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Monday
November 16, 1998

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

FOR: Any person who uses the Federal Register and Code of Federal Regulations.
WHO: Sponosred by the Office of the Federal Register.
WHAT: Free public breifings (approximately 3 hours) to present:
1. The regulatory process, with a focus on the Federal Register system and the public's role in the development of regulations.
2. The relationship between the Federal Register and Code of Federal Regulations.
3. The important elements of typical Federal Register documents.
4. An introduction to the finding aids of the FR/CFR system.

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

WASHINGTON, DC

WHEN: Tuesday, Nov. 24, 1998 at 9:00 am.
WHERE: Office of the Federal Register
Conference Room
800 North Capitol Street, NW.
Washington, DC
(3 blocks north of Union Station Metro)
RESERVATIONS: 202–523–4538

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Separate Parts In This Issue

Reader Aids
Consult the Reader Aids section at the end of this issue for phone numbers, online resources, finding aids, reminders, and notice of recently enacted public laws.

CFR PARTS AFFECTED IN THIS ISSUE

A cumulative list of the parts affected this month can be found in the Reader Aids section at the end of this issue.

Rules and Regulations

Federal Register
Vol. 63, No. 220
Monday, November 16, 1998

OFFICE OF PERSONNEL MANAGEMENT

5 CFR PART 351

RIN 3206–AH95

Reduction in Force Offers of Vacant Positions

AGENCY: Office of Personnel Management.

ACTION: Final rulemaking.

SUMMARY: The Office of Personnel Management is issuing final regulations that clarify existing policy on reduction in force offers of vacant positions.

DATES: These regulations are effective December 16, 1998.

FOR FURTHER INFORMATION CONTACT: Thomas A. Glennon, or Jacqueline R. Yeatman, 202–606–0960, FAX 202–606–2329.

SUPPLEMENTARY INFORMATION:

Background

On May 13, 1998, OPM published proposed regulations (63 FR 26531) to clarify OPM policy on offers of vacant positions to employees under authority of OPM's part 351 reduction in force regulations.

Comments

OPM received three comments on these proposed rules: one from an agency, and two from employees' union.

The agency supported the regulation as proposed.

One union local suggested that the final regulation specifically provide that agencies may also make voluntary offers of positions under authority other than the part 351 reduction in force regulations.

This suggestion was not adopted as unnecessary because an agency always has the right to make offers of vacant positions apart from the reduction in force regulations (e.g., reassignment to positions at the same grade). In addition, agencies may make voluntary offers of lower-graded positions in lieu of reduction in force actions. This option was referenced in the Supplementary Information section of the proposed regulations. Also, agencies may make offers of vacant positions that would not be permissible under the reduction in force regulations (e.g., offers of vacant positions in different competitive areas, or below the applicable grade limits for reduction in force offers of assignment).

The second employees' union noted that its employees are not covered by title 5, United States Code, and asked whether its employees are administratively covered by OPM's part 351 reduction in force regulations.

In a separate letter, OPM explained that coverage of these employees was at the option of the employing agency rather than a right provided to the employees under title 5, United States Code.

Final Regulations

These final regulations revise § 351.704(a)(1) to clarify longstanding OPM policy that an offer of assignment to a vacant position under authority of part 351 must be consistent with §§ 351.201(b) and 351.701, including the grade limits applicable to bump and retreat set forth in §§ 351.701(b)(2) and 351.701(c)(2).

These final regulations also revise § 351.704(a)(1) to clarify longstanding OPM policy that an agency may offer an employee assignment to a vacant position in lieu of separation by reduction in force under part 351.

These final regulations do not affect the agency's right to make offers of vacant positions under other authority.

Regulatory Flexibility Act

I certify that this regulation will not have a significant economic impact on a substantial number of small entities because it affects only certain Federal employees.

List of Subjects in 5 CFR Part 351

Administrative practice and procedure, Government employees.

U.S. Office of Personnel Management.

Janice R. Lachance,

Director.

Accordingly, OPM is amending part 351 of title 5, Code of Federal Regulations, as follows:

PART 351—REDUCTION IN FORCE

1. The authority citation for part 351 continues to read as follows:

Authority: 5 U.S.C. 1302, 3502, 3503, Section 351.801 also issued under E.O. 12828, 58 FR 2965.

2. In § 351.704, paragraph (a)(1) is revised to read as follows:

§ 351.704 Rights and prohibitions.

(a)(1) An agency may satisfy an employee's right to assignment under § 351.701 by assignment to a vacant position under § 351.201(b), or by assignment under any applicable administrative assignment provisions of § 351.705, to a position having a representative rate equal to that the employee would be entitled under § 351.701. An agency may also offer an employee assignment under § 351.201(b) to a vacant position in lieu of separation by reduction in force under 5 CFR part 351. Any offer of assignment under § 351.201(b) to a vacant position must meet the requirements set forth under § 351.701.

* * * * *

[FR Doc. 98–30328 Filed 11–13–98; 8:45 am]

BILLING CODE 6325–01–P

Office of Personnel Management

5 CFR Part 532

RIN 3206–AI30

Prevailing Rate Systems; Redefinition of Philadelphia, PA, and New York, NY, Appropriated Fund Wage Areas

AGENCY: Office of Personnel Management.

ACTION: Final rule.

SUMMARY: The Office of Personnel Management (OPM) is issuing a final rule to redefine Ocean County, NJ, excluding the portion occupied by the Fort Dix Military Reservation, from the area of application of the Philadelphia, PA, appropriated fund Federal Wage System (FWS) wage area to the area of application of the New York, NY, wage area. This change is being made so that the wage area definition of Ocean County will be more reflective of the transportation and commuting patterns in central New Jersey.

DATES: Effective: December 16, 1998. Federal Wage System employees

stationed in Ocean County, NJ, excluding the portion occupied by the Fort Dix Military Reservation, will be moved from the Philadelphia, PA, wage schedule to the New York, NY, wage schedule on the first day of the first applicable pay period beginning on or after this date.

FOR FURTHER INFORMATION CONTACT: Mark Allen at (202) 606–2848, or send an email message to maallen@opm.gov.

SUPPLEMENTARY INFORMATION: The Office of Personnel Management (OPM) is engaged in an ongoing project to review the geographic definitions of selected Federal Wage System (FWS) appropriated fund wage areas. On June 23, 1998, OPM published a proposed rule to redefine Ocean County, NJ, excluding the portion occupied by the Fort Dix Military Reservation, from the area of application of the Philadelphia, PA, appropriated fund FWS wage area to the area of application of the New York, NY, wage area (63 FR 34134). The proposed rule provided a 30-day period for public comment, during which OPM received several comments requesting that Lakehurst Naval Air Station, the main employer of FWS workers in Ocean County, remain in the Philadelphia FWS wage area. The comments we received are addressed below, following an introduction to this issue.

The Federal Prevailing Rate Advisory Committee (FPRAC), the statutory national labor-management committee responsible for advising OPM on matters concerning the pay of FWS employees, recommended by majority vote that OPM redefine Ocean County, NJ, excluding the portion occupied by the Fort Dix Military Reservation, from the area of application of the Philadelphia, PA, appropriated fund FWS wage area to the area of application of the New York, NY, wage area. FPRAC is composed of representatives from the Department of Defense, the Department of the Army, the Department of the Navy, the Department of the Air Force, the Department of Veterans Affairs, OPM, the American Federation of Government Employees, the Metal Trades Department, the National Association of Government Employees, and the National Federation of Federal Employees.

Section 532.211 of title 5, Code of Federal Regulations, lists the following criteria that OPM uses to determine appropriate FWS wage area boundaries:

(i) Distance, transportation facilities, and geographic features;

(ii) Commuting patterns; and

(iii) Similarities in overall population, employment, and the kinds and sizes of private industrial establishments.

Ocean County is located in central New Jersey and is bordered by Burlington County to the West and Monmouth County to the North. FPRAC studied the appropriate wage area definition of Ocean County exhaustively. Based on their analysis of the regulatory criteria, the management members of FPRAC found no compelling reason to change the wage area designation of Ocean County. The labor members of the Committee argued that the transportation facilities and commuting patterns criteria favor placing Ocean County in the New York wage area. After failing to reach consensus, the Committee voted to accept the labor recommendation, with the Chairman of the Committee casting the tie-breaking vote in support of the labor position. The management members of FPRAC filed a minority report in opposition to the FPRAC majority recommendation.

After careful consideration, OPM finds it appropriate to accept the FPRAC recommendation in this case. OPM has not overruled an FPRAC recommendation concerning the definition of an FWS wage area since the Committee was established in 1972. The distance, geographic features, and overall population, employment, and the kinds and sizes of private industrial establishments criteria do not clearly favor defining Ocean County to one wage area more than another. However, we find that the transportation facilities and commuting patterns criteria clearly favor defining Ocean County to the New York wage area rather than to the Philadelphia wage area.

The largest employer of FWS workers in Ocean County is Lakehurst Naval Air Station, although several other smaller employment sites will be affected by the redefinition of Ocean County to the New York wage area. Employees with official duty stations in the Fort Dix Military Reservation portion of Ocean County will remain in the Philadelphia wage area. Employees with official duty stations at Lakehurst Naval Air Station and other facilities in Ocean County will be moved from the Philadelphia wage schedule to the New York wage schedule on the first day of the first applicable pay period beginning on or after 30 days after the issuance of this final regulation.

The comments received in response to the proposed rule raised issues that had been considered and discussed exhaustively during the deliberations of the Federal Prevailing Rate Advisory Committee on this matter. Commenters suggested that there is no clear demonstration of need to cause a change in the definitions of the Philadelphia and New York wage areas. FPRAC found that a demonstrated need exists to make this change. We find that this change is necessary so that the wage area definition of Ocean County will be in line with the regulatory criteria for defining FWS wage areas. This change will enable the wage area definition of Ocean County to be more reflective of the transportation and commuting patterns in central New Jersey.

Commenters suggested that the use of commuting patterns and transportation facilities to justify a change is not supportable, citing the fact that 14 percent of the resident workforce of Ocean County commutes to work in the New York survey area, and citing anecdotal evidence that few blue-collar workers are included in this percentage. FPRAC found that the percentage of the Ocean County resident workforce commuting to New York is significant enough to favor removing the county from the Philadelphia wage area and redefining it to the New York wage area. Also, FPRAC received additional anecdotal evidence from local employees in Ocean County that significant numbers of blue-collar workers commute from Ocean County to jobs in New York, and that transportation facilities between Ocean County and New York are far better than between Ocean County and Philadelphia. We find that the commuting pattern and transportation facility information fully supports defining Ocean County to the New York wage area.

Commenters pointed out that Ocean County is contiguous to the Philadelphia survey area but not contiguous to the New York survey area. While this is true, the distance criteria for defining FWS wage areas shows that Ocean County is about the same distance by road from the center of the New York survey area as it is from the center of the Philadelphia survey area. Therefore, OPM finds that the distance criterion does not clearly favor defining Ocean County to one wage area more than another.

Commenters stated that placing adjacent Department of Defense installations (Fort Dix, McGuire Air Force Base, and Lakehurst Naval Air Station) in separate wage areas would unnecessarily force the installations to compete for the same employees to fill positions in skilled aircraft maintenance occupations, thereby increasing the potential for disruptions in accomplishing mission critical work at the installations. Although not part of

the regulatory criteria for defining FWS wage areas, FPRAC considered this issue carefully before making its recommendation to OPM. Should agencies experience recruitment or retention problems in particular occupations at an installation, OPM would consider the approval of requests for special rates to address those problems.

Commenters stated that Lakehurst Naval Air Station is conducting cost comparisons with private industry to consider contracting out certain work, and that certain FWS employees at the installation will be placed at a competitive disadvantage during these studies if paid from the higher New York wage schedule. Although not among the regulatory criteria for defining FWS wage areas, FPRAC considered this issue carefully before making its recommendation to OPM. OPM finds that it is not appropriate to preclude the appropriate redefinition of an FWS wage area on the basis that the redefinition may increase the likelihood that it may be possible for private sector companies to more easily win contracts to provide services to Federal agencies.

Commenters requested that OPM redefine Ocean County to the New York wage area, while leaving both the Fort Dix Military Reservation and Lakehurst Naval Air Station portions of Ocean County in the Philadelphia wage area. Under the regulatory criteria for defining FWS wage areas, a county may not be split between two wage areas except in unusual circumstances and as an exception to the regulatory criteria. The Fort Dix Military Reservation portion of Ocean County will continue to be defined to the Philadelphia wage area because the activity would otherwise be split between two wage areas. With most of the Fort Dix Military Reservation in Burlington County, and a lesser portion of the installation in Ocean County, we believe this represents an example of an appropriate exception to the regulatory criteria. OPM defines several counties in a similar manner, using exceptions to the regulatory criteria in certain wage areas to avoid splitting individual installations among two or more wage areas. Although Lakehurst Naval Air Station is adjacent to the Fort Dix Military Reservation portion of Ocean County, Lakehurst Naval Air Station is a separate installation. We do not believe it is appropriate to recognize that Ocean County is linked more closely to New York than to Philadelphia under the regulatory criteria for defining FWS wage areas, but then refuse to acknowledge that the major FWS employer in the county should be treated in accordance with the appropriate wage area definition of the county.

Regulatory Flexibility Act

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

List of Subjects in 5 CFR Part 532

Administrative practice and procedure, Freedom of information, Government employees, Reporting and recordkeeping requirements, Wages.

Office of Personnel Management,

Janice R. Lachance,

Director.

Accordingly, OPM is amending 5 CFR part 532 as follows:

PART 532—PREVAILING RATE SYSTEMS

1. The authority citation for part 532 continues to read as follows:

Authority: 5 U.S.C. 5343, 5346; § 532.707 also issued under 5 U.S.C. 552.

Appendix C to Subpart B of Part 532 [Amended]

2. Appendix C to subpart B is amended by revising the wage area listings for the New York, New York, and Philadelphia, Pennsylvania, wage areas to read as follows:

Appendix C to Subpart B of Part 532—Appropriated Fund Wage and Survey Areas

* * * * *

New York

* * * * *

New York

Survey Area

New York:
- Bronx
- Kings
- Nassau
- New York
- Queens
- Suffolk
- Westchester

New Jersey:
- Bergen
- Essex
- Hudson
- Middlesex
- Morris
- Passaic
- Somerset
- Union

Area of Application. Survey area plus:

New York:
- Putnam
- Richmond
- Rockland

New Jersey:
- Monmouth
- Ocean (excluding the Fort Dix Military Reservation)
- Sussex

* * * * *

Pennsylvania

* * * * *

Philadelphia

Survey Area:

Pennsylvania:
- Bucks
- Chester
- Delaware
- Montgomery
- Philadelphia

New Jersey:
- Burlington
- Camden
- Gloucester

Area of Application. Survey area plus:

Pennsylvania:
- Lehigh
- Northampton

New Jersey:
- Atlantic
- Cape May
- Cumberland
- Hunterdon
- Mercer
- Ocean (Fort Dix Military Reservation only)
- Warren

* * * * *

[FR Doc. 98–30511 Filed 11–13–98; 8:45 am]

BILLING CODE 6325–01–P

DEPARTMENT OF JUSTICE

Immigration and Naturalization Service

8 CFR Parts 103, 244, 274a, and 299

[INS No. 1608–93]

RIN 1115–AC30

Temporary Protected Status, Exception to Registration Deadlines

AGENCY: Immigration and Naturalization Service, Justice.

ACTION: Final rule.

SUMMARY: This rule amends the Immigration and Naturalization Service (Service) regulations by providing additional exceptions to the deadlines for initial registration for Temporary Protected Status (TPS). Eligible persons who did not register for TPS because they are or were in a status or a condition that made it unnecessary or discouraged registration during the initial registration period may now apply for late registration. This rule also makes conforming changes to reflect the redesignation by the Immigration Reform and Immigrant Responsibility Act of 1996 (IIRIRA) of section 240 of

the Immigration and Nationality Act (Act) as section 244, and makes other minor conforming changes to reflect current Service procedures.

DATES: This rule is effective November 16, 1998.

FOR FURTHER INFORMATION CONTACT: Pearl Chang, Chief, Residence and Status, Adjudications Division, Immigration and Naturalization Service, 425 I Street, NW., Room 3214, Washington DC 20536, Telephone: (202) 514–5014.

SUPPLEMENTARY INFORMATION:

Temporary Protected Status (TPS), as provided for by section 244 of the Act, affords temporary protection in the United States to persons of designated foreign states that are experiencing ongoing civil strife, environmental disaster, or certain other extraordinary and temporary conditions. As originally promulgated in 1991, the regulations at 8 CFR part 240 limited TPS registration to aliens who applied during the registration period established by **Federal Register** notice initially designating a particular country for TPS. This formulation left otherwise eligible aliens who, for one reason or another, failed to register for TPS with the prospect of having to return to their home countries while the conditions precipitating the TPS designation remained. Many such aliens were maintaining an immigration status or pursuing a pending immigration application which they hoped or assumed would allow them to remain legally in the United States permanently or at least until the conditions in their home countries improved.

On November 5, 1993, the Service published an interim rule in the **Federal Register** at 58 FR 58935 which addressed this problem with respect to nonimmigrants and immigrants by creating an exception to the initial registration deadlines for TPS. This final rule broadens that exception to persons otherwise eligible for TPS who are or were in a status or a condition that made it unnecessary or discouraged registration during the initial registration period, including parolees and pending asylum applicants.

Specifically, the exception in the interim rule was limited to otherwise eligible aliens who are or were in any valid nonimmigrant or immigrant status on the date their country was designated for TPS, and who did not register during the initial registration period (usually comprising the entire first period of designation). Pursuant to the interim rule, such persons may apply for TPS during any extension of the designation, provided the application is submitted within 30 days of the expiration of the previous nonimmigrant or immigrant status, or by February 3, 1994, (90 days after the effective date of that rule), whichever is later. The interim rule also provided a finding of lawful status as a nonimmigrant for those persons who fell out of status between the end of the first period of registration and the effective date of that rule. 8 CFR 244.10(f)(2)(v). (N.B. IIRIRA amended section 212(a)(9)(B) of the Act as of April 1, 1997, to define ''unlawfully present'' such that an alien is present in the United States after the expiration of a period of stay authorized by the Attorney General or present in the United States without being admitted or paroled). This definition applies only for purposes of 212(a)(9)(B)(i) and 212(a)(9)(C)(i)(I) of the Act. Nevertheless, those aliens who file for TPS after April 1, 1997, and within 30 days of the expiration of their previous status will not accrue time in unlawful presence after their previous status expires and before they register for TPS. This finding of nonimmigrant status will continue in effect until such time as the Service may issue a final (or interim) regulation implementing a comprehensive definition of unlawful presence.)

Discussion of Comments

The comment period for the interim rule closed on December 6, 1993. The following is a discussion of those comments and the Service's response.

The Service received five comments to the interim rule. All commenters were supportive of allowing late initial TPS registration under certain circumstances. Several commenters, however, urged that the eligibility for late registration be extended to other groups. The Service agrees with the majority of those commenters that applicants for asylum and minors whose parents registered for TPS, but did not register any or all of their children, should be eligible for such late initial registration. In addition, the Service believes that the following groups should also be eligible: (1) Those with an application for nonimmigrant status, resident status, asylum, voluntary departure, or any relief from removal which is pending or subject to further review or appeal; and (2) those present subsequent to parole under section 212(d)(5) of the Act.

The Service does not, however, agree with the commenter who requested that DED Salvadorans should be eligible for late registration because TPS for El Salvador has already been terminated.

The Service does not agree with the request that those who do not meet the basic eligibility requirements, including physical presence in the United States by the date specified in the TPS **Federal Register** notice, should be eligible for initial late registration.

Finally, the Service agrees with both commenters who suggested that the application period for initial late registration be extended beyond the 30 days specified in the interim rule to provide additional time for the distribution of information regarding TPS to the affected aliens. This final rule extends the late initial registration period to 60 days from the date of the TPS notice's publication in the **Federal Register** for all grandfathered (otherwise ineligible) applicants. The final rule also provides 60 days to register for TPS for those who become eligible for late registration.

In addition, the final rule provides that those persons who would otherwise have been eligible for TPS during the first period of registration who: (1) Were in a valid status during that period of registration; (2) fell out of valid status during any subsequent period of registration; and (3) were prevented from registering for TPS by the regulation in effect at the time, will be held to have maintained a valid status during that period.

Persons covered by this exception must meet all other requirements of TPS including presence in the United States at the time the foreign state in question was designated for TPS. This rule is not intended to extend protection to persons who arrived in the United States, whether legally or illegally, after the designation was made, nor is it intended to cover persons who were not in valid immigrant or nonimmigrant status during the initial registration period.

Technical Amendments

This rule also changes all references to section 240 of the Act to section 244 as required by IIRIRA. Finally, this rule modifies several definitions within section 244 to better comport with the rest of 8 CFR. Specifically, the definition of *Act* is removed because it duplicates the definition at 8 CFR 1.1(b) which controls. The term *state* is changed to *foreign state* (although the definition remains the same) for clarity. The definition of *charging document* is revised to comport with the definition of that term in § 3.13.

Regulatory Flexibility Act

In accordance with 5 U.S.C. 605(b), the Commissioner of the Immigration and Naturalization Service certifies that this rule will not, if promulgated, have a significant economic impact on a substantial number of small entities.

This rule allows certain aliens to apply for TPS; it has no effect on small entities as that term is defined in 5 U.S.C. 601(6).

Executive Order 12866

This rule is not considered by the Department of Justice, Immigration and Naturalization Service, to be a ''significant regulatory action'' under Executive Order 12866, section 3(f), Regulatory Planning and Review, and the Office of Management and Budget has waived its review process under section 6(a)(3)(A).

Executive Order 12612

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

Small Business Regulatory Enforcement Fairness Act of 1996

This rule is not a major rule as defined by section 804 of the Small Business Regulatory Enforcement Act of 1996. This rule will not result in an annual effect on the economy of $100 million or more; a major increase in costs or prices; or significant adverse effects on competition, employment, investment, productivity, innovation, or on the ability of United States-based companies to compete with foreign-based companies in domestic and export markets.

Executive Order 12988 Civil Justice Reform

This final rule meets the applicable standards set forth in sections 3(a) and 3(b)(2) of E.O. 12988.

Unfunded Mandates Reform Act of 1995

This rule will not result in the expenditure by State, local, and tribal governments, in the aggregate, or by the private sector, of $100 million or more in any 1 year, and will not significantly or uniquely affect small governments. Therefore, no actions were deemed necessary under the provisions of the Unfunded Mandates Reform Act of 1995.

Lists of Subjects

8 CFR Part 103

Administrative practice and procedure, Authority delegations (Government agencies), Freedom of information, Privacy, Reporting and recordkeeping requirements, Surety bonds.

8 CFR Part 244

Administrative practice and procedure, Immigration, Aliens, Reporting and recordkeeping requirements.

8 CFR Part 274a

Administrative practice and procedure, Aliens, Employment, Penalties, Reporting and recordkeeping requirements.

8 CFR Part 299

Immigration.

Accordingly, the interim rule amending 8 CFR parts 103, 240, and 299 (part 240 at the time of the interim rule has since been redesignated as part 244) which was published at 58 FR 58935 on November 5, 1993, is adopted as a final rule with the following changes and part 274a is amended as follows:

PART 103—POWERS AND DUTIES OF SERVICE OFFICERS; AVAILABILITY OF SERVICE RECORDS

1. The authority citation for part 103 continues to read as follows:

Authority: 5 U.S.C. 552, 552(a); 8 U.S.C. 1101, 1103, 1201, 1252 note, 1252b, 1304, 1356; 31 U.S.C. 9701; E.O. 12356, 47 FR 14874, 15557, 3 CFR, 1982 Comp., p. 166; 8 CFR part 2.

