the U.S. As discussed earlier, the JAR FCL restrictive language will not allow an individual to convert an FAA pilot license, absent an arrangement between the JAA and the FAA, or to receive credit for flight training unless it is received from an JAA-approved FTO or TRTO. Currently, there is no arrangement between the FAA and the JAA for conversion of certificates and FAA-certificated pilot schools and training centers do not meet the requirements for JAA approval.

The JAA has indicated that they may remove the JAR FCL restrictive language if the FAA removes the restrictive language in the FAA regulations. As discussed earlier, the JAA will be making final decisions regarding any amendments to the language of the JAR FCL in the very near future. Therefore while notice and comment on this amendment are unnecessary, they are also impracticable.

Regulatory Evaluation

Executive Order 12866, ''Regulatory Planning and Review,'' dated September 30, 1993, directs the Federal agencies to promulgate new regulations or modify existing regulations only if benefits to society for each regulatory change outweigh potential costs. The order also requires the preparation of an economic analysis of all ''significant regulatory actions'' except those responding to emergency situations or other narrowly defined exigencies.

The FAA has determined that this final rule is not significant under Executive Order 12866 or the Regulatory Policies and Procedures of the Department of Transportation (DOT) (44 FR 11034; February 26, 1979). The Regulatory Policies and Procedures of the DOT require, for non-significant rulemakings, the preparation of a regulatory evaluation that analyzes the economic consequences of the regulatory action. This section contains the full regulatory evaluation prepared by the FAA that provides information on the economic consequences of this regulatory action. In addition to the regulatory evaluation, this section also contains a regulatory flexibility determination required by the 1980 Regulatory Flexibility Act (5 U.S.C. 601 *et seq.*) and an international trade impact assessment. Accordingly, the FAA makes the following economic evaluation of this final rule.

This final rule merely removes language from the Federal Aviation Regulations that restricts the licensing of foreign persons outside of the U.S. and that restricts the operation of FAA-certificated pilot schools and training centers that are located outside of the U.S. The restrictive language was originally placed in the regulations because of administrative concerns that are no longer applicable. The restrictive language was identified during harmonization efforts currently underway between the FAA and the JAA as an obstruction to harmonization and as potentially detrimental to FAA-certificated pilot schools and training centers that seek to train students from the JAA member states. As part of the FAA's commitment to reduce restrictions that are not safety driven and to further harmonize our regulations with our European neighbors, the FAA is removing the above restrictive language.

Cost-benefit Analysis

This final rule does not change the training or certification requirements for obtaining FAA certificates, it only removes geographic limitations on where the training and certification of foreign nationals may be given. This final rule does not affect the training and certification of U.S. citizens either within or outside of the United States. As a result, this final rule does not, in economic terms, alter the process of training and certification for pilots, flight instructors, and ground instructors. Accordingly, the FAA has determined that there are no economic costs associated with this final rule.

An expected benefit of the proposed rule is continuation of existing international trade with respect to the provision of pilot training by U.S

companies. As discussed in the background section of this preamble, the FAA is concerned about the JAR FCL language that would not allow for the crediting of training time received from unapproved FTOs or TRTOs, namely FAA-certificated pilot schools or training centers. FAA-certificated pilot schools and training centers currently provide training to a significant number of individuals from JAA member states. If the JAR FCL goes into effect in July 1999, significant economic hardship may be endured by many FAA-certificated pilot schools and training centers as students from JAA member states would no longer seek training from them. Further, foreign students that come to the U.S. for flight training provide indirect benefits; they inject money above and beyond tuition costs into the U.S. economy. The FAA is recommending to the JAA that they remove the restrictive language from the JAR FCL. To support this, the FAA must show good faith by removing licensing and training restrictions in the FAA regulations that are not safety driven. Therefore, the FAA has determined that the failure to implement this final rule will result indirectly in economic losses to FAA-certificated pilot schools and training centers and the U.S. economy.