§ 103.1 [Amended]

2. Section 103.1(f)(3)(iii)(HH) is amended by revising the reference to ''part 240'' to read ''part 244.''

§ 103.7 [Amended]

3. In § 103.7(b)(1), the entry for ''Form EOIR–40'' is amended by revising the reference to ''section 244 of the Act'' to read ''section 244 of the Act as it existed prior to April 1, 1997.'' Further, in § 103.7(b)(1), the entry for ''Form I–821'' is amended by revising the reference to ''section 244A of the Act'' to read ''section 244 of the Act as amended by section 308(a)(7) of the Illegal Immigration Reform and Immigrant Responsibility Act of 1996''.

§ 103.12 [Amended]

4. In § 103.12 paragraph (a)(4)(ii) is amended by revising the reference to ''section 244A of the Act'' to read ''section 244 of the Act''.

PART 244—TEMPORARY PROTECTED STATUS FOR NATIONALS OF DESIGNATED FOREIGN STATES

5. The authority citation for part 244 continues to read as follows:

Authority: 8 U.S.C. 1103, 1254, 1254a note, 8 CFR part 2.

6. Section 244.1 is amended by removing the definitions of the terms *Act* and *State*, revising the definition of *Charging document*, and adding the definition of *Foreign state* immediately after the definition of *Felony*, to read as follows:

§ 244.1 Definitions.

* * * * *

Charging document means the written instrument which initiates a proceeding before an Immigration Judge. For proceedings initiated prior to April 1, 1997, these documents include an Order to Show Cause, a Notice to Applicant for Admission Detained for Hearing before Immigration Judge, and a Notice of Intention to Rescind and Request for Hearing by Alien. For proceedings initiated after April 1, 1997, these documents include a Notice to Appear, a Notice of Referral to Immigration Judge, and a Notice of Intention to Rescind and Request for Hearing by Alien.

* * * * *

Foreign state means any foreign country or part thereof as designated by the Attorney General pursuant to section 244 of the Act.

* * * * *

§ 244.1 [Amended]

7. Section 244.1 is amended by:

a. Revising the reference to ''section 244A'' to read ''section 244'' in the definition for *Felony*;

b. Revising the reference to ''section 244A(c)'' to read ''section 244'' in the definition for *Prima Facie*; and by

c. Revising the reference to ''section 244A(b)'' to read ''section 244(b)'' in the definition for *Register*.

8. Section 244.2 is revised to read as follows:

§ 244.2 Eligibility.

Except as provided in §§ 244.3 and 244.4, an alien may in the discretion of the director be granted Temporary Protected Status if the alien establishes that he or she:

(a) Is a national, as defined in section 101(a)(21) of the Act, of a foreign state designated under section 244(b) of the Act;

(b) Has been continuously physically present in the United States since the effective date of the most recent designation of that foreign state;

(c) Has continuously resided in the United States since such date as the Attorney General may designate;

(d) Is admissible as an immigrant except as provided under § 244.3;

(e) Is not ineligible under § 244.4; and

(f)(1) Registers for Temporary Protected Status during the initial registration period announced by public notice in the **Federal Register**, or

(2) During any subsequent extension of such designation if at the time of the initial registration period:

(i) The applicant is a nonimmigrant or has been granted voluntary departure status or any relief from removal;

(ii) The applicant has an application for change of status, adjustment of status, asylum, voluntary departure, or any relief from removal which is pending or subject to further review or appeal;

(iii) The applicant is a parolee or has a pending request for reparole; or

(iv) The applicant is a spouse or child of an alien currently eligible to be a TPS registrant.

(3) Eligibility for late initial registration in a currently designated foreign state shall also continue until January 15, 1999, for any applicant who would have been eligible to apply previously if paragraph (f)(2) of this section as revised had been in effect before November 16, 1998.

(g) Has filed an application for late registration with the appropriate Service director within a 60-day period immediately following the expiration or termination of conditions described in paragraph (f)(2) of this section.

§ 244.4 [Amended]

9. In § 244.4, paragraph (a) is amended by revising the reference to ''§ 240.1'' to read ''§ 244.1''.

§ 244.5 [Amended]

10. In § 244.5, paragraph (a) is amended in the first sentence by revising the term ''state'' to read ''foreign state'', and by revising the reference to ''section 244A'' to read ''section 244''. Paragraph (a) is further amended by revising the reference to ''§ 240.13'' to read ''§ 244.13'' in the next to last sentence.

11. In § 244.5, paragraph (b) is amended in the last sentence by revising the reference to ''§ 240.13'' to read ''§ 244.13''.

§ 244.6 [Amended]

12. Section 244.6 is amended in the last sentence by revising the reference to ''§ 240.9'' to read ''§ 244.9''.

13. Section 244.7 is revised to read as follows:

§ 244.7 Filing the application.

(a) An application for Temporary Protected Status shall be filed with the director having jurisdiction over the applicant's place of residence.

(b) An application for Temporary Protected Status must be filed during the registration period established by the Attorney General, except in the case of an alien described in § 244.2(f)(2).

(c) Each applicant must pay a fee, as determined at the time of the designation of the foreign state, except as provided in § 244.5(a).

(d) If the alien has a pending deportation or exclusion proceeding before the immigration judge or Board of Immigration Appeals at the time a foreign state is designated under section 244(b) of the Act, the alien shall be given written notice concerning Temporary Protected Status. Such alien shall have the opportunity to submit an application for Temporary Protected Status to the director under paragraph (a) of this section during the published registration period unless the basis of the charging document, if established, would render the alien ineligible for Temporary Protected Status under § 244.3(c) or § 244.4. Eligibility for Temporary Protected Status in the latter instance shall be decided by the Executive Office for Immigration Review during such proceedings.

§ 244.8 [Amended]

14. Section 244.8 is amended in the last sentence by revising the term ''district director'' to read ''director''.

§ 244.9 [Amended]

15. Section 244.9 is amended by:

a. Revising the term ''designated state'' to read ''designated foreign state'' in paragraph (a)(1) second sentence of the introductory text;

b. Revising the reference to *section 244A(c)(2)* to read *section 244(c)(2)* in paragraph (a)(3) heading; and by

c. Revising the reference to ''§ 240.2(f)(2)'' to read ''§ 244.2(f)(2)'' in paragraph (a)(4).

§ 244.10 [Amended]

16. In § 244.10, paragraph (a) is amended by revising the reference to ''§ 240.5'' to read ''§ 244.5''.

17. In § 244.10, paragraph (b) is amended by revising the reference to ''§§ 240.2, 240.3, and 240.4'' to read ''§§ 244.2, 244.3, and 244.4''.

18. Section 244.10 is further amended by:

a. Revising the term *district director* to read *director*, in the heading for paragraph (c);

b. Revising the term ''district director'' to read ''director'' wherever that term appears in paragraph (c) introductory text;

c. Revising the phrase ''under § 240.4 or inadmissable under § 240.3(c)'' to read ''under § 244.4 or inadmissible under § 244.3(c)'' in paragraph (c)(1);

d. Revising the term ''district director's'' to read ''director's'' in paragraph (c)(2);

e. Revising the reference to ''240.11 and 240.18'' to read ''240.11, and 244.18'' in paragraph (c)(2);

f. Revising the term ''designated state'' to read ''designated foreign state'' in the last sentence of paragraph (e)(1) introductory text;

g. Revising the reference to ''§ 240.13'' to read ''§ 244.13'' in paragraph (e)(2);

h. Revising the term ''designated state'' to read ''designated foreign state'' in paragraph (f)(2) introductory text;

i. Revising the reference to ''§ 240.15'' to read ''§ 244.15'' in paragraph (f)(2)(iii); and by

j. Revising the reference to ''§ 240.2(f)(2)'' to read ''§ 244.2(f)(2)'' in paragraph (f)(2)(v).

§ 244.11 [Amended]

19. Section 244.11 is amended in the last sentence by revising the reference to ''§ 240.19'' to read ''§ 244.19'' and by revising the term ''state's'' to read ''foreign state's''.

§ 244.12 [Amended]

20. Section 244.12 is amended by:

a. Revising the term ''state's'' to read ''foreign state's'' in paragraph (a);

b. Revising the reference to ''§ 240.14'' to read ''§ 244.14'' in paragraph (b); and by

c. Revising the reference to ''§ 240.18(b)'' to read ''§ 244.18(b)'' in paragraph (d).

§ 244.13 [Amended]

21. In § 244.13, paragraph (b) is amended by revising the term ''state's'' to read ''foreign state's'', and by revising the reference to ''section 244A(b)(3)'' to read ''section 244(b)(3)''.

§ 244.14 [Amended]

22. Section 244.14 is amended by:

a. Revising the term *district director* to read *director* in the heading in paragraph (a), revising the term ''district director'' to read ''director'', and by revising the reference to ''section 244A'' to read ''section 244'' in paragraph (a) introductory text;

b. Revising the reference to ''§ 240.15'' to read ''§ 244.15'' in the last sentence in paragraph (a)(2);

c. Revising the term *district director* to read *director* in the heading of paragraph (b);

d. Revising the phrase ''section 236 or section 242 of the Act'' to read ''sections 235, 236, 237, 238, 240, or 241 of the Act'' in paragraph (b)(2);

e. Revising the phrase ''§ 240.4 or inadmissible under § 240.3(c)'' to read ''§ 244.4 or inadmissible under

§ 244.3(c)'' in the first sentence in paragraph (b)(3); and by

f. Revising the reference to ''§ 240.10(d)'' to read ''§ 244.10(d)'' in paragraph (c).

§ 244.15 [Amended]

23. In § 244.15, paragraph (a) is amended in the first sentence by revising the reference to ''section 244A(c)(3)(B)'' to read ''section 244(c)(3)(B)''.

§ 244.17 [Amended]

24. In § 244.17, paragraph (a) is amended in the second sentence by revising the term ''countries'' to read ''foreign states'' and by revising the reference to ''section 244A(b)'' to read ''section 244(b)''.

§ 244.18 [Amended]

25. Section 244.18 is amended by:

a. Revising the reference to §§ 240.3(c) and 240.4'' to read ''§§244.3(c) and 244.4'' in the first sentence of paragraph (a); and by

b. Revising the reference to ''district director'' to read ''director'' wherever it appears in paragraph (c).

§ 244.19 [Amended]

26. Section 244.19 is amended in the first sentence by revising the term ''state'' to read ''foreign state'', and by changing the term ''state's'' to read ''foreign state's'' in the last sentence.

PART 274a—CONTROL OF EMPLOYMENT OF ALIENS

27. The authority citation for part 274a continues to read as follows:

Authority: 8 U.S.C. 1101, 1103, 1324a, and 8 CFR part 2.

§ 274a.12 [Amended]

28. In § 274a.12 paragraph (c)(19) is amended by revising the reference to ''section 244A'' to read ''section 244'' and by revising the reference to ''part 240'' to read ''part 244''.

Dated: June 15, 1998.

Doris Meissner,

Commissioner, Immigration and Naturalization Service.

[FR Doc. 98–30480 Filed 11–13–98; 8:45 am]

BILLING CODE 4410–10–M

DEPARTMENT OF TRANSPORTATION

Federal Aviation Administration

14 CFR Part 39

[Docket No. 98–NM–234–AD; Amendment 39–10885; AD 98–23–17]

RIN 2120–AA64

Airworthiness Directives; Airbus Model A300 Series Airplanes

AGENCY: Federal Aviation Administration, DOT.

ACTION: Final rule.

SUMMARY: This amendment adopts a new airworthiness directive (AD), applicable to certain Airbus Model A300 series airplanes, that requires modification of the emergency evacuation slide/raft system. This amendment is prompted by issuance of mandatory continuing airworthiness information by a foreign civil airworthiness authority. The actions specified by this AD are intended to prevent the container release cable of the emergency evacuation slide/raft system from jamming, which could result in the inability to open the emergency exit doors or to correctly deploy the emergency evacuation slide/rafts, and consequent delay or impedance of passengers exiting the airplane during an emergency.

DATES: Effective December 21, 1998.

The incorporation by reference of certain publications listed in the regulations is approved by the Director of the Federal Register as of December 21, 1998.

ADDRESSES: The service information referenced in this AD may be obtained from Airbus Industrie, 1 Rond Point Maurice Bellonte, 31707 Blagnac Cedex, France. This information may be examined at the Federal Aviation Administration (FAA), Transport Airplane Directorate, Rules Docket, 1601 Lind Avenue, SW., Renton, Washington; or at the Office of the Federal Register, 800 North Capitol Street, NW., suite 700, Washington, DC.

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

SUPPLEMENTARY INFORMATION: A proposal to amend part 39 of the Federal Aviation Regulations (14 CFR part 39) to include an airworthiness directive (AD) that is applicable to certain Airbus Model A300 series airplanes was published in the **Federal Register** on September 17, 1998 (63 FR 49677). That action proposed to require modification of the emergency evacuation slide/raft system.

Comments

Interested persons have been afforded an opportunity to participate in the making of this amendment. No comments were submitted in response to the proposal or the FAA's determination of the cost to the public.

Conclusion

The FAA has determined that air safety and the public interest require the adoption of the rule as proposed.

Cost Impact

The FAA estimates that 24 airplanes of U.S. registry will be affected by this AD, that it will take approximately 6 work hours per airplane to accomplish the required modification, and that the average labor rate is $60 per work hour. Required parts will cost approximately $1,200 per airplane. Based on these figures, the cost impact of the modification required by this AD on U.S. operators is estimated to be $37,440, or $1,560 per airplane.

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

Regulatory Impact

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

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

List of Subjects in 14 CFR Part 39

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

Adoption of the Amendment

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

PART 39—AIRWORTHINESS DIRECTIVES

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

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

§ 39.13 [Amended]

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

98–23–17 Airbus Industrie: Amendment 39–10885. Docket 98–NM–234–AD.

Applicability: Model A300 series airplanes equipped with Air Cruisers emergency evacuation slide/rafts having part numbers (P/N) D30457-Series, serial numbers (S/N) 1001 through 2268 inclusive, or P/N D30477-Series, S/N 4001 through 4211 inclusive, on which the actions described in Air Cruisers Service Bulletin S.B. 25–88, Revision 3, dated May 4, 1983, have been not accomplished; certificated in any category.

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

Compliance: Required as indicated, unless accomplished previously.

To prevent the container release cable of the emergency evacuation slide/raft system from jamming, which could result in the inability to open the emergency exit doors or to correctly deploy the emergency evacuation slide/rafts, and consequent delay, or impedance of passengers exiting the airplane during an emergency, accomplish the following:

(a) Within 36 months after the effective date of this AD, modify the emergency evacuation slide/raft system, in accordance with Airbus Service Bulletin A300–25–0465, dated October 31, 1997.

Note 2: The Airbus service bulletin references Air Cruisers Service Bulletin S.B. 25–88, Revision 3, dated May 4, 1983, as an additional source of service information for modifying the emergency evacuation slide/raft system.

(b) As of the effective date of this AD, no person shall install an evacuation slide/raft system having Air Cruisers P/N D30457-Series, S/N 1001 through 2268 inclusive, or P/N D30477-Series, S/N 4001 through 4211 inclusive, on any airplane, unless the slide/raft system has been modified in accordance with this AD.

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

Note 3: Information concerning the existence of approved alternative methods of compliance with this AD, if any, may be obtained from the International Branch, ANM–116.

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

(e) The modification shall be done in accordance with Airbus Service Bulletin A300–25–0465, dated October 31, 1997. This incorporation by reference was approved by the Director of the Federal Register in accordance with 5 U.S.C. 552(a) and 1 CFR part 51. Copies may be obtained from Airbus Industrie, 1 Rond Point Maurice Bellonte, 31707 Blagnac Cedex, France. Copies may be inspected at the FAA, Transport Airplane Directorate, 1601 Lind Avenue, SW., Renton, Washington; or at the Office of the Federal Register, 800 North Capitol Street, NW., suite 700, Washington, DC.

Note 4: The subject of this AD is addressed in French airworthiness directive 98–121–243(B), dated March 11, 1998.

(f) This amendment becomes effective on December 21, 1998.

Issued in Renton, Washington, on November 4, 1998.

Vi L. Lipski,

Acting Manager, Transport Airplane Directorate, Aircraft Certification Service.

[FR Doc. 98–30167 Filed 11–13–98; 8:45 am]

BILLING CODE 4910–13–U

DEPARTMENT OF TRANSPORTATION

Federal Aviation Administration

14 CFR Part 39

[Docket No. 98–CE–45–AD; Amendment 39–10881; AD 98–23–14]

RIN 2120–AA64

Airworthiness Directives; Industrie Aeronautiche e Meccaniche Model Piaggio P–180 Airplanes

AGENCY: Federal Aviation Administration, DOT.

ACTION: Final rule.

SUMMARY: This amendment adopts a new airworthiness directive (AD) that applies to certain Industrie Aeronautiche e Meccaniche (I.A.M.) Model Piaggio P–180 airplanes. This AD requires inspecting the elevator and aileron control retaining pins for proper installation and damage, and replacing any improperly installed or damaged pins. This AD is the result of mandatory continuing airworthiness information (MCAI) issued by the airworthiness authority for Italy. The actions specified by this AD are intended to prevent the retaining pins from interfering with the flight control elements, which could result in loss of the cable retaining function with consequent loss of control of the airplane.

DATES: Effective December 18, 1998.

The incorporation by reference of certain publications listed in the regulations is approved by the Director of the Federal Register as of December 18, 1998.

ADDRESSES: Service information that applies to this AD may be obtained from I.A.M. Ronald Piaggio S.p.A., Via Cibrario, 4 16154 Genoa, Italy. This information may also be examined at the Federal Aviation Administration (FAA), Central Region, Office of the Regional Counsel, Attention: Rules Docket No. 98–CE–45–AD, Room 1558, 601 E. 12th Street, Kansas City, Missouri 64106; or at the Office of the Federal Register, 800 North Capitol Street, NW, suite 700, Washington, DC.

FOR FURTHER INFORMATION CONTACT: Mr. David O. Keenan, Aerospace Engineer, FAA, Small Airplane Directorate, 1201 Walnut, suite 900, Kansas City, Missouri 64106; telephone: (816) 426–6934; facsimile: (816) 426–2169.

SUPPLEMENTARY INFORMATION:

Events Leading to the Issuance of This AD

A proposal to amend part 39 of the Federal Aviation Regulations (14 CFR part 39) to include an AD that would

apply to certain I.A.M. Model Piaggio P–180 airplanes was published in the **Federal Register** as a notice of proposed rulemaking (NPRM) on September 9, 1998 (63 FR 48141). The NPRM proposed to require inspecting the elevator and aileron control retaining pins for proper installation and damage, and replacing any improperly installed or damaged pins. Accomplishment of the proposed action as specified in the NPRM would be in accordance with I.A.M. Piaggio Service Bulletin (Mandatory) No. SB–80–0089, dated May 22, 1996.

The NPRM was the result of mandatory continuing airworthiness information (MCAI) issued by the airworthiness authority for Italy.

Interested persons have been afforded an opportunity to participate in the making of this amendment. No comments were received on the proposed rule or the FAA's determination of the cost to the public.

The FAA's Determination

After careful review of all available information related to the subject presented above, the FAA has determined that air safety and the public interest require the adoption of the rule as proposed except for minor editorial corrections. The FAA has determined that these minor corrections will not change the meaning of the AD and will not add any additional burden upon the public than was already proposed.

Cost Impact

The FAA estimates that 5 airplanes in the U.S. registry will be affected by the inspection, that it will take approximately 3 workhours per airplane to accomplish the inspection, and that the average labor rate is approximately $60 an hour. Based on these figures, the total cost impact of the inspection on U.S. operators is estimated to be $900, or $180 per airplane. These figures do not account for any damaged or improperly installed retaining pins found during the inspection that will need to be replaced.

Regulatory Impact

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

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

List of Subjects in 14 CFR Part 39

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

Adoption of the Amendment

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

PART 39—AIRWORTHINESS DIRECTIVES

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

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

§ 39.13 [Amended]

2. Section 39.13 is amended by adding a new airworthiness directive (AD) to read as follows:

98–23–14 Industrie Aeronautiche E Meccaniche: Amendment 39–10881; Docket No. 98–CE–45–AD.

Applicability: Model Piaggio P–180 airplanes, serial numbers 1001, 1002, 1004, and 1006 through 1033, certificated in any category.

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

Compliance: Required as indicated in the body of this AD, unless already accomplished.

To prevent the retaining pins from interfering with the flight control elements, which could result in loss of the cable retaining function with consequent loss of control of the airplane, accomplish the following:

(a) Within the next 100 hours time-in-service after the effective date of this AD, inspect the elevator and aileron control retaining pins for proper installation and damage in accordance with the Accomplishment Instructions section in I.A.M. Piaggio Service Bulletin (Mandatory) No. SB–80–0089, dated May 22, 1996. Prior to further flight, replace any improperly installed or damaged pins in accordance with the service bulletin.

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

(c) An alternative method of compliance or adjustment of the compliance time that provides an equivalent level of safety may be approved by the Manager, Small Airplane Directorate, 1201 Walnut, suite 900, Kansas City, Missouri 64106. The request shall be forwarded through an appropriate FAA Maintenance Inspector, who may add comments and then send it to the Manager, Small Airplane Directorate.

Note 2: Information concerning the existence of approved alternative methods of compliance with this AD, if any, may be obtained from the Small Airplane Directorate.

(d) Questions or technical information related to I.A.M. Piaggio Service Bulletin (Mandatory) No. SB–80–0089, dated May 22, 1996, should be directed to I.A.M. Rinaldo Piaggio S.p.A., Via Cibrario, 4 16154 Genoa, Italy. This service information may be examined at the FAA, Central Region, Office of the Regional Counsel, Room 1558, 601 E. 12th Street, Kansas City, Missouri 64106.

(e) The inspection and replacement required by this AD shall be done in accordance with I.A.M. Piaggio Service Bulletin (Mandatory) No. SB–80–0089, dated May 22, 1996. This incorporation by reference was approved by the Director of the Federal Register in accordance with 5 U.S.C. 552(a) and 1 CFR part 51. Copies may be obtained from I.A.M. Rinaldo Piaggio S.p.A., Via Cibrario, 4 16154 Genoa, Italy. Copies may be inspected at the FAA, Central Region, Office of the Regional Counsel, Room 1558, 601 E. 12th Street, Kansas City, Missouri, or at the Office of the Federal Register, 800 North Capitol Street, NW, suite 700, Washington, DC.

Note 3: The subject of this AD is addressed in Italian AD No. 96–158, dated July 1, 1996.

(f) This amendment becomes effective on December 18, 1998.

Issued in Kansas City, Missouri, on November 4, 1998.

James E. Jackson,

Acting Manager, Small Airplane Directorate, Aircraft Certification Service.

[FR Doc. 98–30166 Filed 11–13–98; 8:45 am]

BILLING CODE 4910–13–U

DEPARTMENT OF TRANSPORTATION

Federal Aviation Administration

14 CFR Part 71

[Airspace Docket No. 98–ANM–04]

Modification of Class D Airspace and Establishment of Class E Airspace; Klamath Falls, OR

AGENCY: Federal Aviation Administration (FAA), DOT.

ACTION: Final rule.

SUMMARY: This action modifies Class D surface airspace at Klamath Falls International Airport by amending the effective hours to coincide with the Klamath Falls Airport Traffic Control Tower (ATCT). This action also establishes a Class E surface airspace area when the ATCT is closed. The effect of this action is to clarify when two-way radio communication with the ATCT is required and to provide adequate Class E airspace for instrument approach procedures when the tower is closed.

EFFECTIVE DATE: 0901 UTC, January 28, 1999.

FOR FURTHER INFORMATION CONTACT: Dennis Ripley, ANM–520.6, Federal Aviation Administration, Docket No. 98–ANM–04, 1601 Lind Avenue S.W., Renton, Washington, 98055–4056; telephone number: (425) 227–2527.

SUPPLEMENTARY INFORMATION:

History

On May 15, 1998, the FAA proposed to amend Title 14, Code of Federal Regulations, part 71 (14 CFR part 71) by modifying the Klamath Falls, OR, Class D surface area and by establishing a Class E surface area (63 FR 13153). This establishment of the Class E surface area provides the additional airspace necessary to allow terminal operations to and from the en route environment when the control tower is not in operation. Interested parties were invited to participate in the rulemaking proceeding by submitting written comments on the proposal. No comments were received.

The coordinates for this airspace docket are based on North American Datum 83. Class D and Class E airspace areas extending upward from the surface of the earth are published in paragraph 5000 and paragraph 6002, respectively, 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 will be published subsequently in the Order.

The Rule

This amendment to 14 CFR part 71 modifies the Class D airspace at Klamath Falls, OR, by amending the effective hours to coincide with the ATCT associated hours of operation. This action also establishes Class E surface area when the ATCT is closed. The intended effect of this rule is to clarify when two-way radio communication with the ATCT is required and to provide adequate Class E airspace for instrument approach procedures when the ATCT is closed.

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

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 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 5000 General.

* * * * *

ANM OR D Klamath Falls, OR [Revised]

Klamath Falls International Airport, OR
(Lat. 42°09′22″N, long. 121°43′59″W)

That airspace extending upward from the surface to and including 6,600 feet MSL within a 5.4-mile radius of the Klamath Falls International Airport. This Class D airspace area is effective during the specific dates and times established in advance by a Notice to Airmen. The effective date and time will thereafter be continuously published in the Airport/Facility Directory.

* * * * *

Paragraph 6002 Class E airspace areas designated as a surface area for an airport.

* * * * *

ANM OR E2 Klamath Falls, OR [New]

Klamath Falls International Airport, OR
(Lat. 42°09′22″N long. 121°43′59″W)

Within a 5.4-mile radius of the Klamath Falls International Airport. This Class E airspace area is effective during the specific dates and times established in advance by a Notice to Airmen. The effective date and time will thereafter be continuously published in the Airport/Facility Directory.

* * * * *

Issued in Seattle, Washington, on October 29, 1998.

Glenn A. Adams III,

Assistant Manager, Air Traffic Division, Northwest Mountain Region.

[FR Doc. 98–30588 Filed 11–13–98; 8:45 am]

BILLING CODE 4910–13–M

DEPARTMENT OF TRANSPORTATION

14 CFR Part 71

[Airspace Docket No. 98–AGL–42]

Establishment of Class E Airspace; Crosby, ND; Correction

AGENCY: Federal Aviation Administration (FAA), DOT.

ACTION: Final rule; correction.

SUMMARY: This action corrects one error in the legal description of a final rule that was published in the **Federal Register** on Thursday, September 10, 1998 (63 FR 48427), Airspace Docket No. 98–AGL–42. The final rule established Class E Airspace at Crosby, ND.

EFFECTIVE DATE: 0901 UTC, December 3, 1998.

FOR FURTHER INFORMATION CONTACT: Michelle M. Behm, Air Traffic Division, Airspace Branch, AGL–520, Federal Aviation Administration, 2300 East Devon Avenue, Des Plaines, IL 60018, telephone: (847) 294–7477.

SUPPLEMENTARY INFORMATION:

History

Federal Register Document 98–24290, Airspace Docket No. 98–AGL–42,

published on September 10, 1998 (63 FR 48427) rule established Class E Airspace at Crosby, ND. One error was discovered in the legal description for the Class E airspace for Crosby, ND. This action corrects that error.

Correction to Final Rule

Accordingly, pursuant to the authority delegated to me, the legal description for the Class E airspace Crosby, ND, as published in the **Federal Register** September 10, 1998 (63 FR 48427), (FR Doc. 98–24290), is corrected as follows:

PART 71—[CORRECTED]

§ 71.1 [Corrected]

AGL SD E5 Crosby, ND [Corrected]

On page 48428, Column 1, in the Class E airspace designation for Crosby, ND, incorporated by reference in Sec. 71.1, change the coordinates for the Crosby Municipal Airport, ND to ''(lat. 48° 55′ 43″N, long 103° 17′50″ W)''.

Issued in Des Plaines, IL on October 29, 1998.

Maureen Woods,

Manager, Air Traffic Division.

[FR Doc. 98–30593 Filed 11–13–98; 8:45 am]

BILLING CODE 4910–13–M

DEPARTMENT OF TRANSPORTATION

Federal Aviation Administration

14 CFR Part 71

[Airspace Docket No. 98–AGL–52]

Establishment of Class E Airspace; Duluth St. Mary's Hospital Heliport, MN

AGENCY: Federal Aviation Administration (FAA), DOT.

ACTION: Final rule.

SUMMARY: This action establishes Class E airspace at Duluth St. Mary's Hospital Heliport, MN. A Global Positioning System (GPS) Standard Instrument Approach Procedure (SIAP) 190° helicopter point in space approach, and a GPS SIAP 330° helicopter point in space approach, have been developed for St. Mary's Hospital Heliport. Controlled airspace extending upward from 700 to 1200 feet above ground level (AGL) is needed to contain aircraft executing the approaches. This action creates controlled airspace with a radius of 6.0 miles for the point in space serving St. Mary's Hospital Heliport.

EFFECTIVE DATE: 0901 UTC, January 28, 1999.

FOR FURTHER INFORMATION CONTACT: Michelle M. Behm, Air Traffic Division, Airspace Branch, AGL–520, Federal Aviation Administration, 2300 East Devon Avenue, Des Plaines, Illinois 60018, telephone (847) 294–7568.

SUPPLEMENTARY INFORMATION:

History

On Friday, August 14, 1998, the FAA proposed to amend 14 CFR part 71 to establish Class E airspace at Duluth St. Mary's Hospital Heliport, MN (63 FR 43653). The proposal was to add controlled airspace extending upward from 700 to 1200 feet AGL to contain Instrument Flight Rules (IFR) operations in controlled airspace during portions of the terminal operation and while transiting between the enroute and terminal environments.

Interested parties were invited to participate in this rulemaking proceeding by submitting written comments on the proposal to the FAA. No comments objecting to the proposal were received. Class E airspace designations for airspace areas extending upward from 700 feet or more above the surface of the earth 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 will be published subsequently in the Order.

The Rule

This amendment to 14 CFR part 71 establishes Class E airspace at Duluth St. Mary's Hospital Heliport, MN, to accommodate aircraft executing the proposed GPS SIAP 190° helicopter point in space approach, and GPS SIAP 330° helicopter point in space approach, at Duluth St. Mary's Hospital Heliport by creating controlled airspace for the heliport. The area will be depicted on appropriate aeronautical charts.

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.

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:

* * * * *

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

* * * * *

AGL MN Duluth St. Mary's Hospital Heliport, MN [New]

St. Mary's Hospital Heliport, MN

Point in Space Coordinates
(Lat. 46°47′38″N., long. 92°05′52″W.)

That airspace extending upward from 700 feet above the surface within a 6.0-mile radius of the Point in Space serving St. Mary's Hospital Heliport excluding that airspace within the Duluth, MN, Class D airspace area, and the Duluth, MN, Duluth Sky Harbor, MN, and the Superior, WI, Class E airspace areas.

* * * * *

Issued in Des Plaines, Illinois on October 29, 1998.

Maureen Woods,

Manager, Air Traffic Division.

[FR Doc. 98–30586 Filed 11–13–98; 8:45 am]

BILLING CODE 4910–13–M

DEPARTMENT OF TRANSPORTATION

Federal Aviation Administration

14 CFR Part 71

[Airspace Docket No. 98–AGL–53]

Modification of Class E Airspace; Valparaiso, IN

AGENCY: Federal Aviation Administration (FAA), DOT.

ACTION: Final rule.

SUMMARY: This action modifies Class E airspace at Valparaiso, IN. A Global Positioning System (GPS) Standard Instrument Approach Procedure (SIAP) to Runway (Rwy) 09, and a GPS SIAP to Rwy 27, have been developed for Porter County Municipal Airport. Controlled airspace extending upward from 700 to 1200 feet above ground level (AGL) is needed to contain aircraft executing the approaches. This action increases the radius of the existing controlled airspace for this airport.

EFFECTIVE DATE: 0901 UTC, January 28, 1999.

FOR FURTHER INFORMATION CONTACT: Michelle M. Behm, Air Traffic Division, Airspace Branch, AGL–520, Federal Aviation Administration, 2300 East Devon Avenue, Des Plaines, Illinois 60018, telephone (847) 294–7568.

SUPPLEMENTARY INFORMATION:

History

On Friday, August 14, 1998, the FAA proposed to amend 14 CFR part 71 to modify Class E airspace at Valparaiso, IN (63 FR 43652). The proposal was to add controlled airspace extending upward from 700 to 1200 feet AGL to contain Instrument Flight Rules (IFR) operations in controlled airspace during portions of the terminal operation and while transiting between the enroute and terminal environments.

Interested parties were invited to participate in this rulemaking proceeding by submitting written comments on the proposal to the FAA. No comments objecting to the proposal were received. Class E airspace designations for airspace areas extending upward from 700 feet or more above the surface of the earth 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 will be published subsequently in the Order.

The Rule

This amendment to 14 CFR part 71 modifies Class E airspace at Valparaiso, IN, to accommodate aircraft executing the proposed GPS Rwy 09 SIAP and GPS Rwy 27 SIAP at Porter County Municipal Airport by increasing the radius the existing controlled airspace for the airport. The area will be depicted on appropriate aeronautical charts.

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.

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

* * * * *

AGL IN E5 Valparaiso, IN [Revised]

Valpariso, Porter County Municipal Airport, IN
(Lat. 41°27′15″ N., long. 87°00′22″ W.)

Issued in Des Plaines, Illinois on October 29, 1998.

Mauren Woods,

Manager, Air Traffic Division.

[FR Doc. 98–30585 Filed 11–13–98; 8:45 am]

BILLING CODE 4910–13–M

CONSUMER PRODUCT SAFETY COMMISSION

16 CFR Part 1700

Final Rule: Requirements for Child-Resistant Packaging; Minoxidil Preparations With More Than 14 mg of Minoxidil Per Package

AGENCY: Consumer Product Safety Commission.

ACTION: Final rule.

SUMMARY: The Commission is issuing a rule to require child-resistant (''CR'') packaging for minoxidil preparations containing more than 14 mg of minoxidil in a single package. The Commission has determined that child-resistant packaging is necessary to protect children under 5 years of age from serious personal injury and serious illness resulting from handling or ingesting a toxic amount of minoxidil. The Commission takes this action under authority of the Poison Prevention Packaging Act of 1970.

DATES: Effective May 17, 1999. For metered finger mechanical sprayer applicators and extender attachments, this rule will not apply until November 16, 1999. This rule applies to preparations packaged on or after those dates.

FOR FURTHER INFORMATION CONTACT: Laura Washburn, Directorate for Compliance, Consumer Product Safety Commission, Washington, D.C. 20207; telephone (301) 504–0400 ext. 1452.

SUPPLEMENTARY INFORMATION:

A. Background

1. Relevant Statutory and Regulatory Provisions

The Poison Prevention Packaging Act of 1970 (''PPPA''), 15 U.S.C. 1471–1476, authorizes the Commission to establish standards for the ''special packaging'' of any household substance if (1) the degree or nature of the hazard to children in the availability of such substance, by reason of its packaging, is such that special packaging is required to protect children from serious personal injury or serious illness resulting from handling, using, or ingesting such substance and (2) the special packaging is technically feasible, practicable, and appropriate for the substance.[1]

Special packaging, also referred to as ''child-resistant'' (''CR'') packaging, is

[1] Chairman Brown and Commissioner Moore voted to approve this notice. Commissioner Gall voted to approve the notice, except that she would have deferred action on metered finger sprayers and extender attachments.

(1) designed or constructed to be significantly difficult for children under 5 years of age to open or obtain a toxic or harmful amount of the substance contained therein within a reasonable time and (2) not difficult for ''normal adults'' to use properly. 15 U.S.C. 1471(4). Household substances for which the Commission may require CR packaging include (among other categories) foods, drugs, or cosmetics as these terms are defined in the Federal Food, Drug, and Cosmetic Act (21 U.S.C. 321). 15 U.S.C. 1471(2)(B). The Commission has performance requirements for special packaging. 16 CFR 1700.15, 1700.20.

Section 4(a) of the PPPA, 15 U.S.C. 1473(a), allows the manufacturer or packer to package a nonprescription product subject to special packaging standards in one size of non-CR packaging only if the manufacturer (or packer) also supplies the substance in CR packages of a popular size, and the non-CR packages bear conspicuous labeling stating: ''This package for households without young children.'' 15 U.S.C. 1473(a), 16 CFR 1700.5.

2. Minoxidil

Topical minoxidil is a liquid medication applied to the scalp to stimulate hair regrowth for individuals with androgenetic alopecia, a common form of genetic hair loss. In February 1996, the Food and Drug Administration (''FDA'') approved the sale of topical minoxidil as an over-the-counter (''OTC'') drug available without a prescription. A tablet form of minoxidil is also available by prescription for treatment of severe hypertension. Like most oral prescription drugs, the prescription form of minoxidil must be in special packaging. 16 CFR 1700.14(a)(10). However, special packaging is not required for topical drugs unless the Commission takes specific action to require it.

Topical minoxidil first became available by prescription in 1988. The OTC preparation is currently marketed as a two percent solution in 60 percent alcohol, propylene glycol, and water. The package instructions direct the user to apply one milliliter (20 milligrams of minoxidil) to the scalp twice a day. This application generally must continue for four months, and further application is necessary to maintain the newly grown hair. The most prevalent package size contains 60 milliliters of the preparation (1200 milligrams of minoxidil) which is a 30-day supply if used as directed.(2) [2] On November 14, 1997, the FDA approved for OTC use a 5% minoxidil solution for men. The package size is also 60 milliliters, and the recommended dosage is one milliliter (50 milligrams of minoxidil) applied twice a day. The total contents of this package is 3000 milligrams.

The Commission is aware of ten manufacturers that have FDA's approval to market the OTC two percent minoxidil solution. In addition, the Commission knows of six other companies—probably repackagers or relabelers—that sell the OTC minoxidil formulation. The year after FDA approved OTC status for topical minoxidil preparations, retail sales of topical minoxidil were about $200 million (approximately 8 million packages). (3)

Topical minoxidil formulations are generally packaged either for men or for women. The formulations are the same, but the packaging and instructions are different. All the bottles the Commission is aware of are secured with CR senior friendly (''SF'') continuous threaded closures. In addition to the primary closure, the packages the Commission staff examined contain one or more applicators that are reasonably expected to be used to replace the primary closure.

The Commission staff examined nine topical minoxidil packages for men. These packages contained dropper applicators. In six of these, the droppers were CR/SF, the other three droppers were non-CR. Four of the packages for men also contained a metered finger mechanical sprayer applicator (hereafter referred to as a ''finger sprayer'') in addition to the dropper applicator. None of the finger sprayers are CR. (4 and 8).

Hair loss for women occurs as a thinning of the hair over a broad area on the top of the scalp rather than at the vertex. All four of the topical minoxidil packages for women that the staff examined contained the finger sprayer. Two products for women included a CR/SF dropper in addition to the finger sprayer. Three packages for women included an extender attachment to fit onto the finger sprayer applicator allowing the solution to be applied closer to the scalp than the finger sprayer alone would manage. Neither the finger sprayers nor the extenders in the packages intended for women were CR. (4 and 8).

3. CR Packaging for Applicators

As explained in the notice of proposed rulemaking (''NPR'')(63 FR 13019), because the topical minoxidil formulations are packaged with applicators that are reasonably expected to replace the primary closure of the product, the Commission has determined that the applicators themselves must be CR if the Commission requires CR packaging for the product.

Under the PPPA, a ''package'' is defined as:

> the immediate container or wrapping in which any household substance is contained for consumption, use, or storage by individuals in or about the household.

15 U.S.C. 1471(3). This definition focuses on how the product is packaged in the home where it is ''contained for consumption, use or storage'' rather than its packaging in the store. This is fully consistent with the purpose of the statute, to reduce child poisonings from available household substances.

The exclusions from the definition of ''package'' also indicate that Congress was concerned with the package as maintained in the home. Congress excluded containers used only to transport the product. *Id.*

The legislative history of the statute also supports the view that the ''package'' includes applicators that are reasonably expected to be used as closures in the home. The Senate Commerce Committee Report notes: ''The term 'package' was defined here to [sic] in order to make explicit that special packaging refers to that package in which the substance is kept in or around the house.'' S. Rep. 845, 91st Cong., 2d Sess. 9 (1970).

Thus, the Commission concludes that when an applicator is packaged with a product that requires CR packaging and the applicator is reasonably expected by the Commission to replace the original closure of the packaging, that applicator must also be CR. This does not mean that every applicator packaged with a substance requiring CR packaging must itself be CR. It is permissible for an applicator, such as a dropper, to be packaged with a product so long as the applicator cannot be used to replace the original closure. As discussed in the NPR, this view reflects the long held interpretation of the Commission staff. 63 FR 13021.

Because the Commission has not previously addressed this question explicitly in a regulation, the minoxidil rule expressly states that applicators packaged with topical minoxidil that are reasonably expected to replace the original closures would be required to be CR and SF. The Commission recognizes that its other rules, such as the rule covering oral prescription drugs or acetaminophen, do not contain such a provision. When previous special packaging rules were issued, few

[2] Numbers in parentheses refer to documents listed at the end of this notice.

packages contained applicators that could be used as closures. Thus, previous rules did not expressly state that such applicator closures are ''packages'' under the PPPA. In order to clarify the issue, the Commission is including such a statement in the minoxidil rule. The lack of such a statement in previous PPPA rules is not to be construed to mean applicator closures are exempt from special packaging requirements.

The Commission did not receive any comments questioning its interpretation of the PPPA as covering applicators that are reasonably expected to be used to replace the primary closure.

4. The Proposed Rule

On March 17, 1998, the Commission issued an NPR that proposed requiring CR packaging for minoxidil preparations containing more than 14 mg of minoxidil in a single package. 63 FR 13019.

The Commission received five comments in response to the proposed rule. The American Academy of Pediatrics commented in support of the rule and expressed agreement with the Commission's position that the CR packaging requirement should include applicators expected to replace original closures on minoxidil products. Other comments and the Commission's responses are discussed below.(7)

Packaging Issues

Comment: One comment from the Closure Manufacturers Association (''CMA'') stated that the Commission had no data to demonstrate that CR extender finger sprayers are technically feasible and practicable. The commenter stated that the preamble in the NPR had stated that technology does not exist for the development or use of CR finger sprayers with extenders. The commenter concluded that therefore continuing with the proposed rule ''would be a violation of the [PPPA] statute and the Administrative Procedures [sic] Act.''

Response: CMA apparently misunderstood the statement in the NPR which noted that CR extender sprayers are not currently on the market. The fact that a particular CR closure is not currently being marketed does not mean it is not technically feasible and practicable. As explained in section E.2. of the preamble, technical feasibility refers to the capability of producing a CR closure, not whether one is actually on the market. Similarly, practicability means that mass production methods can be used to produce CR packaging for the substance, not that it is currently being done. Neither CMA nor any other commenters have presented any information indicating that a CR extender sprayer could not be developed or could not be mass produced. In fact, as discussed below, some companies said they would need more time to produce CR applicators for minoxidil products, but they did not question their ability to make any of the available applicators CR.

CMA's comments refer only to the extended sprayer. It is important to note that the PPPA does not require that every package design must be made CR. The Commission has no information indicating that a CR extended sprayer could not be made. However, even if it could not, other CR packaging applicators exist that are technically feasible, practicable and appropriate exist. Thus, this rulemaking does not violate the PPPA or any other statute.

Comment: One commenter indicated that CR droppers are not a good barrier because children can chew through the bulb.

Response: When testing CR dropper packaging, if a child chews through or pulls out the dropper bulb this would count as a failure since the child gains access to the product. The Commission's data indicate that dropper assemblies currently on the market pass the CR packaging test protocol and meet the requirements of the PPPA.

Comment: The same commenter requested that the Commission prohibit applicators that could be used as substitutes for original closures because of cost, time, and potential competitive imbalance.

Response: Under the PPPA, the Commission cannot prescribe specific packaging designs. 15 U.S.C. 1472(d). Thus, companies may use any packaging that meets the requirements of the special packaging protocol. Similarly, any applicator (if it is reasonably expected to replace the original closure) that meets these requirements could be used. Moreover, as pointed out in the proposed rule, an applicator that would not be used to replace the original closure, such as a dropper without a reclosable feature, would also be acceptable.

Effective Date for Finger Sprayers

Comment: Three commenters indicated that the proposed effective date of one year was too short. One commenter requested a total of 34 months (22 months in addition to a one year effective date). Another commenter stated that 27–36 months would be necessary to incorporate a CR finger sprayer.

Response: After reviewing the process for commercialization of a CR finger sprayer, the Commission agrees that more than one year may well be necessary. Thus, the Commission will allow companies to request a stay of enforcement to provide additional time to produce CR finger sprayers and extender sprayers, and it would anticipate granting such requests until such time as it determined that an enforcement stay was no longer appropriate. This issue is discussed further in section F of the preamble.

Cost Considerations

Comment: One commenter indicated that the additional cost of CR droppers instead of non-CR droppers was greater than $0.05 as suggested in the NPR.

Response: The commenter has since indicated to CPSC staff that the $0.05 estimate is in fact within the range of increased cost for a CR dropper.

Comment: One commenter stated that there would be a competitive disadvantage to generics if exclusive agreements for spray packaging were made with a brand product.

Response: The commenter supplied no data and the Commission has no data to support this claim. In fact, two different companies commenting on the NPR provided information about the timing for developing a finger sprayer. Even if there were an exclusive agreement, it would not prevent other companies, such as the commenter from developing a CR finger sprayer independently. The estimated incremental cost of the CR sprayer will be a little more than double the 13–15 cents currently paid for the non-CR finger sprayer, according to one commenter. This is not a substantial cost increase relative to the product cost, even for less expensive generic minoxidil products. Moreover, several of the generic brands do not currently include a finger sprayer with their products. Also, a generic company is not necessarily a small company. The commenter, for example, is a large generic pharmaceutical manufacturer.