Regulatory Flexibility Determination

The Regulatory Flexibility Act of 1980 establishes ''as a principle of regulatory issuance that agencies shall endeavor, consistent with the objective of the rule and of applicable statutes, to fit regulatory and informational requirements to the scale of the business, organizations, and governmental jurisdictions subject to regulation.'' To achieve that principle, the Act requires agencies to solicit and consider flexible regulatory proposals and to explain the rationale for their actions. The Act covers a wide range of small entities, including small businesses, not-for-profit organizations and small government jurisdictions.

Agencies must perform a review to determine whether a proposed or final rule will have a significant economic impact on a substantial number of small entities. If the determination is that it will, the agency must prepare a regulatory flexibility analysis (RFA) as described in the Act.

However, if an agency determines that a proposed or final rule is not expected to have a significant economic impact on a substantial number of small entities, section 605(b) of the 1980 Act provides that the head of the agency may so certify and an RFA is not required. The certification must include a statement providing the factual basis for this determination, and the reasoning should be clear.

The FAA conducted the required review of this final rule and determined that it will not have a significant economic impact, positive or negative, on a substantial number of small entities. This final rule, while it does affect FAA-certificated pilot schools and training centers, does not impose any cost on them. This final rule merely removes geographic limitations on FAA-certificated pilot schools and training centers for the training and certification of foreign nationals outside of the United States. Accordingly, pursuant to the Regulatory Flexibility Act, 5 U.S.C. 605(b), the FAA certifies that this final rule will not have a significant impact on a substantial number of small entities. The FAA solicits comments from the public regarding this determination.

International Trade Impact Analysis

The Office of Management and Budget (OMB) requires Federal agencies to determine whether any rule or regulation will have an impact on international trade. The FAA has determined that this final rule will affect the operations of businesses involved in the sale of aviation services, specifically, FAA-certificated pilot schools and training centers. It affects FAA-certificated pilot schools and training centers by removing restrictive language that placed geographic limitations on where they could be located and on what training and certification they could provide to foreign nationals outside of the U.S. The FAA has determined that this final rule promotes international trade. While the FAA believes that this final rule will promote international trade, the more tangible benefit of this final rule will be the enhancement of harmonization efforts currently underway between the FAA and the JAA.

Federalism Implications

This final rule will not have a substantial direct effect 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 will not have sufficient federalism implications to warrant the preparation of a Federalism Assessment.

Paperwork Reduction Act

In accordance with the Paperwork Reduction Act of 1995 (Pub. L. 104–13 (May 22, 1995)), there are no requirements for information collection associated with this final rule.

Unfunded Mandates Reform Act Assessment

In accordance with the Unfunded Mandates Reform Act of 1995 Pub. L. 104–4 (March 22, 1995)), there are no Federal mandates in this final rule that meet the required cost threshold.

List of Subjects

14 CFR Part 61

Airmen, Certification, Flight instructors, Foreign airmen, Ground instructors, Pilots, Students, Training.

14 CFR Part 67

Airmen, Certification, Foreign airmen, Medical certification.

14 CFR Part 141

Airmen, Certification, Educational facilities, Flight instructors, Foreign students, Ground instructors, Pilots, Schools, Students, Training.

14 CFR Part 142

Airmen, Certification, Educational facilities, Foreign students, Instructors, Pilots, Schools, Students, Training.

The Amendments

In consideration of the foregoing the Federal Aviation Administration amends Chapter I of Title 14 Code of Federal Regulations as follows:

PART 61—CERTIFICATION: PILOTS, FLIGHT INSTRUCTORS, AND GROUND INSTRUCTORS

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

Authority: 49 U.S.C. 106(g), 40113, 44701–44703, 44709–44711, 45102–45103, 45301–45302.

§ 61.2 [Removed]

2. Remove § 61.2.

PART 67—MEDICAL STANDARDS AND CERTIFICATION

3. The authority citation for part 67 continues to read as follows:

Authority: 49 U.S.C. 106(g), 40113, 44701–44703, 44707, 44709–44711, 45102–45103, 45301–45303.