B. Toxicity of Minoxidil

The Commission's Directorate for Epidemiology and Health Sciences reviewed the toxicity of minoxidil. Either as prescription tablets or a topical liquid, when it is ingested, minoxidil is rapidly and almost completely (over 95 percent) absorbed by the gastrointestinal tract and is distributed systematically throughout the body. Because minoxidil is very poorly absorbed through the skin, a topical solution of two percent minoxidil is considered safe when used on the skin as directed but can be harmful if ingested. (2)

The tablet form of minoxidil is prescribed for use as an antihypertensive drug. It lowers blood pressure by relaxing the smooth muscle of the arteries. The body's nervous system responds by causing the heart to beat faster (tachycardia) and with more force (increased cardiac output) to compensate for the drop in blood pressure. (2)

The most prominent effects from therapeutic ingestion of minoxidil are increased heart rate, increased cardiac output and decreased blood pressure. When blood pressure becomes abnormally low (hypotension), it can lead to lethargy and lightheadedness with the possibility of damage to the heart and other tissues with high oxygen demand, if left untreated. Less frequent effects include salt and fluid retention and edema, aggravation of angina, and pericardial effusion (massive fluid accumulation around the heart) in patients with renal impairment. Repeated ingestion over several months can produce hypertrichosis (overstimulated hair growth) particularly to the face and to a lesser extent to the limbs and scalp. Less severe symptoms of nausea, headache, fatigue, and dermatologic reactions have been occasionally reported. (2)

Prescription minoxidil is available as 2.5 mg, 5 mg, and 10 mg tablets. The effective dosage is usually between 0.2 to 1 mg/kg/day (roughly 5 to 40 mg/day for an adult) depending on the individual and the desired antihypertensive response. Use in children has been limited with a similar effective body weight-normalized dose range as adults (0.2 to 1 mg/kg/day). Because of possible adverse effects, the maximum recommended daily therapeutic dosage is 100 mg in adults and 50 mg for children under the age of 12. (2)

C. Incident Data

As discussed more extensively in the NPR, the staff reviewed several sources for information of adverse health effects from ingestions of minoxidil. These sources are the American Association of Poison Control Centers (''AAPCC''), the FDA Spontaneous Reporting System (''SRS''), published reports in the medical literature, and reports from the injury surveillance databases maintained by the Commission. The most commonly cited injuries are prolonged hypotension and tachycardia that require hospitalization. There were reports of two deaths associated with minoxidil overdose.

AAPCC Data. The AAPCC collects reports made to participating poison control centers throughout the United States. A retrospective study by AAPCC evaluated AAPCC records of all minoxidil exposures from 1985 through 1991. (The study did not distinguish between ingestions of minoxidil tablets and topical solution.) During this time period, 285 incidents were reported. About half (51 percent) of these occurred in children under six years of age. (2)

Annual AAPCC data on pediatric exposures to children under five years of age reported four accidental ingestions of topical minoxidil liquid in 1995, none of which led to serious toxicity. (Prior to 1995, topical minoxidil was not given a specific code within the AAPCC database.) In 1996, the number of reported cases increased to 43, one of these exhibited moderate effects. For 1997, the AAPCC had 52 reports of children under age five ingesting topical minoxidil. Half of these were referred to a health care facility for observation or treatment. However no serious outcomes were reported. (2 and 6)

Because incidents involving minoxidil tablets (rather than topical solutions) are coded in a category that includes ''other vasodilators,'' it is not possible to isolate incidents specific to minoxidil tablets. There were two childhood ingestions of ''other vasodilators'' reported in 1995 that resulted in a moderate toxicity. (2)

FDA/SRS Database

The SRS is a database maintained by the FDA for reports of adverse reactions detected after a drug goes on the market. Drug manufacturers are required to report any known incidents of adverse effects associated with their products. However, the incident reports are not verified by the FDA, and therefore, the adverse effects may reflect underlying diseases or reactions to multiple drugs.

There have been 16,795 SRS reports on topical minoxidil between 1983 and March 1997. Most of the reported adverse effects were dermal reactions to excessive application of topical minoxidil to the scalp. However, FDA specifically cited five overdose *ingestion* cases involving topical minoxidil. As discussed in more detail in the NPR, three of these led to serious outcomes. (2)

CPSC Databases

CPSC has several databases for poison incidents. The staff reviewed cases from 1988 to June 1998 in the National Electronic Injury Surveillance System (''NEISS''). NEISS monitors emergency room visits to a statistically-based sample of selected hospitals throughout the United States. Three childhood poisoning cases associated with minoxidil were reported in the NEISS database during that time period. One was an ingestion of an unknown quantity of topical minoxidil by a two-year-old male. The child was seen in an emergency room with normal temperature, pulse, and respiration and was released the same day without treatment. It is not known whether the minoxidil package was secured with a child-resistant closure at the time of the incident. (2)

There is less information concerning the two more recent incidents that were reported since the NPR. One case involved minoxidil tablets and the other resulted from topical minoxidil in a spray bottle. Neither child was hospitalized. No other details are available at this time. (6)

The staff also reviewed CPSC's Injury and Potential Injury Incident (''IPII'') files of consumer product-related incidents reported through letters, telephone calls, media articles and death certificate files of consumer product-related deaths. There were no minoxidil-related injuries or deaths found in these databases for the 1988 to June 1998 time period. (2)

Medical Literature

Five case reports of injuries following minoxidil ingestion were found in the published literature. Two cases involved young children. In one instance, a two-year-old ingested an unconfirmed number of minoxidil tablets. In the second instance, a three-year-old swallowed an estimated 1–2 milliliters of three percent minoxidil solution (30–60 milligrams). Both children were seen at hospitals experiencing moderate tachycardia but no other reported abnormalities. The three other reports were intentional ingestions by adults of minoxidil tablets (one case) or two percent liquid (two cases) and were discussed in the NPR. (2)

D. Level for Regulation

The Commission is issuing a rule requiring special packaging for minoxidil products containing more than 14 mg of minoxidil in a single package. This is based on the maximum recommended therapeutic dose of minoxidil for an adult. The 14 mg dose level corresponds to 1.4 mg/kg for a 10 kg child. The equivalent minoxidil dose for the average 70 kg adult would be approximately 100 mg. The regulated dose level is expected to reasonably protect children under five years of age from serious personal injury or illness. (2) The Commission proposed this level and received no comments on it.

E. Statutory Considerations

1. Hazard to Children

As noted above, the toxicity data concerning ingestion of minoxidil demonstrate that minoxidil can cause serious illness and injury to children. Moreover, it is available to children in OTC topical minoxidil preparations. Although as far as the Commission is aware, all primary product containers for topical minoxidil products currently use CR packaging, all applicators are not CR. Some packages contain applicators that are reasonably expected to be used as closures after first use which are not CR. The Commission concludes that a regulation is needed to ensure that products subject to the regulation, including applicators which it is reasonable to expect may be used to replace the original closures, will be placed in CR packaging by any current as well as future manufacturers.

Pursuant to section 3(a) of the PPPA, 15 U.S.C. 1472(a), the Commission finds that the degree and nature of the hazard to children from handling or ingesting minoxidil is such that special packaging is required to protect children from serious illness. The Commission bases this finding on the toxic nature of minoxidil products and their accessibility to children in the home.

2. Technical Feasibility, Practicability, and Appropriateness

In issuing a standard for special packaging under the PPPA, the Commission is required to find that the special packaging is ''technically feasible, practicable, and appropriate.'' 15 U.S.C. 1472(a)(2). Technical feasibility may be found when technology exists, or can be readily developed and implemented, to produce packaging that conforms to the standards. Practicability means that special packaging complying with the standards can utilize modern mass production and assembly line techniques. Packaging is appropriate when complying packaging will adequately protect the integrity of the substance and not interfere with its intended storage or use.

a. Primary Product Containers

The primary product containers for all topical minoxidil products that the Commission is aware of have continuous threaded reclosable packaging. All of these closures that the staff examined were CR and SF. Thus, it is clear that CR packaging for primary product containers is technically feasible, practicable and appropriate. (4 and 8)

b. Applicators

As discussed above, topical minoxidil packages contain applicators—droppers and/or metered finger mechanical sprayers—which it is reasonable to expect may replace the original closures. Eight products have droppers that are CR and SF. This indicates that such droppers are technically feasible, practicable and appropriate. (4 and 8)

The Commission knows of eight minoxidil products that include a non-CR finger sprayer. Child-resistance for a finger sprayer means that it must be significantly difficult for children to obtain an amount above the regulated level by, for example, (1) removing the finger sprayer closure from the container or (2) activating the finger sprayer mechanism. One packaging manufacturer has developed a prototype CR finger sprayer applicator which the manufacturer believes can be modified to pass senior adult effectiveness testing. In addition, two product manufacturers commenting on the NPR indicated that they could develop a finger sprayer that would meet special packaging requirements. As discussed above, an applicator that cannot be used as a closure does not need to be CR. (4 and 8)

Three products for women also contain an extender to be used with the finger sprayer. Under the proposed rule, when the extender is attached to the finger sprayer, this applicator mechanism must be CR. That is, it must be significantly difficult for children to (1) remove the combined finger sprayer and extender from the container, (2) activate the combined finger sprayer and extender to obtain an amount above the regulated level, and (3) remove the extender. Currently no finger sprayers with extenders are CR. As noted above, CR/SF finger sprayer could be developed. Some modifications to the extender may be needed so that it would operate with the CR finger sprayer. (4 and 8)

As discussed above, the Commission received one comment from CMA questioning whether an extender sprayer was feasible and practicable. However, since the finger sprayer and the extender use essentially the same mechanism, the Commission believes that the extender sprayer could be made CR/SF. The Commission is not aware of any data indicating otherwise.

3. Other Considerations

In establishing a special packaging standard under the PPPA, the Commission must consider the following:

a. The reasonableness of the standard;

b. Available scientific, medical, and engineering data concerning special packaging and concerning childhood accidental ingestions, illness, and injury caused by household substances;

c. The manufacturing practices of industries affected by the PPPA; and

d. The nature and use of the household substance. 15 U.S.C. 1472(b).

The Commission has considered these factors with respect to the various determinations made in this notice, and finds no reason to conclude that the rule is unreasonable or otherwise inappropriate.

F. Effective Date

The PPPA provides that no regulation shall take effect sooner than 180 days or later than one year from the date such final regulation is issued, except that, for good cause, the Commission may establish an earlier effective date if it determines an earlier date to be in the public interest. 15 U.S.C. 1471n.

Primary closures and droppers. Primary product containers for topical minoxidil are already CR and SF. Droppers are available CR and SF that can be used to replace the original closures. Thus, the Commission proposed that a final rule with respect to child-resistance of primary closures and dropper applicators would take effect six months after publication of the final rule. The Commission has no additional information that would change this aspect of the proposed effective date.

Finger sprayer and extender. The Commission stated in the NPR that it was aware of one packaging manufacturer that had developed a prototype CR finger sprayer that the manufacturer believed could be modified to pass senior adult effectiveness testing in approximately 12 months. The Commission also recognized that additional time might be needed to provide commercial quantities of this type of packaging. Thus, the Commission proposed an effective date with respect to metered finger sprayer applicators and extenders that would be 12 months after publication of the final rule. The Commission also proposed that if additional time appeared necessary to produce commercial quantities of these applicators, manufacturers could request a temporary stay of enforcement for the finger sprayer and extender.

As discussed above, the Commission received comments indicating that more than 12 months would be necessary to convert to a CR metered finger sprayer. Two commenters indicated that a design could be modified, tested, and in commercial use in approximately 27 to

36 months. The Commission agrees that this time seems reasonable due to the complexity of developing a finger sprayer that is metered and has two CR features. Because companies will need to commit resources to develop this type of packaging, companies may request a stay of enforcement immediately after this final rule is published, and the Commission would anticipate granting such requests until such time as it determined that an enforcement stay were no longer appropriate. Companies requesting a stay of enforcement should provide the Commission with a timeline or schedule that will outline the steps they will take to bring this type of CR packaging to commercial use. They should include an estimated initial production date and current and proposed packaging specifications.

G. Regulatory Flexibility Act Certification

When an agency undertakes a rulemaking proceeding, the Regulatory Flexibility Act, 5 U.S.C. 601 *et seq.*, generally requires the agency to prepare proposed and final regulatory flexibility analyses describing the impact of the rule on small businesses and other small entities. Section 605 of the Act provides that an agency is not required to prepare a regulatory flexibility analysis if the head of an agency certifies that the rule will not have a significant economic impact on a substantial number of small entities.

As noted in the NPR, the Commission's Directorate for Economic Analysis prepared a preliminary assessment of the impact of a rule to require special packaging for topical minoxidil products containing more than 14 mg of minoxidil in a single package. Based on this assessment, the Commission concluded that the proposed requirement for minoxidil products would not have a significant impact on a substantial number of small businesses or other small entities. The Commission requested additional information on the possible impact on small business, but received no such comments. One commenter (not a small business) supplied cost estimates for the CR finger sprayer. The expected cost is not substantial relative to the retail cost of the product. Moreover, the Commission is unaware of any small firms that supply a finger sprayer with their product. Thus, the Commission continues to conclude that the rule would not have a significant effect on a substantial number of small entities.

H. Environmental Considerations

Pursuant to the National Environmental Policy Act, and in accordance with the Council on Environmental Quality regulations and CPSC procedures for environmental review, the Commission has assessed the possible environmental effects associated with the proposed PPPA requirements for minoxidil-containing products.

In the NPR, the Commission concluded that the rule would have no adverse effect on the environment and that neither an environmental assessment nor an environmental impact statement is required. The Commission has no information that would alter this conclusion.

I. Executive Orders

According to Executive Order 12988 (February 5, 1996), agencies must state in clear language the preemptive effect, if any, of new regulations.

The PPPA provides that, generally, when a special packaging standard issued under the PPPA is in effect, ''no State or political subdivision thereof shall have any authority either to establish or continue in effect, with respect to such household substance, any standard for special packaging (and any exemption therefrom and requirement related thereto) which is not identical to the [PPPA] standard.'' 15 U.S.C. 1476(a). Upon application to the Commission, a State or local standard may be excepted from this preemptive effect if the State or local standard (1) provides a higher degree of protection from the risk of injury or illness than the PPPA standard and (2) does not unduly burden interstate commerce. In addition, the Federal government, or a State or local government, may establish and continue in effect a non-identical special packaging requirement that provides a higher degree of protection than the PPPA requirement for a household substance for the Federal, State or local government's own use. 15 U.S.C. 1476(b).

Thus, with the exceptions noted above, the rule requiring CR packaging for products containing more than 14 mg minoxidil would preempt non-identical state or local special packaging standards for such minoxidil containing products.

In accordance with Executive Order 12612 (October 26, 1987), the Commission certifies that the rule does not have sufficient implications for federalism to warrant a Federalism Assessment.

List of Subjects in 16 CFR Part 1700

Consumer protection, Drugs, Infants and children, Packaging and containers, Poison prevention, Toxic substances.

For the reasons given above, the Commission amends 16 CFR part 1700 as follows:

PART 1700—[AMENDED]

1. The authority citation for part 1700 continues to read as follows:

Authority: Pub. L. 91–601, secs. 1–9, 84 Stat. 1670–74, 15 U.S.C. 1471–76. Secs 1700.1 and 1700.14 also issued under Pub. L. 92–573, sec. 30(a), 88 Stat. 1231, 15 U.S.C. 2079(a).

2. Section 1700.14 is amended by adding new paragraph (a)(28) to read as follows (although unchanged, the introductory text of paragraph (a) is included below for context):

§ 1700.14 Substances requiring special packaging.

(a) *Substances.* The Commission has determined that the degree or nature of the hazard to children in the availability of the following substances, by reason of their packaging, is such that special packaging meeting the requirements of § 1700.20(a) is required to protect children from serious personal injury or serious illness resulting from handling, using, or ingesting such substances, and the special packaging herein required is technically feasible, practicable, and appropriate for these substances:

* * * * *

(28) *Minoxidil.* Minoxidil preparations for human use and containing more than 14 mg of minoxidil in a single retail package shall be packaged in accordance with the provisions of § 1700.15(a), (b) and (c). Any applicator packaged with the minoxidil preparation and which it is reasonable to expect may be used to replace the original closure shall also comply with the provisions of § 1700.15(a), (b) and (c).

* * * * *

Dated: October 30, 1998.

Sadye E. Dunn,

Secretary, Consumer Product Safety Commission.

List of Relevant Documents

1. Briefing memorandum from Val Schaeffer, Ph.D., EH, to the Commission, ''Proposed Rule to Require Child-Resistant Packaging for Topical Minoxidil,'' February 10, 1998.

2. Memorandum from Val Schaeffer, Ph.D., EH, to Marilyn Wind, Ph.D., Director, Health Sciences Division, ''Toxicity Assessment of Topical Minoxidil'' November 14, 1997.

3. Memorandum from Marcia P. Robins, EC, to Val Schaeffer, Ph.D., EH, ''Economic Considerations of a Proposal to Require Child-Resistant Packaging for Drug Preparations Containing Minoxidil,'' January 5, 1998.

4. Memorandum from Charles Wilbur, EH, to Val Schaeffer, Ph.D., EH, ''Technical

Feasibility, Practicability, and Appropriateness Determination for the Proposed Rule to Require Special Packaging for Products Containing Minoxidil,'' December 16, 1997.

5. Memorandum from Michael T. Bogumill, CRM, to Val Schaeffer, Ph.D., EH, ''Special Packaging of Oral Prescription Drugs in Dropper Bottles,'' December 17, 1997.

6. Briefing memorandum from Suzanne Barone, Ph.D., EH, to the Commission, ''Final Rule to Require Child-Resistant Packaging for Topical Minoxidil,'' October 9, 1998.

7. Memorandum from Martha A. Kosh, OS, Comments on the Proposed Rule for Requirements for Child-resistant Packaging; Minoxidil Preparation with More than 14 mg of Minoxidil per Package (CP98–3), June 2, 1998.

8. Memorandum from Charles Wilbur, EH, to Suzanne Barone, Ph.D., EH, ''Technical Feasibility, Practicability, and Appropriateness Determination for the Final Rule to Require Special Packaging for Products Containing Minoxidil,'' August 21, 1998.

9. Memorandum from Marcia P. Robins, EC, to Suzanne Barone, Ph.D., EH, ''Child-Resistant Packaging for Preparations Containing Minoxidil: Small Business Effects,'' August 24, 1998.

[FR Doc. 98–29732 Filed 11–13–98; 8:45 am]

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DEPARTMENT OF THE INTERIOR

Office of the Surface Mining Reclamation and Enforcement

30 CFR Part 944

[SPATS No. UT–039–FOR]

Utah Regulatory Program

AGENCY: Office of Surface Mining Reclamation and Enforcement, Interior.

ACTION: Final rule; approval of amendment.

SUMMARY: The Office of Surface Mining Reclamation and Enforcement (OSM) is approving a proposed amendment to the Utah regulatory program (the ''Utah program'') under the Surface Mining Control and Reclamation Act of 1977 (SMCRA). Utah proposed changes in its requirements for coal mine permit application approval at section 40–10–11 of the Utah Code Annotated (UCA, or the ''Utah Code''). The State proposed the changes to update language used to describe the approval process and information that needs to be documented during that process. In addition, Utah proposed to change paragraph (f) of UCA 40–10–11(2) to clarify limitations on the authority of the Division of Oil, Gas and Mining and of the Board of Oil, Gas and Mining with respect to property right disputes. Utah also proposed to revise provisions concerning a permit applicant's list of violations of air and water protection provisions at subsection (3) of UCA 40–10–11 in response to an amendment required by OSM and described at 30 CFR 944.16(f)(2). The amendment revised the Utah program to be consistent with the Surface Mining Control and Reclamation Act of 1977 (SMCRA) regulations and to improve operational efficiency.

EFFECTIVE DATE: November 16, 1998.

FOR FURTHER INFORMATION CONTACT: James F. Fulton, Chief, Denver Field Division, telephone: (303) 844–1424; e-mail address: jfulton@osmre.gov.

SUPPLEMENTARY INFORMATION:

I. Background on the Utah Program

On January 21, 1981, the Secretary of the Interior conditionally approved the Utah program. General background information on the Utah program, including the Secretary's findings, the disposition of comments, and the conditions of approval of the Utah program can be found in the January 21, 1981, **Federal Register** (46 FR 5899). Subsequent actions concerning Utah's program and program amendments can be found at 30 CFR 944.15, 944.16, and 944.30.

II. Proposed Amendment

Utah submitted a proposed amendment (SPATS No. UT–039–FOR, administrative record No. 1117) to its program pursuant to SMCRA (30 U.S.C. 1201 *et seq.*) by letter dated June 8, 1998. The State submitted the proposed amendment at its own initiative and in response to a requirement at 30 CFR 944.16(f)(2) imposed by the Director resulting from OSM's review of a previous amendment to the Utah Code.

The proposed amendment consisted of revisions to UCA 40–10–11. This section of the Utah Code pertains to actions by the Division of Oil, Gas and Mining (the Division) to approve or deny coal mine permit applications. UCA 40–10–11 also includes provisions for considering, during the permit approval/denial process, an applicant's violations of air and water protection provisions, whether an area proposed for mining includes prime farmlands, and information related to land ownership and the probable impacts of mining on the hydrologic balance.

Most of the changes Utah proposed reword existing provisions of UCA 40–10–11 in current writing style and break-up existing provisions into subsections. In that context, specific changes included: Recodifying existing provisions of UCA 40–10–11(1) as subsections (1)(a)(i) and (ii), (1)(b), (1)(c), and (1)(c)(i) and (ii); recodifying existing provisions of UCA 40–10–11(2)(d) to include subsections 1(d)(i) and 2(d)(ii); recodifying existing provisions of UCA 40–10–11(2)(e)(i) to include subsections (e)(i)(A) and (B); recodifying, in part, existing provisions of UCA 40–10–11(2)(f)(i) to include subsection (2)(f)(i)(A), and adding new subsection (2)(f)(i)(B); recodifying existing provisions of UCA 40–10–11(3) as subsections (3)(a)(i), (ii), and (3)(b) and (c); and recodifying existing provisions of UCA 40–10–11(4)(a) as (4)(a)(i) and (ii). Utah proposed to reword several parts of UCA 40–10–11(1), (2), (3), (4) and (5) as well.

In two cases, the State either expanded existing provisions of the Utah Code or added a new provision. At UCA 40–10–11(2)(f)(i)(B), Utah added a new statement to the effect that nothing in UCA 40–10–11(2) shall be construed ''* * * to authorize the board or divisions to adjudicate property right disputes * * *'' in cases where permit applications involve lands on which the private mineral estate has been severed from the private surface estate. Second, at recodified UCA 40–10–11(3)(c), Utah proposed to preclude permit issuance in cases in which the Board finds that an applicant or operator controls, or has controlled, mining operations with a demonstrated pattern of willful violations. Such a pattern includes violations of SMCRA, the implementing regulations, or of any State or Federal programs enacted under SMCRA or under other provisions of the approved Utah program, in addition to violations of the Utah Code. The State proposed this new provision in response to the required amendment described at 30 CFR 944.16(f)(2). That section requires the Utah Code's provision for denying permits on the basis of patterns of violations to be no less stringent than the Federal counterpart provision at section 510(c) of SMCRA. The required amendment resulted from OSM's review of a previous amendment to the Utah Code (UT–024–FOR; 60 FR 37002, July 19, 1995; administrative record No. UT–1066). OSM later reiterated the need for Utah to amend UCA 40–10–11(3) in its review of Code amendment UT–035–FOR (62 FR 41845, August 4, 1997; administrative record No. UT–1098).

OSM announced receipt of this proposed amendment in the July 8, 1998, **Federal Register** (63 FR 36868; administrative record No. UT–1120). That announcement provided an opportunity for anyone to request a public hearing or meeting on the amendment's substantive adequacy. It also invited public comment on its

adequacy. No one requested a public hearing or meeting, so OSM did not hold either one. The public comment period ended on August 7, 1998.

III. Director's Findings

In accordance with SMCRA and 30 CFR 731.15 and 732.17, and as discussed below, the Director finds that the proposed program amendment submitted by Utah on June 8, 1998, is no less stringent than SMCRA. Accordingly, the Director approves Utah's amendment.

1. Nonsubstantive Revisions to the Utah Code

Utah proposed revisions to the following previously approved provisions of the Utah Code that are nonsubstantive in nature. These proposed revisions consist of recodification changes. They also include wording and punctuation changes made to reflect contemporary writing style and to make the State's provisions clearer or more specific. Corresponding SMCRA provisions are listed in parentheses.

UCA 40–10–11(1)(a)(i), (a)(ii), (1)(b), (1)(c), (c)(i), and (c)(ii), decision to approve, deny, or require modification of a permit application after receipt of a complete application and reclamation plan (section 510(a) of SMCRA);

UCA 40–10–11(2), (2)(a), (2)(b), and (2)(c), required finding that the permit application is complete and all requirements of UCA 40–10 have been complied with; required demonstration in the application and finding by the Division as a prerequisite to Division approval that reclamation requirements under UCA 40–10 can be accomplished; and finding that an assessment has been made of mining's cumulative impacts on the hydrologic balance and that the operation is designed to prevent material damage to the hydrologic balance outside the permit area (sections 510(b), (b)(1), (b)(2), and (b)(3) of SMCRA);

UCA 40–10–11(2)(d), (d)(i), and (d)(ii), demonstration in the application and finding by the Division that the proposed mining area is not in an area designated as unsuitable for mining or under study for that designation (section 510(b)(4) of SMCRA);

UCA 40–10–11(2)(e), (2)(e)(i), (e)(i)(A), and (e)(i)(B), demonstration in the application and finding by the Division that the proposed mining will not adversely affect farming on alluvial valley floors in certain cases (sections 510(b)(5) and (b)(5)(A) of SMCRA);

UCA 40–10–11(2)(e)(ii), demonstration in the application and finding by the Division that the proposed mining will not materially damage surface and ground water systems that supply alluvial valley floors, with certain exceptions (section 510(b)(5)(B) of SMCRA);

UCA 40–10–11(2)(f), (2)(f)(i), and (f)(i)(A), requirement for the surface owner's written consent to surface mining where the private mineral estate has been severed from the private surface estate, with the provision that UCA 40–10–11(2)(f) shall not be construed to change any property right established under State law (section 510(b)(6) and (b)(6)(A) of SMCRA, with no SMCRA counterpart to recodified UCA 40–10–11(2)(f)(i)(A));

UCA 40–10–11(2)(f)(iii), requirement for an application to include documentation, consistent with state law, that establishes the status of the surface-subsurface legal relationship as an alternative to including a conveyance expressly granting or reserving the right to extract coal by surface mining in cases where the private surface estate has been severed from the private mineral estate (section 510(b)(6)(C) of SMCRA);

UCA 40–10–11(3)(a)(i), (a)(ii), and (3)(b), requirement for an applicant to submit a list of violations with the permit application and for the Division to consider such violations in deciding to approve or deny a permit (section 510(c) of SMCRA);

UCA 40–10–11(4)(a)(i), (a)(ii), and (4)(b), permit findings required in some cases if the area proposed to be mined contains prime farmland (section 510(d)(1) and (2) of SMCRA); and

UCA 40–10–11(5)(a), provision that the prohibition against permit issuance at UCA 40–10–11(3) shall not apply to a permit application if the violation resulted from an unanticipated situation that occurred at a surface mine on lands eligible for remining under a permit held by the person applying for a mining permit (section 510(e) of SMCRA).

Because the proposed revisions to these previously-approved statutory provisions are nonsubstantive in nature, the Director finds these proposed statutory provisions are no less stringent that SMCRA. The Director approves these proposed changes to the Utah Code.

2. UCA 40–10–11(2)(f)(i)(B), Limitation on Division and Board Authority in Property Rights Disputes

Utah proposed to add UCA 40–10–11(2)(f)(i)(B) to provide that nothing in subsection (2) of UCA 40–10–11 shall be construed to authorize the Board or Division to adjudicate property right disputes. The counterpart provision in SMCRA is at section 510(b)(6)(C). The State's proposed provision is very similar to the SMCRA provision except for its reference to the ''Division'' and the ''Board'' not having the power to adjudicate disputes, while SMCRA refers to the ''regulatory authority''. The Division is the regulatory authority in Utah and the Board oversees the Division's activities, is the rulemaking body, and hears appeals of actions taken by the Division. UCA 40–10–6 describes the duties, functions, and powers of the Division and Board but does not specifically describe their authority with respect to property rights disputes, particularly those that might arise when permit applications involve lands on which the private surface estate is severed from the private mineral estate. Utah's proposed addition of UCA 40–10–11(2)(f)(i)(B) provides the necessary clarification of Division and Board authority in such cases and is consistent with SMCRA in that respect.

For the reasons explained above, the Director finds Utah's proposed addition of UCA 40–10–11(2)(f)(i)(B) to be consistent with, and no less stringent than, the counterpart provision at section 510(b)(6)(C) of SMCRA. Accordingly, the Director approves the proposed revision to the Utah Code.

3. UCA 40–10–11(3)(c), List of Violations in Permit Applications

Utah proposed to revise UCA 40–10–11(3) in response to the required amendment described at 30 CFR 944.16(f)(2). During its review of a previous amendment to the Utah Code, OSM noted that the part of UCA 40–10–11(3) dealing with patterns of violations only addressed violations of the State statute. OSM explained that Utah's provision needed to require consideration of other violations as well and cited previous rulemaking in support of that explanation. Specifically, in finding No. 7 of the final rule announcing its approval of amendment UT–024–FOR (60 FR 37002, 37006, July 19, 1995; administrative record No. UT–1066), OSM concluded that UCA 40–10–11(3) was less stringent than SMCRA. As a result, OSM imposed a required amendment at 30 CFR 944.16(f)(2). That subsection specifically required Utah to revise UCA 40–10–11(3) to provide that the pattern of violations determination include violations of SMCRA, the implementing Federal regulations, any State or Federal programs enacted under SMCRA, and other provisions of the approved Utah program.

With this amendment, Utah's proposed change addresses the required amendment at 30 CFR 944.16(f)(2) by

revising UCA 40–10–11(3) to add a provision at new subsection (3)(c). That provision requires including violations of SMCRA, the implementing Federal regulations, any State or Federal programs enacted under SMCRA, or other provisions of the approved Utah program in findings of patterns of violations. As proposed, UCA 40–10–11(3)(c) is no less stringent than the counterpart provision at section 510(c) of SMCRA and satisfies the requirement described at 30 CFR 944.16(f)(2). The Director approves Utah's revision at UCA 40–10–11(3)(c) and removes the required amendment at 30 CFR 944.16(f)(2).

IV. Summary and Disposition of Comments

Following are summaries of all written comments OSM received on the proposed amendment.

1. Public Comments

The Utah Mining Association responded in June 30, 1998, letter by expressing its support for the proposed amendment and urging OSM to approve it (administrative record No. UT–1121). The Mining Association said it worked closely with the Division to develop the amendment and was involved in its consideration and passage in the 1998 session of the Utah Legislature. Also, the Mining Association stated that, in its opinion, changes proposed in this amendment are consistent with SMCRA and are supported by the Utah coal industry.

2. Federal Agency Comments

OSM solicited comments on the proposed amendment from various Federal agencies with an actual or potential interest in the Utah program, as required by 30 CFR 732.17(h)(11)(i).

The Utah Field Office of U.S. Department of the Interior, Fish and Wildlife Service (FWS) responded in a letter dated July 20, 1998 (administrative record No. UT–1123). FWS offered no comments on the proposed amendment.

3. Environmental Protection Agency (EPA) Concurrence and Comments

OSM is required by 30 CFR 732.17(h)(11)(ii) to solicit EPA's written concurrence on provisions of the proposed amendment relating to air and water quality standards promulgated under the authority of the Clean Air Act (42 U.S.C. 7401 *et seq.*) or the Clean Water Act (33 U.S.C. 1251 *et seq.*). None of the changes Utah proposed in amendment UT–039–FOR pertain to air or water quality standards. As a result, OSM did not request EPA's concurrence.

Nevertheless, OSM solicited EPA's comments on the proposed amendment as required by 30 CFR 732.17(h)(11)(i) (administrative record No. UT–1118). OSM did not receive any comments from EPA.

4. State Historic Preservation Officer (SHPO) and the Advisory Council on Historic Preservation (ACHP)

OSM solicited comments on the proposed amendment from the Utah SHPO and the ACHP as required by 30 CFR 732.17(h)(4) (administrative record No. UT–1118). OSM did not receive any comments from the SHPO or ACHP.

V. Director's Decision

Based on the above findings, the Director approves Utah's proposed amendment as submitted on June 8, 1998.

The Director approves, as discussed in: Finding No. 1, UCA 40–10–11(1) through (1)(c)(ii), recodification and rewording of provisions pertaining to the decision to approve, deny, or require modification of a permit application after receipt of a complete application and reclamation plan; UCA 40–10–11(2)(a), (b), and (c), reworded requirement for a finding of permit application completeness and compliance with UCA 40–10, for demonstration in the application and finding by the Division that reclamation requirements under UCA 40–10 can be accomplished, and for a finding that an assessment has been made of mining's cumulative impacts on the hydrologic balance and that the operation is designed to prevent material damage to the hydrologic balance outside the permit area; UCA 40–10–11(2)(d), (d)(i), and (d)(ii), recodified and reworded requirement for a demonstration in the application and finding by the Division that the proposed mining area is not in an area designated as unsuitable for mining or under study for that designation; UCA 40–10–11(2)(e), (e)(i), (e)(i)(A), (e)(i)(B), recodified and reworded requirement for a demonstration in the application and finding by the Division that the proposed mining will not adversely affect farming on alluvial valley floors in certain cases; UCA 40–10–11(2)(e)(ii), reworded requirement for a demonstration in the application and finding by the Division that the proposed mining will not materially damage surface and ground water systems that supply alluvial valley floors, with certain exceptions; UCA 40–10–11(2)(f), (f)(i), and (f)(i)(A), recodified and reworded requirement for the surface owner's written consent to surface mining where the private mineral estate has been severed from the private surface estate, with the provision that UCA 40–10–11(2)(f) shall not be construed to change any property right established under State law; UCA 40–10–11(2)(f)(iii), reworded requirement for documentation in an application establishing the status of the surface-subsurface legal relationship as an alternative to a conveyance expressly granting or reserving the right to extract coal by surface mining where the private surface estate has been severed from the private mineral estate; UCA 40–10–11(3)(a)(i), (a)(ii), and (3)(b), recodified and reworded requirement for an applicant to submit a list of violations with the permit application and for the Division to consider such violations in deciding to approve or deny a permit; UCA 40–10–11(4)(a)(i), (a)(ii), and (4)(b), recodified and reworded provision requiring permit findings in some cases prime farmland to be mined; and UCA 40–10–11(5)(a), reworded provision that the prohibition against permit issuance at UCA 40–10–11(3) shall not apply to a permit application if the violation resulted from an unanticipated situation that occurred at a surface mine on lands eligible for remining under a permit held by the person applying for a mining permit; Finding No. 2, UCA 40–10–11(2)(f)(i)(B), provision that nothing in subsection (2) of UCA 40–10–11 shall be construed to authorize the Board or Division to adjudicate property right disputes; and Finding No. 3, UCA 40–10–11(3)(c), requirement that the pattern of violations determination include violations of SMCRA, the implementing Federal regulations, any State or Federal programs enacted under SMCRA, and other provisions of the approved Utah program.

To implement this decision, OSM is amending the Federal regulations at 30 CFR Part 944, which codify decisions concerning the Utah program. By making this final rule effective immediately, OSM is expediting the State program amendment process. OSM encourages States to make their programs conform to the Federal standards without undue delay.

VI. Procedural Determinations

1. Executive Order 12866

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

2. Executive Order 12988

The Department of the Interior conducted the reviews required by section 3 of Executive Order 12988 (Civil Justice Reform) and determined that this rule meets the applicable standards of subsections (a) and (b) of that section. However, these standards are not applicable to the actual language of State regulatory programs and program amendments because each program is drafted and promulgated by a specific State, not by OSM. Sections 503 and 505 of SMCRA (30 U.S.C. 1253 and 1255) and the Federal regulations at 30 CFR 730.11, 732.15, and 732.17(h)(10) describe how OSM must make decisions on proposed State regulatory programs and program amendments. As required by those provisions, OSM must base its decision on a State amendment solely on a determination of whether the amendment is consistent with SMCRA and its implementing Federal regulations and whether the other requirements of 30 CFR Parts 730, 731, and 732 have been met.

3. National Environmental Policy Act

Under section 702(d) of SMCRA (30 U.S.C. 1292(d)), agency decisions on proposed State regulatory program provisions are not major Federal actions within the meaning of section 102(2)(C) of the National Environmental Policy Act (42 U.S.C. 4332(2)(C)). Consequently, an environmental impact statement is not required for this rule.

4. Paperwork Reduction Act

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

5. Regulatory Flexibility Act

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

6. Unfunded Mandates

This rule will not impose a cost of $100 million or more on any governmental entity or the private sector in any given year.

List of Subjects in 30 CFR Part 944

Intergovernmental relations, Surface mining, Underground mining.

Dated: October 14, 1998.

Richard J. Seibel,

Regional Director, Western Regional Coordinating Center.

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

PART 944—UTAH

1. The authority citation for part 944 continues to read as follows:

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

2. Section 944.15 is amended in the table by adding a new entry in chronological order by ''Date of Final Publication'' to read as follows:

§ 944.15 Approval of Utah regulatory program amendments.

* * * * *

Original amendment submission date	Date of final publication	Citation/description
*	*	* * * * *
June 8, 1998	November 16, 1998	UCA 40–10–11(1)(a)(i), (a)(ii), (1)(b), (1)(c), (c)(i), and (c)(ii); (2), (2)(a), (2)(b), (2)(c), (2)(d), (2)(d)(i), (d)(ii), (2)(e), (2)(e)(i), (e)(i)(A), (e)(i)(B), (e)(ii), (2)(f), (2)(f)(i), (f)(i)(A), (f)(i(B), and (f)(iii); (3)(a)(i), (a)(ii), (3)(b), and (3)(c); (4)(a)(i), (a)(ii), and (4)(b); and (5)(a).

§ 944.16 [Amended]

3. Section 944.16 is amended by removing and preserving paragraph (f) in its entirety.

[FR Doc. 98–30547 Filed 11–13–98; 8:45 am]

BILLING CODE 4310–05–M

DEPARTMENT OF TRANSPORTATION

Coast Guard

33 CFR Part 100

[CGD07–98–068]

RIN 2115–AE46

Special Local Regulations; City of Augusta, GA

AGENCY: Coast Guard, DOT.

ACTION: Temporary final rule.

SUMMARY: Temporary special local regulations are being adopted for the Augusta Port Authority's Head of the South Rowing Regatta. The event will be held from 7 a.m. to 6 p.m. Eastern Standard Time (EST) each day on November 13 and 14, 1998, on the Savannah River at Augusta, GA. These regulations are necessary for the safety of life on navigable waters during the event.

DATES: This rule becomes effective at 6:30 a.m. and terminates at 6:30 p.m. EST each day on November 13 and 14, 1998.

FOR FURTHER INFORMATION CONTACT: LTJG A. Cooper, Project Manager, Coast Guard Group Charleston at (803) 724–7621.

SUPPLEMENTARY INFORMATION:

Background and Purpose

These regulations are needed to provide for the safety of life during the Head of the South Rowing Regatta. The regulations are intended to promote safe navigation on the Savannah River immediately before, during, and after the race by controlling the traffic entering, exiting, and traveling within the regulated area. The anticipated number of participants and spectator vessels poses a safety concern which is addressed in these special local regulations. There will be approximately 6000 participants racing singles, doubles, four, and eight person rowing shells on a fixed course. The event will take place in an area of limited commercial traffic on the Savannah River at Augusta, GA between mile marker 200.2 and marker 197.0.

In accordance with 5 U.S.C. 553, good cause exists for not publishing a notice of proposed rulemaking for this regulation and good cause exists for making it effective in less than 30 days from the date of publication. Following normal rulemaking procedures would have been impractical, as immediate action is needed to minimize potential danger to the public. The permit request to hold this event was only recently received by the Coast Guard, leaving insufficient time for a full comment period and delayed effective date.

Regulatory Evaluation

This rule is not a significant regulatory action under section 3(f) of executive order 12866 and does not require an assessment of potential costs and benefits under section 6(a)(3) of that order. It has been exempted from review by the Office of Management and Budget under that order. It is not significant under the regulatory policies and procedures of the Department of Transportation (DOT) (44 FR 11040; February 26, 1979). The Coast Guard expects the economic impact of this rule to be so minimal that a full Regulatory Evaluation under paragraph 10(e) of the regulatory policies and procedures of DOT is unnecessary. The regulated area encompasses less than 3 nautical miles on the Savannah River, entry into which is prohibited for only twelve hours on each day of the event.

Small Entities

Under the Regulatory Flexibility Act (5 U.S.C. 601–612), The Coast Guard must consider whether this rule will have a significant economic impact on a substantial number of small entities. ''Small entities'' include small businesses, not-for-profit organizations that are independently owned and operated and are not dominant in their field, and governmental jurisdictions with populations of less than 50,000.

Therefore, the Coast Guard certifies under section 605(b) that this rule will not have a significant effect upon a substantial number of small entities, because these regulations will only be in effect for two days in a limited area of the Savannah River that is seldom used for commerce.

Collection of Information

These regulations contain no collection of information requirements under the Paperwork Reduction Act (44 U.S.C. 3501–3520).

Federalism

This action has analyzed in accordance with the principals and criteria contained in Executive Order 12612 and it has been determined that this rulemaking does not have sufficient federalism implications to warrant the preparation of a Federalism Assessment.

Environmental Assessment

The Coast Guard has considered the environmental impact of this action, and has determined pursuant to Figure 2–1, paragraph 34(h) of Commandant Instruction M16475.1C, that it is categorically excluded from further environmental documentation. A Categorical Exclusion Determination has been prepared and is available in the docket for inspection or copying

List of Subjects in 33 CFR Part 100

Marine safety, Navigation (water), Reporting and recordkeeping requirements, Waterways.

Temporary Regulations

In consideration of the foregoing, the Coast Guard amends Part 100 of Title 33, Code of Federal Regulations, as follows:

PART 100—[AMENDED]

1. The authority citation for Part 100 continues to read as follows:

Authority: 33 U.S.C. 1233; 49 CFR 1.46 and 33 CFR 100.35.

2. A temporary section 100.35T07–068 is added to read as follows:

§ 100.35T07–068 Head of the South Rowing Regatta; Savannah River, Augusta, GA.

(a) *Definitions:*

(1) *Regulated area.* A regulated area is established on that portion of the Savannah River at Augusta, GA, between mile markers 200.2 and 197.0. The regulated area encompasses the width of the Savannah River between these two points.

(2) *Coast Guard Patrol Commander.* The Coast Guard Patrol Commander is a commissioned, warrant, or petty officer of the Coast Guard who has been designated by the Commander, Coast Guard Group Charleston, SC.

(b) *Special Local Regulations.* Entry into the regulated area by other than event participants is prohibited, unless otherwise authorized by the Coast Guard Patrol Commander. After termination of the Head of the South Rowing Regatta on November 13–14, 1998, all vessels may resume normal operations.

(c) *Dates.* This section becomes effective at 6:30 a.m. and terminates at 6:30 p.m. EST each day, on November 13 and 14, 1998.

Dated: November 4, 1998.

Norman T. Saunders,

Rear Admiral, U.S. Coast Guard, Commander, Seventh Coast Guard District.

[FR Doc. 98–30596 Filed 11–13–98; 8:45 am]

BILLING CODE 4910–15–M

FEDERAL COMMUNICATIONS COMMISSION

47 CFR Parts 1 and 24

[WT Docket No. 97–82; FCC 98–290]

Extension of the Commission's Initial Non-Delinquency Period for C and F Block Installment Payments

AGENCY: Federal Communications Commission.

ACTION: Final rule.

SUMMARY: This Order denies the requests of several licensees seeking a waiver of the October 29, 1998, deadline for late installment payments on their licenses. On July 31, 1998, broadband PCS C and F block licensees were required to resume making installment payments on their licenses. However, in accordance with an earlier ruling, licensees that failed to meet the July 31, 1998, deadline were allowed to submit their payment on or before October 29, 1998, without being considered delinquent, if they paid a 5 percent late payment fee.

EFFECTIVE DATE: October 29, 1998.

FOR FURTHER INFORMATION CONTACT: Julie Buchanan at (202) 418–0660 Auctions and Industry Analysis Division, Wireless Telecommunications Bureau.

SUPPLEMENTARY INFORMATION: This is a summary of the Commission Order, WT Docket No. 97–82, FCC 98–290, adopted and released on October 29, 1998. The full text of this Order is available for inspection and copying during normal business hours in the FCC Dockets Branch, 445 Twelfth Street, S.W., Washington, D.C. 20554. The complete text may be purchased from the Commission's copy contractor, International Transcription Service, Inc., 1231 20th Street, N.W., Washington, D.C. 20036. (202) 857–3800.

Synopsis

1. On July 31, 1998, broadband PCS C and F block licensees were required to resume making installment payments on their licenses. However, in accordance with the *Order on Reconsideration of the Second Report and Order,* 63 FR 17111 (April 8, 1998) (''*Reconsideration Order*''), licensees that failed to meet the July 31, 1998,

deadline may submit their payment on or before October 29, 1998, without being considered delinquent, if they pay a 5 percent late payment fee. Several licensees have filed requests seeking a waiver of the October 29, 1998, deadline for late payments. For the reasons stated below, the Commission denies these requests.

2. A licensee asked the Commission to suspend its installment payment for 12 months. It claimed that, without a waiver of the Commission's rules, its inability to fulfill both its obligation to the Commission and its obligation to its principal creditor would threaten the provision of service to its customers and the expansion of its system. Another licensee argued that, due to the collapse of financial markets after the issuance of the *Reconsideration Order*, the Commission should extend the non-delinquency period another 180 days. In addition, another petitioner sought an extension until January 31, 1999, for the resumption of its installment and accrued interest payment obligations. It asserts that it needs more time to finalize negotiations for capital placement in light of recently discovered problems with its original capitalization plan. Another petitioner requested relief through December 31, 1998, in order to allow it time to receive anticipated funding. Funding delays also caused another licensee to seek an extension until December 13, 1998, or whatever time period the Commission provides to other C block licensees that also are seeking waivers. Finally, another licensee asked for a two-week grace period to accommodate last-minute delays with a needed stock subscription.

3. The Commission declines to waive the October 29, 1998, late payment deadline in response to the individual situations presented. In order for a waiver of the PCS rules to be granted, one of two tests must be met. Pursuant to § 24.819 of the Commission's Rules, the entity requesting a waiver must demonstrate either that: (1) ''the underlying purpose of the rule will not be served, or would be frustrated, by its application in a particular case, and that grant of the waiver is otherwise in the public interest'' or (2) ''the unique facts and circumstances of a particular case render application of the rule inequitable, unduly burdensome or otherwise contrary to the public interest.''