§ 67.5. [Removed]

4. Remove § 67.5

PART 141—PILOT SCHOOLS

5. The authority citation for part 141 continues to read as follows:

Authority: 49 U.S.C. 106(g), 40113, 44701–44703, 44707, 44709–44711, 45102–45103, 45301–45302.

§ 141.15 [Removed]

6. Remove § 141.15

PART 142—TRAINING CENTERS

7. The authority citation for part 142 continues to read as follows:

Authority: 49 U.S.C. 106(g), 40113, 40119, 44101, 44701–44703, 44705, 44707, 44709–44711, 45102–45103, 45301–45302.

§ 142.15 [Amended]

8. In § 142.15, remove paragraph (e).

9. Section 142.17 is amended by revising paragraph (a) introductory text to read as follows:

§ 142.17 Satellite training centers.

(a) The holder of a training center certificate may conduct training in accordance with an approved training program at a satellite training center if—

* * * * *

§ 142.19 [Removed]

10. Remove § 142.19.

Issued in Washington, DC, on September 30, 1998.

Jane F. Garvey,

Administrator.

[FR Doc. 98–26602 Filed 10–2–98; 8:45 am]

BILLING CODE 4910–13–M

federal register

Monday
October 5, 1998

Part IV

The President

Proclamation 7130—National Breast Cancer Awareness Month, 1998

Federal Register
Vol. 63, No. 192
Monday, October 5, 1998

Presidential Documents

Title 3—

The President

Proclamation 7130 of October 1, 1998

National Breast Cancer Awareness Month, 1998

By the President of the United States of America

A Proclamation

For the millions of us who have lost loved ones to breast cancer, this annual observance brings with it both sorrow and hope—sorrow that medical breakthroughs came too late to save a beloved relative or friend, and hope that new efforts in research, prevention, and treatment will protect other families from suffering the impact of this devastating disease. Recent declines in the rate of breast cancer deaths among American women reflect the progress we have made in early detection and improved treatment. But it is urgent that we continue to build on that progress. This year alone, another 180,000 cases of breast cancer will be diagnosed, and some 44,000 women will die from the disease.

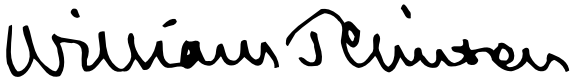
We are waging America's crusade against breast cancer on many fronts. Spearheading the effort is the National Action Plan on Breast Cancer (NAPBC)—the product of a conference convened by Secretary of Health and Human Services (HHS) Donna Shalala that included advocates, women with breast cancer, their families, clinicians, researchers, members of Congress, educators, and the media. The NAPBC is helping to coordinate the national response to breast cancer by fostering communication, cooperation, and collaboration among experts both inside and outside of the Government.

The lead Government agency conducting breast cancer research and control programs is the National Cancer Institute (NCI) at HHS. By developing an index of genes involved in breast and other cancers, the NCI is improving our understanding of the disease at the molecular level. Research into the relationship between breast cancer and genes such as BRCA1 and BRCA2 is helping us to better comprehend how the disease develops, allowing researchers to understand more precisely the risk of breast cancer caused by mutations in these genes. The most encouraging advance thus far in prevention research came from the landmark Breast Cancer Prevention Trial. This study, a national clinical trial sponsored by the NCI, found that women at high risk for breast cancer reduced that risk by taking the drug tamoxifen, demonstrating that breast cancer can actually be prevented. The NCI is now developing an educational program to help physicians and patients decide who should consider taking tamoxifen.