4. Although the specific concerns raised by each petitioner vary, all revolve around the same theme—the inability to raise capital. The challenge of raising capital to finance C and F block licenses exists in varying degrees for all licensees and does not constitute ''unique facts and circumstances.'' In formulating, as well as reconsidering, the restructuring options, the Commission addressed the challenges of raising capital. Further, the Commission does not believe that the underlying purpose of its rules would be frustrated by their application here or that it would serve the public interest to delay their enforcement. As the Commission stated in the *Reconsideration Order*, ''[n]o matter what deadline we establish, it is inevitable that some licensees will seek more time to pay.''

5. Although the Commission is sympathetic to the difficulties certain licensees are facing in securing capital, the Commission made it clear that it ''will not entertain any requests for an extension'' beyond the 60-day non-delinquency period that originally was established for initial payments not submitted by the payment resumption date for C and F block licensees. Further, the Commission ratified a firm deadline for late payments in the *Reconsideration Order*. Despite the fact that its rules, as amended effective March 16, 1996, allow an automatic grace period for installment payments not made within a non-delinquency period, the Commission determined that such a grace period is not appropriate for the initial July 31 payment. First, licensees have already enjoyed a payment suspension since the spring of 1997. Second, in the *Reconsideration Order*, the Commission provided additional relief by extending to 90 days the original 60-day non-delinquency period for initial payments. A further extension of the non-delinquency period would only serve to undermine the Commission's enforcement of its payment deadlines. Therefore, licensees that failed to make payment by July 31, 1998, and fail to make full payment by October 29, 1998, including the 5 percent late payment fee, will be subject to the automatic cancellation of their licenses.

6. Accordingly, it is ordered that, pursuant to Sections 4(i), 303(r), and 309(j) of the Communications Act of 1934, as amended, 47 U.S.C. §§ 154(i), 303(r), and 309(j), the requests filed for a waiver of the October 29, 1998, late payment deadline for C and F block licensees are denied and the waiver request filed seeking an extension until January 31, 1999 for the resumption of installment and accrued interest payment obligations is dismissed as moot.

List of Subjects

47 CFR Part 1

Administrative practice and procedure.

47 CFR Part 24

Personal communications services.

Federal Communications Commission.

Magalie Roman Salas,

Secretary.

[FR Doc. 98–30551 Filed 11–13–98; 8:45 am]

BILLING CODE 6712–01–P

FEDERAL COMMUNICATIONS COMMISSION

47 CFR Part 52

[CC Docket No. 96–98; FCC 98–224]

Petition for Declaratory Ruling and Request for Expedited Action on the July 15, 1997 Order of the Pennsylvania Public Utility Commission Regarding Area Codes 412, 610, 215, and 717; Implementation of the Local Competition Provisions of the Telecommunications Act

AGENCY: Federal Communications Commission.

ACTION: Final rule.

SUMMARY: On September 28, 1998, the Commission released a Memorandum Opinion and Order and Order on Reconsideration in CC Docket 96–98, declaring that an Order issued by the Pennsylvania Commission on July 15, 1997, unlawfully exceeded state jurisdiction over telecommunications numbering administration, unlawfully discriminated against Petitioners, and constituted an unlawful barrier to entry. It also required the Pennsylvania Commission to provide area code relief in the 215, 610, and 717 area codes. The Commission also reconsidered a portion of Implementation of the Local Competition Provisions of the Telecommunications Act of 1996, where authority was delegated to state commissions to implement area code relief. The Commission delegated additional authority to state commissions to order NXX code rationing, under certain conditions, so that state commissions may have more flexibility to assure that the area codes they have will last until implementation of relief.

EFFECTIVE DATE: December 16, 1998.

FOR FURTHER INFORMATION CONTACT: Gregory Cooke or Jared Carlson, Network Services Division, Common Carrier Bureau, (202) 418–2320.

SUPPLEMENTARY INFORMATION: This summarizes the Commission's Memorandum Opinion and Order and Order on Reconsideration in CC Docket 96–98, Implementation of the Local Competition Provisions of the Telecommunications Act of 1996.

Paperwork Reduction Act

No impact.

Analysis of Proceeding

Background

1. *Overview.* Numbering Plan Areas (NPAs) are known commonly as area codes, and are the first three digits of a ten-digit telephone number. The second three digits of a telephone number are known as the NXX code or central office code (CO code). The NXX code is used by some carriers, particularly wireline carriers, for billing purposes. NXX codes are assigned to particular switches or rate centers in an area code and carriers base charges for telephone calls, in part, on the distance between the rate center from which a call originates and the rate center at which the call terminates. NXX codes are an integral part of addressing calls and routing them throughout the telephone network, and are normally associated with a specific geographic location within the area code from which they are assigned. Usually, a whole NXX code that includes 10,000 line numbers is assigned to an entity for use at a switch or point of interconnection that the entity owns or controls, and the entity assigns the line numbers to its individual customers.

2. According to industry guidelines that govern the NXX code administrators, applicants must certify a need for North American Numbering Plan (NANP) numbers and must be licensed or certified to operate in the area. These codes are assigned on a first-come, first-served basis, unless a jeopardy condition exists. The guidelines further provide that, once an area code is in jeopardy, the code administrator will notify the appropriate regulatory authorities, the NANP Administrator (NANPA), and affected parties that the area code is in jeopardy and will invoke special conservation procedures.

3. *Jurisdiction.* The Communications Act of 1934, as amended by the Telecommunications Act of 1996 (the Act), gives the Commission plenary jurisdiction over numbering issues that pertain to the United States. In the Local Competition Second Report and Order, the Commission delegated the authority to implement new area codes to the state commissions, but retained broad authority over numbering. Under the Commission rules, states can introduce new area codes through the use of: (1) A geographic split, which occurs when the geographic area served by an area code is split into two or more geographic parts and one part maintains the old area code and one (or more) receive a new area code; (2) an area code boundary realignment, which occurs when the boundary lines between two adjacent area codes are shifted to allow the transfer of some NXX codes from an area code for which NXX codes remain unassigned to an area code for which few or no NXX codes are left for assignment; or (3) an area code overlay, which occurs when a new area code is introduced to serve the same geographic area as an existing area code.

4. The Commission stated that the delegation of functions associated with initiation and planning of area code relief was made only to those states wishing to perform those functions, and that those functions would be performed by the new NANPA for those states that did not wish to perform such functions. The Commission specifically declined to delegate to states the task of NXX code allocation or assignment, stating that to do so would vest in fifty-one separate commissions oversight of functions that the Commission centralized to the new NANPA. The Commission noted that a uniform, nationwide system of numbering, including allocation of NXX codes, is essential to the efficient delivery of telecommunications services in the United States.

5. *Pennsylvania Commission Orders.* In 1996, the NXX code administrator for Pennsylvania filed petitions with the Pennsylvania Commission requesting that the Pennsylvania Commission address the depletion of NXX codes in area codes 412, 215, 610, and 717. On July 15, 1997, the Pennsylvania Commission entered an order addressing NXX code depletion in the four Pennsylvania area codes 412, 215, 610, and 717 (Pennsylvania Commission Order). On July 28, 1997, the Pennsylvania Commission issued a letter to the NXX code administrator requiring the rationing of NXX codes in those four area codes at the rate of three per month.

6. The Pennsylvania Commission Order required a geographic split for area code 412 but did not order traditional area code relief to the 610, 215, and 717 area codes. Instead the order required implementation of transparent area code overlays and, eventually, number pooling, to relieve the need for additional NXX codes in area codes 215, 610, and 717. The Pennsylvania Commission described the use of the transparent area codes as an interim measure to help relieve the need for additional NXX codes, and stated that this relief was optional for competitive local exchange carriers and for wireless carriers, who could choose to participate or wait for assignment of NXX codes in the old area code under the lottery procedures.

7. On December 18, 1997 and February 5, 1998, the Pennsylvania Commission adopted orders that clarified and implemented the July 15, 1997 Order (Pennsylvania Commission Orders II and III).

8. Between July 18 and July 30, 1997, several parties filed motions for reconsideration of the Pennsylvania Commission Order with the Pennsylvania Commission. On August 14 and 15, 1997, several parties also appealed the Pennsylvania Commission Order to the Commonwealth Court of Pennsylvania. On February 26, 1998, the Commonwealth Court of Pennsylvania granted the Pennsylvania Commission's request to remand the case, requiring that the Pennsylvania Commission enter a subsequent Order on or before May 29, 1998, addressing all issues necessary for implementation of conventional area code relief in area codes 215, 610, and 717.

9. On February 26, 1998, the Pennsylvania Commission adopted two Orders that tentatively approved a geographic split of the 717 area code (Pennsylvania Commission Order IV) and the creation of a new area code that would overlay the 215 and 610 area codes (Pennsylvania Commission Order V). Both orders expressly stated that the provisions of the Pennsylvania Commission's first three Orders shall remain in force and effect, to the extent not rescinded or modified in the Orders. On May 21, 1998, the Pennsylvania Commission adopted two additional Orders approving area code relief plans for area codes 717 (Pennsylvania Commission Order VI), and area codes 215 and 610 (Pennsylvania Commission Order VII). The orders stated that while the lack of any available NXXs mandated immediate conventional area code relief, the Pennsylvania Commission anticipated that number pooling will be implemented in the foreseeable future and that could delay further need for disruptive area code relief. The Pennsylvania Commission directed the NXX code administrator to reserve 15 NXX codes in the 717 NPA and 15 NXXs in the new area code created by the 717 split to be available for pooling or porting, either on a long-term or trial basis. Similarly, it directed the same in area codes 215 and 610.

Discussion

10. The actions taken by the Pennsylvania Commission in its two most recent orders resolve certain issues raised by the petitioners. State commissions need additional guidance and clarification, however, as to the limits of their authority over area code relief and number conservation as they address decisions in this area. Although we wish to support state commissions' efforts to develop innovative ways to address the problem of NXX code depletion, we are also mindful that the 1996 Act assigned to the Commission the responsibility for implementing a national numbering policy.

11. The Commission, the state commissions, and the industry are working together to develop methods to conserve and promote efficient use of numbers that do not undermine the uniform scheme of numbering. The North American Numbering Council (NANC) will make recommendations to the Commission on number pooling, and other number conservation measures, and those recommendations will have the benefit of industry expertise and will be in large part the product of industry consensus. The Commission anticipates using the NANC recommendations to conduct a rulemaking to establish national standards and regulations for number pooling architecture, administration, and implementation, and possibly other number conservation methods.

12. *Delegation of Additional Authority to States.* In the Local Competition Second Report and Order, the Commission did not delegate any authority to state commissions in the area of NXX code allocation or administration. Therefore, a state commission ordering NXX code rationing, or any other NXX code conservation measure, is, under the current regulatory structure, acting outside the scope of its delegated authority. The Commission understands the exigencies of NXX code rationing in the Pennsylvania situation and other states. We believe that state commissions may need flexibility to become involved in attempts to conserve NXX codes in order to extend the lives of area codes within their borders. Therefore, the Commission is reconsidering on its own motion the portion of the Local Competition Second Report and Order where the authority was delegated to state commissions to implement new area codes. We specifically delegate a limited amount of additional authority to state commissions that will allow them to order NXX code rationing in certain situations. This authorization is effective immediately upon publication in the **Federal Register**.

13. The Commission agrees with commenters asserting that the rationing of NXX codes should only occur when it is clear that an NPA will run out of NXX codes before implementation of a relief plan. The Commission therefore delegates authority to state commissions to order NXX code rationing, only in conjunction with area code relief decisions, if the industry has been unable to reach consensus on a rationing plan to extend the life of an area code until implementation of relief. A state commission, therefore, may only impose an NXX rationing plan if the state commission has decided on a specific form of area code relief (i.e., a split, overlay, or boundary realignment) and has established an implementation date. At that point, a state commission may work with the NXX code administrator to devise an NXX code rationing plan based on whatever mechanisms the state commission and the NXX code administrator deem most appropriate, including a lottery. State commissions and NXX code administrators also may consider imposing a usage threshold that a carrier must meet in its NXXs before obtaining another NXX in the same rate center.

14. The Commission clarifies that state commissions do not have authority to order return of NXX codes or 1,000 number blocks to the code administrator, either pursuant to a pooling trial or pursuant to a number rationing scheme implemented as part of a state-ordered area code relief plan. Such actions fall outside of the authority granted the states to initiate traditional area code relief, and would interfere with the code administrator's functioning pursuant to rules delegating to the code administrator the authority to manage the United States CO code number resource.

15. The Commission is aware that some states are conducting number pooling trials and encourages those efforts. At this time, however, the Commission declines to delegate to state commissions the authority to order number pooling, in view of the activity occurring at the federal level to develop such national standards. Until the Commission conducts a rulemaking to develop regulations on number pooling we encourage number pooling experiments in the states, provided that such experiments do not violate previous Commission decisions regarding numbering administration and area code relief, and provided that carrier participation is voluntary. State commissions may order that a certain number of NXX codes in a new area code be withheld from assignment and saved for number pooling. No carrier, however, may be denied a NXX code so that it can be saved for pooling purposes. Further, state commissions should proceed with the understanding that they ultimately may have to change their number pooling methods to conform to national standards.

16. The Commission encourages state commissions conducting pooling trials to work cooperatively with the NXX code administrator, and to conduct these trials in a manner consistent with industry guidelines. Further, states conducting pooling trials must ensure that numbering resources are available for carriers that do not have the LNP technology to participate in number pooling.

17. In addition, the Commission grants to Illinois limited authority to continue its pooling initiative despite the trial's mandatory nature. To prevent multiple, inconsistent mandatory pooling trials throughout the country, we limit this grant of authority to Illinois. Other states that are considering innovative number conservation methods that the Commission has not addressed, or number pooling trials that fall outside the guidelines adopted in this Order, should request from the Commission an additional, limited delegation of authority to implement these methods.

18. *State Commission Authority.* The Commission clarifies that the actions mandated by the Pennsylvania Commission in its July 1997 Order exceeded the scope of the authority the Commission has delegated to the state commissions. The Commission has not delegated jurisdiction over numbering issues to the states. The text of the Local Competition Second Report and Order is clear that the Commission delegated to state commissions the authority to implement new area codes; however, the Commission specifically declined to delegate to state commissions the authority to administer or allocate NXX codes.

19. While the Pennsylvania Commission itself was not actually assigning the NXX codes, it ordered carriers and the NXX code administrator to implement several measures, including 1,000 block pooling, 1,000 block reclamation, the return of NXX codes, and NXX code rationing, that are part of NXX code administration.

20. *Compliance With Numbering Administration Regulations.* The Pennsylvania Commission's original plan violated the Commission's regulations, which were promulgated to ensure that telecommunications

numbers are made available on an equitable basis.

21. *Availability of Numbering Resources.* The original Pennsylvania plan did not facilitate entry into the telecommunications marketplace by making numbering resources available on an efficient and timely basis to carriers. The measures contained in the plan were unproven and could have deprived carriers of the numbers they needed to provide their services. Such measures are not a substitute for area code relief after jeopardy has been declared.

22. Further, measures such as those ordered by the Pennsylvania Commission could affect negatively the routing of calls in the United States. For example, although the Pennsylvania Commission and the PaOCA asserted that the ''transparent overlays'' did not conflict with the requirements for 911 or E911 service, and that no solution in the Pennsylvania Commission Order adversely affected roaming, the record supports a finding that there is at least a potential for disruption in 911 service if wireless carriers must participate in the ''transparent overlays'' in order to obtain numbers. The record also indicates a potential for service disruption if Pennsylvania wireless customers who have numbers assigned from the ''transparent overlays'' or whose carriers are attempting to participate in 1,000 block number pooling roam outside of Pennsylvania.

23. *Discrimination Against an Industry Segment.* The Commission agrees with Petitioners that the Pennsylvania Commission's original reliance on the use of number pooling and transparent overlays unduly disfavored wireless and non-LRN capable carriers because it did not provide adequate assurance that those carriers would have access to numbering resources. Therefore, the measures mandated in the July 15, 1997 Order violated the Commission's rule requiring that numbering administration not unduly favor or disfavor any particular telecommunications industry segment. The original plan also unduly disfavored wireless carriers because its implementation would have caused service problems for wireless carriers and their customers, but similar burdens would not have been placed on other types of carriers. Additionally, because of the NXX code rationing plan that the Pennsylvania Commission ordered, the original plan also would have unduly disfavored carriers that could not participate in the transparent overlays and number pooling.

24. *Technological Neutrality.* The Commission does not determine whether Pennsylvania's original proposed methods would have been ''technology-neutral,'' and therefore inconsistent with the Commission's rule requiring that numbering administration not unduly favor or disfavor any telecommunication technology, if carriers that could not have participated in the transparent overlays and number pooling had other access to numbering resources. It is not necessary to resolve that question in this order.

25. *Section 253.* The Commission will not address arguments raised under section 253 of the Communications Act in this Order.

26. *Area Code Relief in Pennsylvania.* We are not ordering area code relief for area codes 215, 610, and 717, as requested by Petitioners, because the Pennsylvania Commission has acted to provide for such relief. Because wireline carriers have implemented LNP or will be implementing LNP soon in the area codes at issue, it does not appear that the Pennsylvania Commission still intends to implement transparent overlays, but the Pennsylvania Commission Orders VI and VII did not specifically rescind the earlier Orders' provisions regarding transparent overlays. Implementation of transparent overlays is beyond the state commissions' jurisdiction, and, as discussed above the Commission has misgivings about the use of transparent overlays as an effective method of area code relief because of their impacts on some carriers.

27. The Pennsylvania Commission's original imposition of NXX rationing measures was inconsistent with this Order's delegation of authority to state commission, because the state commission imposed the rationing plan when the area codes were in jeopardy, without having chose an area code relief method and established a relief date. Because the Pennsylvania Commission has ordered area code relief and because the NXX code situation in Pennsylvania is exigent, however, the current NXX code rationing plan may continue.

28. Until area code relief is implemented in the 215, 610, and 717 area codes in Pennsylvania, we grant additional authority to the Pennsylvania Commission, if requested, to hear and address claims of carriers claiming that they do not, or in the near future will not, have any line numbers remaining in their NXX codes, and will be unable to serve customers if they cannot obtain an NXX, or that they are using or will have to use extraordinary and unreasonably costly measures to provide service. The Pennsylvania Commission should work with the code administrator to ensure that those carriers have access to NXXs outside of the parameters of the rationing plan.

29. *Referral to the NANC.* The Commission asks the NANC for a recommendation as to whether, in the future, the state commissions or the NANPA, Lockheed Martin IMS, should perform the function of evaluating whether a carrier that is subject to an NXX code rationing plan should receive and NXX or multiple NXXs outside of the parameters of the ration plan if it demonstrates that it has no numbers and cannot provide service to customers or is having to rely on extraordinary and costly measures in order to provide service. Recommendation from NANC is requested within 60 days of the effective date of the order.

Final Regulatory Flexibility Certification

30. As permitted by section 605(b) of the Regulatory Flexibility Act (RFA), the Commission certifies that a regulatory flexibility analysis is not necessary because the amendments to the rules adopted in this Order will not impose a significant economic impact on a substantial number of small entities as defined by statute, or by the Small Business Administration (SBA). The RFA generally defines the term ''small entity'' as having the same meaning as the terms ''small business,'' ''small organization,'' and ''small governmental jurisdiction.'' In addition, the term ''small business'' has the same meaning as the term ''small business concern'' under the Small Business Act. A small business concern is one that (1) is independently owned and operated; (2) is not dominant in its field of operation; and (3) satisfies any additional criteria established by the SBA. The rule expands state commissions' authority to implement area code relief by granting additional authority to the state commissions to, under certain conditions, ration NXX codes in conjunction with area code relief decisions. Because state commissions will be the entities complying with the rules, and because the expansion of the rule simply supplements authority that the state commissions already have, we can certify that a regulatory flexibility analysis is unnecessary. This certification conforms to the RFA, as amended by the Small Business Regulatory Enforcement Fairness Act of 1996 (SBREFA).

31. The Commission's Office of Public Affairs, Public Reference Branch, will send a copy of the certification, along with the Order, in a report to Congress pursuant to the Small Business Regulatory Enforcement Fairness Act of 1996, 5 U.S.C. section 801(a)(1)(A), and

to the Chief Counsel for Advocacy of the Small Business Associations, 5 U.S.C. section 605(b).

Ordering Clauses

32. Accordingly, pursuant to section 1, 4(i), 201–205, 251, 253, and 403 of the Communications Act of 1934, as amended, 47 U.S.C. 151, 154(i), 201–205, 251, 253, and 403, and pursuant to section 1.2 of the Commission's Rules, 47 C.F.R. 1.2, *It is ordered* that the Petition for Declaratory Ruling filed by Nextel Communications, Inc., Sprint PCS, Vanguard Cellular Systems, Inc., 360 Communications Company, and Bell Atlantic Mobile, Inc. is *Granted* to the extent described herein.

33. *It is further ordered*, that, pursuant to section 1, 4(i), 201–205, 251, 253, and 403 of the Communications Act of 1934, as amended, 47 U.S.C. 151, 154(i), 201–205, 251, 253, and 403, and pursuant to section 1.2 of the Commission's Rules, 47 C.F.R. 1.2, we reconsider on our own motion a portion of Implementation of the Local Competition Provisions of the Telecommunications Act of 1996, Second Report and Order and Memorandum Opinion and Order, CC Docket No. 96–98, 11 FCC Rcd 19392 (1996) (Local Competition Second Report and Order), and authorize state commissions to order NXX code rationing in conjunction with area code relief decisions, consistent with the terms as defined in this Order. Pursuant to the authority contained in section 408 of the Communications Act, as amended, 47 U.S.C. 408, this authorization is effective immediately upon publication in the **Federal Register**. The remaining policies and requirements set forth herein are effective upon release of this Order.

34. *It is further ordered*, that the Chief, Common Carrier Bureau, is directed to determine whether state commissions should be delegated additional authority to implement innovative or experimental number conservation efforts.

35. *It is further ordered*, that the NANC, within 60 days of the effective date of this Order, provide a recommendation as to whether, in the future, the state commissions or the NANPA should perform the function of evaluating whether a carrier that is subject to an NXX code rationing plan if it demonstrates that it has no number and cannot provide service to customers or is having to rely on extraordinary and costly measures in order to provide service.

36. *It is further ordered*, that the Commission's Office of Public Affairs, Public Reference Branch, will send a copy of this certification, along with this Order, in a report to Congress pursuant to the Small Business Regulatory Enforcement Fairness Act of 1996, 5 U.S.C. 801(a)(1)(A), and to the Chief Counsel for Advocacy of the Small Business Association, 5 U.S.C. 605(b). A copy of this certification will also be published in the **Federal Register**.

37. *It is further ordered*, that PageNet's Motion to accept late-filed reply comments is hereby accepted.

List of Subjects in 47 CFR Part 52

Communications common carriers, Telecommunications, Telephone.

Federal Communications Commission.

Magalie Roman Salas,

Secretary.

Rule Changes

Part 52 of Title 47 of the Code of Federal Regulations is amended as follows.

PART 52—NUMBERING

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

Authority: Sec. 1,2,4,5, 48 Stat. 1066, as amended; 47 U.S.C. 151, 152, 154, 155 unless otherwise noted. Interpret or apply secs. 3,4, 201–05, 218, 225–7, 251–2, 271 and 332, 48 Stat. 1070, as amended, 1077; 47 U.S.C. 153, 154, 201–205, 207–09, 218, 225–7, 251–2, 271 and 332 unless otherwise noted.

2. Revise paragraph (a) of section 52.19 to read as follows:

§ 52.19 Area code relief.

(a) State commissions may resolve matters involving the introduction of new area codes within their states. Such matters may include, but are not limited to: Directing whether area code relief will take the form of a geographic split, an overlay area code, or a boundary realignment; establishing new area code boundaries; establishing necessary dates for the implementation of area code relief plans; and directing public education efforts regarding area code changes.

* * * * *

[FR Doc. 98–30495 Filed 11–13–98; 8:45 am]

BILLING CODE 6712–01–P

FEDERAL COMMUNICATIONS COMMISSION

47 CFR Part 73

[MM Docket No. 98–115; RM–9292]

Radio Broadcasting Services; Stevensville, MT

AGENCY: Federal Communications Commission.

ACTION: Final rule.

SUMMARY: This document allots Channel 283A to Stevensville, Montana, in response to a petition filed by L. Topaz Enterprises, Inc. *See* 63 FR 38786, July 20, 1998. The coordinates for Channel 283A at Stevensville are 46–30–24 and 114–05–18. Canadian concurrence has been obtained for this allotment. With this action, this proceeding is terminated.

EFFECTIVE DATE: December 21, 1998.

FOR FURTHER INFORMATION CONTACT: Kathleen Scheuerle, Mass Media Bureau, (202) 418–2180.

SUPPLEMENTARY INFORMATION: This is a summary of the Commission's Report and Order, MM Docket No. 98–115, adopted October 28, 1998, and released November 6, 1998. The full text of this Commission decision is available for inspection and copying during normal business hours in the Commission's Reference Center (Room 239), 1919 M Street, NW, Washington, DC. The complete text of this decision may also be purchased from the Commission's copy contractors, International Transcription Services, Inc., 1231 20th Street, NW., Washington, DC. 20036, (202) 857–3800, facsimile (202) 857–3805.

List of Subjects in 47 CFR Part 73

Radio broadcasting.

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

PART 73—[AMENDED]

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

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

§ 73.202 [Amended]

2. Section 73.202(b), the Table of FM Allotments under Montana, is amended by adding Stevensville, Channel 283A.

Federal Communications Commission.

John A. Karousos,

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

[FR Doc. 98–30494 Filed 11–13–98; 8:45 am]

BILLING CODE 6712–01–P

FEDERAL COMMUNICATIONS COMMISSION

47 CFR Part 73

[MM Docket No. 98–111; RM–9299]

Radio Broadcasting Services; Elko, NV

AGENCY: Federal Communications Commission.

ACTION: Final rule.

SUMMARY: The Commission, at the request of L. Topaz Enterprises, Inc., allots Channel 233C3 to Elko, NV, as the community's third local commercial FM service. *See* 63 FR 38784, July 20, 1998. Channel 233C3 can be allotted to Elko in compliance with the Commission's minimum distance separation requirements without the imposition of a site restriction, at coordinates 40–49–48 North Latitude and 115–45–36 West Longitude. With this action, this proceeding is terminated.

DATES: Effective December 21, 1998. A filing window for Channel 233C3 at Elko, NV, will not be opened at this time. Instead, the issue of opening a filing window for this channel will be addressed by the Commission in a subsequent order.

FOR FURTHER INFORMATION CONTACT: Leslie K. Shapiro, Mass Media Bureau, (202) 418–2180.

SUPPLEMENTARY INFORMATION: This is a synopsis of the Commission's Report and Order, MM Docket No. 98–111, adopted October 28, 1998, and released November 6, 1998. The full text of this Commission decision is available for inspection and copying during normal business hours in the FCC Reference Center (Room 239), 1919 M Street, NW., Washington, DC. The complete text of this decision may also be purchased from the Commission's copy contractor, International Transcription Services, Inc., (202) 857–3800, 1231 20th Street, NW, Washington, DC 20036.

List of Subjects in 47 CFR Part 73

Radio broadcasting.

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

PART 73—[AMENDED]

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

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

§ 73.202 [Amended]

2. Section 73.202(b), the Table of FM Allotments under Nevada, is amended by adding Channel 233C3 at Elko.

Federal Communications Commission.

John A. Karousos,

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

[FR Doc. 98–30491 Filed 11–13–98; 8:45 am]

BILLING CODE 6712–01–P

FEDERAL COMMUNICATIONS COMMISSION

47 CFR Part 73

[MM Docket No. 98–110; RM–9311]

Radio Broadcasting Services; Humboldt, NE

AGENCY: Federal Communications Commission.

ACTION: Final rule.

SUMMARY: The Commission, at the request of C.R. Communications, Inc., allots Channel 244A to Humboldt, NE, as the community's first local aural service. *See* 63 FR 8784, July 20, 1998. Channel 244A can be allotted to Humboldt in compliance with the Commission's minimum distance separation requirements with a site restriction of 2.1 kilometers (1.4 miles) southeast, at coordinates 40–09–00 North Latitude and 95–55–43 West Longitude, to avoid a short-spacing to Station KZKX, Channel 245C1, Seward, NE. With this action, this proceeding is terminated.

DATES: Effective December 21, 1998. A filing window for Channel 244A at Humboldt, NE, will not be opened at this time. Instead, the issue of opening a filing window for this channel will be addressed by the Commission in a subsequent order.

FOR FURTHER INFORMATION CONTACT: Leslie K. Shapiro, Mass Media Bureau, (202) 418–2180.

SUPPLEMENTARY INFORMATION: This is a synopsis of the Commission's Report and Order, MM Docket No. 98–110, adopted October 28, 1998, and released November 6, 1998. The full text of this Commission decision is available for inspection and copying during normal business hours in the FCC Reference Center (Room 239), 1919 M Street, NW., Washington, DC. The complete text of this decision may also be purchased from the Commission's copy contractor, International Transcription Services, Inc., (202) 857–3800, 1231 20th Street, NW, Washington, DC 20036.

List of Subjects in 47 CFR Part 73

Radio broadcasting.

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

PART 73—[AMENDED]

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

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

§ 73.202 [Amended]

2. Section 73.202(b), the Table of FM Allotments under Nebraska, is amended by adding Humboldt, Channel 244A.

Federal Communications Commission.

John A. Karousos,

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

[FR Doc. 98–30492 Filed 11–13–98; 8:45 am]

BILLING CODE 6712–01–P

FEDERAL COMMUNICATIONS COMMISSION

47 CFR Part 73

[MM Docket No. 98–124; RM–9305]

Radio Broadcasting Services; Whitefish, MT

AGENCY: Federal Communications Commission.

ACTION: Final rule.

SUMMARY: This document allots Channel 286A to Whitefish, Montana, in response to a petition filed by Whitefish Broadcasting Company. *See* 63 FR 39805, July 24, 1998. The coordinates for Channel 286A at Whitefish are 48–24–42 and 114–20–18. Canadian concurrence has been obtained for this allotment. With this action, this proceeding is terminated.

EFFECTIVE DATE: December 21, 1998.

FOR FURTHER INFORMATION CONTACT: Kathleen Scheuerle, Mass Media Bureau, (202) 418–2180.

SUPPLEMENTARY INFORMATION: This is a summary of the Commission's Report and Order, MM Docket No. 98–124, adopted October 28, 1998, and released November 6, 1998. The full text of this Commission decision is available for inspection and copying during normal business hours in the Commission's Reference Center (Room 239), 1919 M Street, NW, Washington, DC. The complete text of this decision may also be purchased from the Commission's copy contractors, International Transcription Services, Inc., 1231 20th Street, NW., Washington, DC. 20036, (202) 857–3800, facsimile (202) 857–3805.

List of Subjects in 47 CFR Part 73

Radio broadcasting.

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

PART 73—[AMENDED]

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

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

§ 73.202 [Amended]

2. Section 73.202(b), the Table of FM Allotments under Montana, is amended by adding Whitefish, Channel 286A.

Federal Communications Commission.

John A. Karousos,

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

[FR Doc. 98–30493 Filed 11–13–98; 8:45 am]

BILLING CODE 6712–01–P

Proposed Rules

Federal Register
Vol. 63, No. 220
Monday, November 16, 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 39

[Docket No. 98–NM–265–AD]

RIN 2120–AA64

Airworthiness Directives; Empresa Brasileira de Aeronautica S.A. (EMBRAER) Model EMB–120 Series Airplanes

AGENCY: Federal Aviation Administration, DOT.

ACTION: Notice of proposed rulemaking (NPRM).

SUMMARY: This document proposes the adoption of a new airworthiness directive (AD) that is applicable to certain EMBRAER Model EMB–120 series airplanes. This proposal would require removing the thermal insulating blankets from the upper rear nacelle structure; re-positioning the engine exhaust duct; and replacing the engine exhaust bracket with a new engine exhaust bracket, if necessary. For certain airplanes, this proposal also would require installing new stainless steel plates onto the upper rear nacelle structure. This proposal is prompted by issuance of mandatory continuing airworthiness information by a foreign civil airworthiness authority. The actions specified by the proposed AD are intended to prevent fretting of the titanium thermal insulating blankets, which could result in an increased risk of fire in the engine exhaust duct of the tail pipe.

DATES: Comments must be received by December 16, 1998.

ADDRESSES: Submit comments in triplicate to the Federal Aviation Administration (FAA), Transport Airplane Directorate, ANM–114, Attention: Rules Docket No. 98–NM–265–AD, 1601 Lind Avenue, SW., Renton, Washington 98055–4056. Comments may be inspected at this location between 9:00 a.m. and 3:00 p.m., Monday through Friday, except Federal holidays.

The service information referenced in the proposed rule may be obtained from Empresa Brasileira de Aeronautica S.A. (EMBRAER), P.O. Box 343—CEP 12.225, Sao Jose dos Campos—SP, Brazil. This information may be examined at the FAA, Transport Airplane Directorate, 1601 Lind Avenue, SW., Renton, Washington; or at the FAA, Small Airplane Directorate, Atlanta Aircraft Certification Office, One Crown Center, 1895 Phoenix Boulevard, suite 450, Atlanta, Georgia.

FOR FURTHER INFORMATION CONTACT: Linda M. Haynes, Aerospace Engineer, Airframe and Propulsion Branch, ACE–117A, FAA, Small Airplane Directorate, Atlanta Aircraft Certification Office, One Crown Center, 1895 Phoenix Boulevard, suite 450, Atlanta, Georgia 30337–2748; telephone (770) 703–6091; fax (770) 703–6097.

SUPPLEMENTARY INFORMATION:

Comments Invited

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

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

Commenters wishing the FAA to acknowledge receipt of their comments submitted in response to this notice must submit a self-addressed, stamped postcard on which the following statement is made: ''Comments to Docket Number 98–NM–265–AD.'' The postcard will be date stamped and returned to the commenter.

Availability of NPRMs

Any person may obtain a copy of this NPRM by submitting a request to the FAA, Transport Airplane Directorate, ANM–114, Attention: Rules Docket No. 98–NM–265–AD, 1601 Lind Avenue, SW., Renton, Washington 98055–4056.

Discussion

The Departmento de Aviacao Civil (DAC), which is the airworthiness authority for Brazil, notified the FAA that an unsafe condition may exist on certain EMBRAER Model EMB–120 series airplanes. The DAC advises that it has received reports of fire in the engine exhaust duct of the tail pipe. Investigation revealed that the aft section of the engine exhaust duct is subject to vibration that causes relative motion between the layers of insulation blankets and the engine exhaust duct. As a result, the titanium thermal insulating blankets are subject to fretting. Such fretting produces titanium dust, which under intense heat, could spontaneously ignite. This condition, if not corrected, could result in an increased risk of fire in the engine exhaust duct of the tail pipe.

Explanation of Relevant Service Information

EMBRAER has issued Service Bulletin 120–54–0035, Change 02, dated May 29, 1998, which describes procedures for removing the thermal insulating blankets from the upper rear nacelle structure; re-positioning the engine exhaust duct with the use of shims; and replacing the engine exhaust bracket with a new engine exhaust bracket, if necessary. For certain airplanes, the service bulletin also describes procedures for installing new stainless steel plates onto the upper rear nacelle structure. Accomplishment of the actions specified in the service bulletin is intended to adequately address the identified unsafe condition. The DAC classified this service bulletin as mandatory and issued Brazilian airworthiness directives 97–11–03, dated December 3, 1997, and 97–11–03R1, dated July 6, 1998, in order to assure the continued airworthiness of these airplanes in Brazil.

FAA's Conclusions

This airplane model is manufactured in Brazil and is type certificated for operation in the United States under the

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

Explanation of Requirements of Proposed Rule

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

Cost Impact

The FAA estimates that 171 airplanes of U.S. registry would be affected by this proposed AD.

It would take approximately 9 work hours per airplane to accomplish the actions on airplanes listed in ''Part I'' of EMBRAER Service Bulletin 120–54–0035, Change 02, at an average labor rate of $60 per work hour. Required parts would cost approximately $337 per airplane. Based on these figures, the cost impact of the proposed requirements of this AD on U.S. operators of airplanes listed in ''Part I'' of the service bulletin is estimated to be $877 per airplane.

It would take approximately 2 work hours per airplane to accomplish the actions on airplanes listed in ''Part II'' of EMBRAER Service Bulletin 120–54–0035, Change 02, at an average labor rate of $60 per work hour. Based on these figures, the cost impact of the proposed requirements of this AD on U.S. operators of airplanes listed in ''Part II'' of the service bulletin is estimated to be $120 per airplane.

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

Regulatory Impact

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

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

List of Subjects in 14 CFR Part 39

Air transportation, Aircraft, Aviation safety, Safety.

The Proposed Amendment

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

PART 39—AIRWORTHINESS DIRECTIVES

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

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

§ 39.13 [Amended]

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

Empresa Brasileira de Aeronautica S.A. (EMBRAER): Docket 98–NM–265–AD.

Applicability: Model EMB–120 series airplanes, serial numbers (S/N) 120003, 120004, and 120006 through 120336 inclusive; certificated in any category.

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

Compliance: Required as indicated, unless accomplished previously.

To prevent fretting of the titanium thermal insulating blankets, which could result in an increased risk of fire in the engine exhaust duct of the tail pipe, accomplish the following:

(a) For airplanes identified in ''Part I'' of the effectivity listing of EMBRAER Service Bulletin 120–54–0035, Change 02, dated May 29, 1998: Within 2,400 flight hours after the effective date of this AD, accomplish paragraphs (a)(1) and (a)(2) in accordance with the service bulletin.

(1) Remove the thermal insulating blankets from the upper rear nacelle structure.

(2) Install new stainless steel plates onto the upper rear nacelle structure.

(b) For airplanes identified in ''Part II'' of the effectivity listing of EMBRAER Service Bulletin 120–54–0035, Change 02, dated May 29, 1998: Within 2,400 flight hours after the effective date of this AD, remove the thermal insulating blankets from the upper rear nacelle structure in accordance with the service bulletin.

(c) For all airplanes: Prior to further flight following accomplishment of either paragraph (a) or (b) of this AD, as applicable, re-position the engine exhaust duct with the use of shims in accordance with EMBRAER Service Bulletin 120–54–0035, Change 02, dated May 29, 1998. If it is not possible to re-position the engine exhaust duct with the use of shims as specified in the service bulletin, prior to further flight, replace the rear exhaust duct bracket with a new rear exhaust duct bracket, in accordance with the ''NOTE'' in paragraph 1.3.1.1 of the Planning section of the service bulletin.

(d) As of the effective date of this AD, no person shall install on any airplane a thermal insulating blanket having part number (P/N) 120–35411–025, –035, –036, 120035413–001, or 12035411–002.

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

Note 2: Information concerning the existence of approved alternative methods of compliance with this AD, if any, may be obtained from the Atlanta ACO.

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

Note 3: The subject of this AD is addressed in Brazilian airworthiness directives 97–11–03, dated December 3, 1997, and 97–11–03R1, dated July 6, 1998.

Issued in Renton, Washington, on November 9, 1998.

Darrell M. Pederson,

Acting Manager, Transport Airplane Directorate, Aircraft Certification Service.

[FR Doc. 98–30537 Filed 11–13–98; 8:45 am]

BILLING CODE 4910–13–U

DEPARTMENT OF TRANSPORTATION

Federal Aviation Administration

14 CFR Part 71

[Airspace Docket No. 98–AGL–57]

Proposed Modification of Class E Airspace; Fostoria, OH

AGENCY: Federal Aviation Administration (FAA), DOT.

ACTION: Notice of proposed rulemaking.

SUMMARY: This notice proposes to modify Class E airspace at Fostoria, OH. A Global Positioning System (GPS) Standard Instrument Approach Procedure (SIAP), 099° helicopter point in space approach, has been developed for Fostoria Community Hospital Heliport. Controlled airspace extending upward from 700 to 1200 feet above ground level (AGL) is needed to contain aircraft executing the approach. This action proposes to modify existing controlled airspace; for Fostoria, OH, in order to include the point in space approach serving Fostoria Community Hospital Heliport.

DATES: Comments must be received on or before December 31, 1998.

ADDRESSES: Send comments on the proposal in triplicate to: Federal Aviation Administration, Office of the Assistant Chief Counsel, AGL–7, Rules Docket No. 98–AGL–57, 2300 East Devon Avenue, Des Plaines, Illinois 60018.

The official docket may be examined in the Office of the Assistant Chief Counsel, Federal Aviation Administration, 2300 East Devon Avenue, Des Plaines, Illinois. An informal docket may also be examined during normal business hours at the Air Traffic Division, Airspace Branch, Federal Aviation Administration, 2300 East Devon Avenue, Des Plaines, Illinois.

FOR FURTHER INFORMATION CONTACT: Michelle M. Behm, Air Traffic Division, Airspace Branch, AGL–520, Federal Aviation Administration, 2300 East Devon Avenue, Des Plaines, Illinois 60018, telephone (847) 294–7568.

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–AGL–57.'' 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, FAA, Great Lakes Region, Office of the Assistant Chief Counsel, 2300 East Devon Avenue, Des Plaines, Illinois, 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 Notice of Proposed Rulemaking (NPRM) by submitting a request to the Federal Aviation Administration, Office of Public Affairs, Attention: Public Inquiry Center, APA–230, 800 Independence Avenue, SW., Washington, DC 20591, or by calling (202) 267–3484. 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 14 CFR part 71 to modify Class E airspace at Fostoria, OH, to accommodate aircraft executing the proposed GPS SIAP, 099° helicopter point in space approach for Fostoria Community Hospital Heliport by modifying existing controlled airspace. Controlled airspace extending upward from 700 to 1200 feet AGL is needed to contain aircraft executing the approach. The area would be depicted on appropriate aeronautical charts. Class E airspace designations for airspace areas extending upward from 700 feet or more above the surface of the earth 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 will only affect air traffic procedures and air navigation, it is certified that this proposed rule 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

Accordingly, pursuant to the authority delegated to me, 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 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.

* * * * *

AGL OH E5 Fostoria, OH [Revised]

Fostoria Metropolitan Airport, OH
(Lat. 41° 11′ 27″N., long. 83° 23′ 40″W)
Fostoria Community Hospital, OH
Point In Space Coordinates

(Lat. 41° 10′ 08″N., long. 83° 26′ 31″W)
That airspace extending upward from 700 feet above the surface within a 7.0-mile radius of the Fostoria Metropolitan Airport, and within a 6.0-mile radius of the Point in Space serving Fostoria Community Hospital, excluding the airspace within the Tiffin, OH, Class E airspace area.

* * * * *

Issued in Des Plaines, Illinois on October 29, 1998.

Maureen Woods,

Manager, Air Traffic Division.

[FR Doc. 98–30592 Filed 11–13–98; 8:45 am]

BILLING CODE 4910–13–M

DEPARTMENT OF TRANSPORTATION

Federal Aviation Administration

14 CFR Part 71

[Airspace Docket No. 98–AGL–60]

Proposed Establishment of Class E Airspace; Bellevue, OH

AGENCY: Federal Aviation Administration (FAA), DOT.

ACTION: Notice of proposed rulemaking.

SUMMARY: This notice proposes to establish Class E airspace at Bellevue, OH. A Global Positioning System (GPS) Standard Instrument Approach Procedure (SIAP), 052° helicopter point in space approach, has been developed for Bellevue Hospital Heliport. Controlled airspace extending upward from 700 to 1200 feet above ground level (AGL) is needed to contain aircraft executing the approach. This action proposes to establish controlled airspace for Bellevue, OH.

DATES: Comments must be received on or before December 31, 1998.

ADDRESSES: Send comments on the proposal in triplicate to: Federal Aviation Administration, Office of the Assistant Chief Counsel, AGL–7, Rules Docket No. 98–AGL–60, 2300 East Devon Avenue, Des Plaines, Illinois 60018.

This official docket may be examined in the Office of the Assistant Chief Counsel, Federal Aviation Administration, 2300 East Devon Avenue, Des Plaines, Illinois. An informal docket may also be examined during normal business hours at the Air Traffic Division, Airspace Branch, Federal Aviation Administration, 2300 East Devon Avenue, Des Plaines, Illinois.

FOR FURTHER INFORMATION CONTACT: Michelle M. Behm, Air Traffic Division, Airspace Branch, AGL–520, Federal Aviation Administration, 2300 East Devon Avenue, Des Plaines, Illinois 60018, telephone (847) 294–7568.

SUPPLEMENTARY INFORMATION:

Comments Invited

Interested parties are invited to participate in this proposed rulemkaing 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–AGL–60.'' 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, FAA, Great Lakes Region, Office of the Assistant Chief Counsel, 2300 East Devon Avenue, Des Plaines, Illinois, 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 Notice of Proposed Rulemaking (NPRM) by submitting a request to the Federal Aviation Administration, Office of Public Affairs, Attention: Public Inquiry Center, APA–230, 800 Independence Avenue, S.W., Washington, DC 20591, or by calling (202) 267–3484. 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 14 CFR part 71 to establish Class E airspace at Bellevue, OH, to accommodate aircraft executing the proposed GPS SIAP, 052° helicopter point in space approach for Bellevue Hospital Heliport. Controlled airspace extending upward from 700 to 1200 feet AGL is needed to contain aircraft executing the approach. The area would be depicted on appropriate aeronautical charts. Class E airspace designations for airspace areas extending upward from 700 feet or more above the surface of the earth 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 will only affect air traffic procedures and air navigation, it is certified that this proposed rule 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

Accordingly, pursuant to the authority delegated to me, 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 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.

* * * * *

AGL OH E5 Bellevue, OH [New]

Bellevue Hospital, OH
Point In Space Coordinates
(Lat. 41°16′33″N., long. 82°51′10″W)

That airspace extending upward from 700 feet above the surface within a 6.0-mile radius of the Point in Space serving Bellevue Hospital, excluding the airspace within the Sandusky, OH, and Norwalk, OH, Class E airspace areas.

* * * * *

Issued in Des Plaines, Illinois on October 29, 1998.

Maureen Woods,

Manager, Air Traffic Division.

[FR Doc. 98–30591 Filed 11–13–98; 8:45 am]

BILLING CODE 4910–13–M

DEPARTMENT OF TRANSPORTATION

Federal Aviation Administration

14 CFR Part 71

[Airspace Docket No. 98–AGL–59]

Proposed Modification of Class E Airspace; Sandusky, OH

AGENCY: Federal Aviation Administration (FAA), DOT.

ACTION: Notice of proposed rulemaking.