Researchers are also making advances in breast cancer treatment and have found ways to combine chemotherapy drugs to make treatment more effective for patients whose cancer has spread. Drugs have also been developed to alleviate some of the side effects of chemotherapy. But these breakthroughs in cancer research and treatment can only help if women are informed about them. During this month, I invite all Americans to take part in our national effort to save lives. Let us join together to make sure that women and their families hear the message about the importance of screening and early detection, receive recommended screening mammograms, and have access to appropriate treatment. We have won important battles in our war on breast cancer, and we have cause to celebrate; nevertheless, we must remain focused on gaining the ultimate victory—an America free from breast cancer.

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 October 1998 as National Breast Cancer Awareness Month. I call upon government officials, businesses, communities, health care professionals, educators, volunteers, and all the people of the United States to publicly reaffirm our Nation's strong and continuing commitment to controlling and curing breast cancer.

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



[FR Doc. 98–26835
Filed 10–2–98; 8:45 am]
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LIST OF PUBLIC LAWS

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260–265	(869–032–00149–9)	29.00	July 1, 1997
266–299	(869–032–00150–2)	24.00	July 1, 1997
300–399	(869–032–00151–1)	27.00	July 1, 1997
400–424	(869–032–00152–9)	33.00	[5] July 1, 1996
425–699	(869–032–00153–7)	40.00	July 1, 1997
700–789	(869–032–00154–5)	38.00	July 1, 1997
790–End	(869–034–00156–4)	22.00	July 1, 1998
41 Chapters:			
1, 1–1 to 1–10		13.00	[3] July 1, 1984
1, 1–11 to Appendix, 2 (2 Reserved)		13.00	[3] July 1, 1984
3–6		14.00	[3] July 1, 1984
7		6.00	[3] July 1, 1984
8		4.50	[3] July 1, 1984
9		13.00	[3] July 1, 1984
10–17		9.50	[3] July 1, 1984
18, Vol. I, Parts 1–5		13.00	[3] July 1, 1984
18, Vol. II, Parts 6–19		13.00	[3] July 1, 1984
18, Vol. III, Parts 20–52		13.00	[3] July 1, 1984
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102–200	(869–034–00158–9)	15.00	July 1, 1998
201–End	(869–032–00159–6)	15.00	July 1, 1997
42 Parts:			
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430–End	(869–032–00162–6)	50.00	Oct. 1, 1997
43 Parts:			
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1000–end	(869–032–00164–2)	50.00	Oct. 1, 1997
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500–1199	(869–032–00168–5)	29.00	Oct. 1, 1997
1200–End	(869–032–00169–3)	39.00	Oct. 1, 1997
46 Parts:			
1–40	(869–032–00170–7)	26.00	Oct. 1, 1997
41–69	(869–032–00171–5)	22.00	Oct. 1, 1997
70–89	(869–032–00172–3)	11.00	Oct. 1, 1997
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166–199	(869–032–00176–6)	26.00	Oct. 1, 1997
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47 Parts:			
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1 (Parts 52–99)	(869–032–00185–5)	29.00	Oct. 1, 1997
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[1] Because Title 3 is an annual compilation, this volume and all previous volumes should be retained as a permanent reference source.

[2] The July 1, 1985 edition of 32 CFR Parts 1–189 contains a note only for Parts 1–39 inclusive. For the full text of the Defense Acquisition Regulations in Parts 1–39, consult the three CFR volumes issued as of July 1, 1984, containing those parts.

[3] The July 1, 1985 edition of 41 CFR Chapters 1–100 contains a note only for Chapters 1 to 49 inclusive. For the full text of procurement regulations in Chapters 1 to 49, consult the eleven CFR volumes issued as of July 1, 1984 containing those chapters.

[4] No amendments to this volume were promulgated during the period July 1, 1996 to June 30, 1997. The volume issued July 1, 1996, should be retained.

[5] No amendments to this volume were promulgated during the period January 1, 1997 through December 31, 1997. The CFR volume issued as of January 1, 1997 should be retained.

[6] No amendments to this volume were promulgated during the period April 1, 1997, through April 1, 1998. The CFR volume issued as of April 1, 1997, should be retained.