SUMMARY: This notice proposes to modify Class E airspace at Sandusky, OH. A Global Positioning System (GPS) Standard Instrument Approach Procedure (SIAP), 097° helicopter point in space approach, has been developed for Providence Hospital Heliport and Firelands Community Hospital Heliport. Controlled airspace extending upward from 700 to 1200 feet above ground level (AGL) is needed to contain aircraft executing the approach. This action proposes to modify existing controlled airspace for Sandusky, OH, in order to include the point in space approach serving Providence Hospital Heliport and Firelands Community Hospital Heliport.

DATES: Comments must be received on or before December 31, 1998.

ADDRESSES: Send comments on the proposal in triplicate to: Federal Aviation Administration, Office of the Assistant Chief Counsel, AGL–7, Rules Docket No. 98–AGL–59, 2300 East Devon Avenue, Des Plaines, Illinois 60018.

The official docket may be examined in the Office of the Assistant Chief Counsel, Federal Aviation Administration, 2300 East Devon Avenue, Des Plaines, Illinois. An informal docket may also be examined during normal business hours at the Air Traffic Division, Airspace Branch, Federal Aviation Administration, 2300 East Devon Avenue, Des Plaines, Illinois.

FOR FURTHER INFORMATION CONTACT: Michelle M. Behm, Air Traffic Division, Airspace Branch, AGL–520, Federal Aviation Administration, 2300 East Devon Avenue, Des Plaines, Illinois 60018, telephone (847) 294–7568.

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–AGL–59.'' 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, FAA, Great Lakes Region, Office of the Assistant Chief Counsel, 2300 East Devon Avenue, Des Plaines, Illinois, 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 Notice of Proposed Rulemaking (NPRM) by submitting a request to the Federal Aviation Administration, Office of Public Affairs, Attention: Public Inquiry Center, APA–230, 800 Independence Avenue, S.W., Washington, DC 20591, or by calling (202) 267–3484. 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 14 CFR part 71 to modify Class E airspace at Sandusky, OH, to accommodate aircraft executing the proposed GPS SIAP, 097° helicopter point in space approach for Providence Hospital Heliport and Firelands Community Hospital Heliport by modifying existing controlled airspace. Controlled airspace extending upward from 700 to 1200 feet AGL is needed to contain aircraft executing the approach. The area would be depicted on appropriate aeronautical charts. Class E airspace designations for airspace areas extending upward from 700 feet or more above the surface of the earth 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 will only affect air traffic procedures and air navigation, it is certified that this proposed rule will not have a significant economic impact on a substantial number of small entities under the criteria of the Regulatory Flexibility Act.

List of Subject in 14 CFR Part 71

Airspace, Incorporation by reference, Navigation (air).

The Proposed Amendment

Accordingly, pursuant to the authority delegated to me, the Federal Aviation Administration proposes to amended 14 CFR part 71 as follows:

PART 71—DESIGNATION OF CLASS A, CLASS B, 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 6005 Class E airspace areas extending upward from 700 feet or more above the surface of the earth.

* * * * *

AGL OH E5 Sandusky, OH [Revised]

Sandusky, Griffing Sandusky Airport, OH
(Lat. 41°26′00″ N., long. 82°39′08″ W)
Firelands Community Hospital, OH
Providence Hospital, OH
Point In Space Coordinates
(Lat. 41′26′32″ N., long 82°43′29″ W)

That airspace extending upward from 700 feet above the surface within a 6.5-mile radius of the Griffing Sandusky airport, and within 6.0-mile radius of the Point in Space serving Firelands Community Hospital and Providence Hospital, excluding the airspace within the Port Clinton, OH, and Norwalk, OH, Class E airspace areas.

* * * * *

Issued in Des Plaines, Illinois on October 29, 1998.

Maureen Woods,

Manager, Air Traffic Division.

[FR Doc. 98–30590 Filed 11–13–98; 8:45 am]

BILLING CODE 4910–13–M

DEPARTMENT OF TRANSPORTATION

Federal Aviation Administration

14 CFR Part 71

[Airspace Docket No. 98–AGL–58]

Proposed Modification of Class E Airspace; Norwalk, OH

AGENCY: Federal Aviation Administration (FAA), DOT.

ACTION: Notice of proposed rulemaking.

SUMMARY: This notice proposes to modify Class E airspace at Norwalk, OH. A Global Positioning System (GPS) Standard Instrument Approach Procedure (SIAP), 037° helicopter point in space approach, has been developed for Fisher-Titus Medical Center Heliport. Controlled airspace extending upward from 700 to 1200 feet above ground level (AGL) is needed to contain aircraft executing the approach. This action proposes to modify existing controlled airspace for Norwalk, OH, in order to include the point in space approach, serving Fisher-Titus Medical Center Heliport.

DATES: Comments must be received on or before December 31, 1998.

ADDRESSES: Send comments on the proposal in triplicate to: Federal Aviation Administration, Office of the Assistant Chief Counsel, AGL–7, Rules Docket No. 98–AGL–58, 2300 East Devon Avenue, Des Plaines, Illinois 60018.

The official docket may be examined in the Office of the Assistant Chief Counsel, Federal Aviation Administration, 2300 East Devon Avenue, Des Plaines, Illinois. An informal docket may also be examined during normal business hours at the Air Traffic Division, Airspace Branch, Federal Aviation Administration, 2300 East Devon Avenue, Des Plaines, Illinois

FOR FURTHER INFORMATION CONTACT: Michelle M. Behm, Air Traffic Division, Airspace Branch, AGL–520, Federal Aviation Administration, 2300 East Devon Avenue, Des Plaines, Illinois 60018, telephone (847) 294–7568.

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–AGL–58.'' 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, FAA, Great Lakes Region, Office of the Assistant Chief Counsel, 2300 East Devon Avenue, Des Plaines, Illinois, 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 Notice of Proposed Rulemaking (NPRM) by submitting a request to the Federal Aviation Administration, Office of Public Affairs, Attention: Public Inquiry Center, APA–230, 800 Independence Avenue, S.W., Washington, DC 20591, or by calling (202) 267–3484. 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 14 CFR part 71 to modify Class E airspace at Norwalk, OH, to accommodate aircraft executing the proposed GPS SIAP, 037° helicopter point in space approach for Fisher-Titus Medical Center Heliport by modifying existing controlled airspace. Controlled airspace extending upward from 700 to 1200 feet AGL is needed to contain aircraft executing the approach. The area would be depicted on appropriate aeronautical charts. Class E airspace designations for airspace areas extending upward from 700 feet or more above the surface of the earth 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 will only affect air

traffic procedures and air navigation, it is certified that this proposed rule 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

Accordingly, pursuant to the authority delegated to me, 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 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.

* * * * *

AGL OH E5 Norwalk, OH [Revised]

Norwalk-Huron County Airport, OH
(Lat. 41°14′41″N., long, 82°33′04″W)
Fisher-Titus Medical Center, OH
Point in Space Coordinates
(Lat. 41°12′53″N., long. 82°36′37″W)

That airspace extending upward from 700 feet above the surface within a 6.4-mile radius of the Norwalk-Huron County Airport and within 2.5 miles each side of the 338° bearing from the airport extending from the 6.3 mile radius to 8.8 miles northwest of the airport, and within a 6.0-mile radius of the Point in Space serving Fisher-Titus Medical Center, excluding that airspace within the Willard, OH, Class E airspace area.

* * * * *

Issued in Des Plaines, Illinois on October 29, 1998.

Maureen Woods,

Manager, Air Traffic Division.

[FR Doc. 98–30589 Filed 11–13–98; 8:45 am]

BILLING CODE 4910–13–M

DEPARTMENT OF TRANSPORTATION

Federal Aviation Administration

14 CFR Part 71

[Airspace Docket No. 98–AGL–55]

Proposed Modification of Class E Airspace; Monroe, MI

AGENCY: Federal Aviation Administration (FAA), DOT.

ACTION: Notice of proposed rulemaking.

SUMMARY: This notice proposes to modify Class E airspace at Monroe, MI. A Global Positioning System (GPS) Standard Instrument Approach Procedure (SIAP), 210° helicopter point in space approach, has been developed for Mercy Memorial Hospital Heliport. Controlled airspace extending upward from 700 to 1200 feet above ground level (AGL) is needed to contain aircraft executing the approach. This action proposes to modify existing controlled airspace for Monroe, MI, in order to include the point in space approach serving Mercy Memorial Hospital Heliport.

DATES: Comments must be received on or before December 31, 1998.

ADDRESSES: Send comments on the proposal in triplicate to: Federal Aviation Administration, Office of the Assistant Chief Counsel, AGL–7, Rules Docket No. 98–AGL–55, 2300 East Devon Avenue, Des Plaines, Illinois 60018.

The official docket may be examined in the Office of the Assistant Chief Counsel, Federal Aviation Administration, 2300 East Devon Avenue, Des Plaines, Illinois. An informal docket may also be examined during normal business hours at the Air Traffic Division, Airspace Branch, Federal Aviation Administration, 2300 East Devon Avenue, Des Plaines, Illinois.

FOR FURTHER INFORMATION CONTACT: Michelle M. Behm, Air Traffic Division, Airspace Branch, AGL–520, Federal Aviation Administration, 2300 East Devon Avenue, Des Plaines, Illinois 60018, telephone (847) 294–7568.

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–AGL–55.'' 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, FAA, Great Lakes Region, Office of the Assistant Chief Counsel, 2300 East Devon Avenue, Des Plaines, Illinois, 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.

Availablity of NPRM's

Any person may obtain a copy of this Notice of Proposed Rulemaking (NPRM) by submitting a request to the Federal Aviation Administration, Office of Public Affairs, Attention: Public Inquiry Center, APA–230, 800 Independence Avenue, S.W., Washington, DC 20591, or by calling (202) 267–3484. 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 14 CFR part 71 to modify Class E airspace at Monroe, MI, to accommodate aircraft executing the proposed GPS SIAP, 210° helicopter point in space approach for Mercy Memorial Hospital Heliport by modifying existing controlled airspace. Controlled airspace extending upward from 700 to 1200 feet AGL is needed to contain aircraft executing the approach. The area would be depicted on appropriate aeronautical charts. Class E airspace designations for airspace areas extending upward from 700 feet or more above the surface of the earth 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 will only affect air traffic procedures and air navigation, it is certified that this proposed rule 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

Accordingly, pursuant to the authority delegated to me, 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 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.

* * * * *

AGL MI E5 Monroe, MI [Revised]

Monroe, Custer Airport, MI
(Lat. 41°56′24″N., long. 83°26′05″W)
Mercy Memorial Hospital, MI
Point in Space Coordinates
(Lat. 41°56′05″N., long. 83°23′34″W)
That airspace extending upward from 700 feet above the surface within a 6.5-mile radius of Custer Airport, and within a 6.0-mile radius of the Point in Space serving Mercy Memorial Hospital, excluding that airspace within the Detroit, MI, Class E airspace area.

* * * * *

Issued in Des Plaines, Illinois on October 29, 1998.

Maureen Woods,

Manager, Air Traffic Division.

[FR Doc. 98–30587 Filed 11–13–98; 8:45 am]

BILLING CODE 4910–13–M

DEPARTMENT OF TRANSPORTATION

Federal Aviation Administration

14 CFR Part 71

[Airspace Docket No. 98–AGL–56]

Proposed Modification of Class E Airspace; Fremont, OH

AGENCY: Federal Aviation Administration (FAA), DOT.

ACTION: Notice of proposed rulemaking.

SUMMARY: This notice proposes to modify Class E airspace at Fremont, OH. A Global Positioning System (GPS) Standard Instrument Approach Procedure (SIAP), 090° helicopter point in space approach, has been developed for Memorial Hospital of Sandusky County Heliport. Controlled airspace extending upward from 700 to 1200 feet above ground level (AGL) is needed to contain aircraft executing the approach. This action proposes to modify existing controlled airspace for Fremont, OH, in order to include the point in space approach serving Memorial Hospital of Sandusky County Heliport.

DATES: Comments must be received on or before December 31, 1998.

ADDRESSES: Send comments on the proposal in triplicate to: Federal Aviation Administration, Office of the Assistant Chief Counsel, AGL–7, Rules Docket No. 98–AGL–56, 2300 East Devon Avenue, DES Plaines, Illinois 60018.

The official docket may be examined in the Office of the Assistant Chief Counsel, Federal Aviation Administration, 2300 East Devon Avenue, Des Plaines, Illinois. An informal docket may also be examined during normal business hours at the Air Traffic Division, Airspace Branch, Federal Aviation Administration, 2300 East Devon Avenue, Des Plaines, Illinois.

FOR FURTHER INFORMATION CONTACT:

Michelle M. Behm, Air Traffic Division, Airspace Branch, AGL–520, Federal Aviation Administration, 2300 East Devon Avenue, Des Plaines, Illinois 60018, telephone (847) 294–7568.

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–AGL–56.'' 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, FAA, Great Lakes Region, Office of the Assistant Chief Counsel, 2300 East Devon Avenue, Des Plaines, Illinois, 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 Notice of Proposed Rulemaking (NPRM) by submitting a request to the Federal Aviation Administration, Office of Public Affairs, Attention: Public Inquiry Center APA–230, 800 Independence Avenue, S.W., Washington, DC 20591, or by calling (202) 267–3484. 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 procedures.

The Proposal

The FAA is considering an amendment to 14 CFR part 71 to modify Class E airspace at Fremont, OH, to accommodate aircraft executing the proposed GPS SIAP, 090° helicopter point in space approach for Memorial Hospital of Sandusky County Heliport by modifying existing controlled airspace. Controlled airspace extending upward from 700 to 1200 feet AGL is needed to contain aircraft executing the approach. The area would de depicted on appropriate aeronautical charts. Class E airspace designations for airspace areas extending upward from 700 feet or more above the surface of the earth 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 will only affect air traffic procedures and air navigation, it is certified that this proposed rule 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

Accordingly, pursuant to the authority delegated to me, 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 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.

* * * * *

AGL OH E5 Fremont, OH [Revised]

Fremont Airport, OH
(Lat. 41° 20′ 03″N., long. 83° 09′ 36″W.)
Memorial Hospital of Sandusky County, OH Point In Space Coordinates
(Lat. 41° 20′ 18″N., long 83° 08′ 57′W.)

That airspace extending upward from 700 feet above the surface within a 6.3-mile radius of the Fremont Airport, and within a 6.0-mile radius of the Point in Space serving Memorial Hospital of Sandusky County.

* * * * *

Issued in Des Plaines, Illinois on October 29, 1998.

Maureen Woods,

Manager, Air Traffic Division.

[FR Doc. 98–30584 Filed 11–13–98; 8:45 am]

BILLING CODE 4910–13–M

DEPARTMENT OF THE INTERIOR

Office of Surface Mining Reclamation and Enforcement

30 CFR Part 913

[SPATS No. IL–094–FOR]

Illinois Regulatory Program

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

ACTION: Proposed rule; reopening and extension of public comment period on proposed amendment.

SUMMARY: OSM is announcing receipt of revisions to and explanatory information for a previously proposed amendment to the Illinois regulatory program (Illinois program) under the Surface Mining Control and Reclamation Act of 1977 (SMCRA). The revisions concern areas unsuitable for surface coal mining operations, permitting, violation information, impoundments, explosives, revegetation, and administrative and judicial review. Illinois intends to revise its program to be consistent with the corresponding Federal regulations and SMCRA, to clarify existing regulations, and to improve operational efficiency.

DATES: We will accept written comments until 4:00 p.m., e.s.t., December 1, 1998.

ADDRESSES: You should mail or hand deliver written comments to Andrew R. Gilmore, Director, Indianapolis Field Office at the address listed below.

You may review copies of the Illinois program, the proposed amendment, and all written comments received in response to this document at the addresses listed below during normal business hours, Monday through Friday, excluding holidays. You may receive one free copy of the proposed amendment by contacting OSM's Indianapolis Field Office.

Andrew R. Gilmore, Director Indianapolis Field Office, Office of Surface Mining Reclamation and Enforcement, Minton-Capehart Federal Building, 575 North Pennsylvania Street, Room 301, Indianapolis, Indiana 46204–1521, Telephone: (317) 226–6700.

Illinois Department of Natural Resources, Office of Mines and Minerals, 524 South Second Street, Springfield, Illinois 62701–1787, Telephone: (217) 782–4970.

FOR FURTHER INFORMATION CONTACT: Andrew R. Gilmore, Director, Indianapolis Field Office. Telephone: (317) 226–6700. Internet: agilmore@mcrgw.osmre.gov.

SUPPLEMENTARY INFORMATION:

I. Background on the Illinois Program

On June 1, 1982, the Secretary of the Interior conditionally approved the Illinois program. You can find background information on the Illinois program, including the Secretary's findings, the disposition of comments, and the conditions of approval in the June 1, 1982, **Federal Register** (47 FR 23883). You can find later actions concerning the Illinois program at 30 CFR 913.15, 913.16, and 913.17.

II. Discussion of the Proposed Amendment

By letter dated February 26, 1998 (Administrative Record No. IL–5009), Illinois sent us an amendment to revise its regulations in response to letters dated January 6 and June 17, 1997 (Administrative Record Nos. IL–1951 and IL–2000, respectively), that we sent to Illinois under 30 CFR 732.17(c) and in response to required program amendments at 30 CFR 913.16. Illinois also proposed to amend its program to clarify existing regulations. We announced receipt of the proposed amendment in the April 6, 1998, **Federal Register** (63 FR 16719) and invited public comment on its

adequacy. The public comment period ended May 6, 1998.

During our review of the amendment, we identified concerns relating to 62 IAC 1773.15(c)(11), written findings for permit application approval; 62 IAC 1778.14(c), required information in permit application; 62 IAC 1816.116 and 1817.116, revegetation standards; 62 IAC 1816.117(c)(3) and 1817.117(c)(3), tree and shrub vegetation; 62 IAC 1847.3, hearings; 62 IAC 1847.3(g), burden of proof for permit hearings; 62 IAC 1847.9(g), burden of proof for bond release hearings; and editorial errors in various regulations. We notified Illinois of these concerns on June 2, 1998 (Administrative Record No. IL–5019). By letter dated November 5, 1998 (Administrative Record No. Il–IL–5025), Illinois sent us a revised amendment package. Illinois proposed the following changes to its amendment.

1. General

Illinois corrected typographical errors, punctuation, citation references, and other editorial-type errors throughout the amended regulations. Illinois also simplified its use of numbers: for example, in 62 IAC 1701.5. Appendix A, in the definition of ''Head-of-hollow fill,'' a reference to ''twenty (20) degrees'' was changed to ''20 degrees''; in 62 IAC 1761.12(c), references to ''one hundred (100) feet'' were changed to ''100 feet''; in 62 IAC 1773.15(a), a reference to ''sixty (60) days'' was changed to ''60 days''; in 62 IAC 1774.11(a)(1), a reference to ''five (5) years'' was changed to ''five years''; and in 62 IAC 1800.40, a reference to ''sixty (60) percent'' was changed to ''60%.''

2. 62 IAC 1761.12 Procedures for Areas Designated by Act of Congress

In section 1761.12(b)(2), Illinois proposes to replace the reference to ''Section 1761.11(a), (f) or (g)'' with a reference to ''Section 1761.11(a)(6) and (7).''

3. 62 IAC 1764 State Processes for Designating Areas Unsuitable for Surface Coal Mining Operations

In section 1764.15(a), Illinois added the heading ''Processing of Petitions''; and in section 1764.15(c), Illinois added the heading ''Land Report and Public Comment.''

4. 62 IAC Part 1773 Requirements for Permits and Permit Processing

Illinois removed its reference to 1816.116(a)(2)(B) and 1816.117(a)(2)(B) at 62 IAC 1773.15(c)(11) and added the following provision for written findings at 62 IAC 1773.15(c)(13):

(13) For a proposed remining operation where the applicant intends to reclaim in accordance with the requirements of 62 Ill. Adm. Code 1816.116(a)(2)(B) or 1817.116(a)(2)(B), the site of the operation is land eligible for remining as defined in 62 Ill. Adm. Code 1701. Appendix A.

5. 62 IAC Part 1774.13 Permit Revisions

At 1774.13(b)(3), Illinois is changing a reference from ''1773.19(b)'' to ''1773.19(a)(3)(A) and (C).''

6. 62 IAC 1778.14 Violation Information

At 62 IAC 1778.14(c), Illinois proposes to replace its currently proposed introductory language with the following language:

(c) A list of all violation notices received by the applicant during the three-year period preceding the application date, and a list of all outstanding violation notices received prior to the date of the application by any surface coal mining operation that is deemed or presumed to be owned or controlled by the applicant under the definition of ''owned or controlled'' and ''owns or controls'' in 62 Ill. Adm. Code 1773.5. For each notice of violation issued pursuant to 62 Ill. Adm. Code 1843.12 or under a Federal or State program for which the abatement period has not expired, the applicant shall certify that such notice of violation is in the process of being corrected to the satisfaction of the agency with jurisdiction over the violation. For each violation notice reported, the list shall include the following information, as applicable:

7. 62 IAC Part 816 Permanent Program Performance Standards for Surface Mining Activities and 62 IAC Part 817, Permanent Program Performance Standards for Underground Mining Operations

a. At 62 IAC 1816.49(a)(3)(B) and 1817.49(a)(3)(B), concerning impoundments, Illinois proposes to replace the reference to ''Practice Standard 378, Ponds, April 1987'' with a reference to ''Practice Standard IL 278, Ponds, June 1992.''

b. At 62 IAC 1816.66(d), relating to explosives, Illinois added the heading ''Proximity to buildings and other facilities.''

c. Illinois added the following new revegetation provision at 62 IAC 1816.116(a)(2)(G) and 1817.116(a)(2)(G):

(G) Other Management Practices:

The Department shall approve the use of deep tillage for prime farmland and high capability land as a beneficial practice that will not restart the five year period of responsibility, if the following conditions are met:

(i) The Permittee has submitted a request to use the practice and has identified the field that will be deep tilled;

(ii) One or more hay crops, or other acceptable row crops, have been grown or will be grown to dry out the subsoil prior to deep tilling the field; and

(iii) The Department has determined that the use of deep tillage will be beneficial to the soil structure and long term crop production of the field and the benefits will continue well beyond the responsibility period.

The Department shall notify the permittee in writing of its decision. Such written notice shall be in the form of an inspection report or other document issued by the Department.

Illinois proposed the above provision to replace a provision at 62 IAC 1816.116(a)(2)(F)(i) and 1817.116(a)(2)(F)(i) that also concerned deep tillage. We had disapproved the provision at 62 IAC 1816.116(a)(2)(F)(i) and 1817.116(a)(2)(F)(i) on May 29, 1996 (61 FR 26801). By letter dated June 15, 1998 (Administrative Record No. IL–5024), Illinois submitted explanatory information and supporting documentation for consideration of the above proposed provision.

d. Illinois proposes to delete the following language from 62 IAC 1816.116(a)(4)(ii):

The Department may approve a field to represent non-contiguous areas less than or equal to four acres of the same capability if it determines that the field is representative of reclamation of such areas. These areas shall be managed and vegetated in the same manner as the representative field.

e. Illinois proposes to withdraw the revisions currently proposed for 62 IAC 1816.117(c)(3) and 1817.117(c)(3) that would have limited the number of plots needed to sample tree or shrub areas to 200 for areas of 50 acres or more.

8. 62 IAC Part 1847 Administrative and Judicial Review

a. Illinois proposes the following revised language for 62 IAC 1847.3(g)(2):

(2) In all other proceedings held under this Section, the party seeking to reverse the Department's decision shall have the burden of proving by a preponderance of evidence that the Department's decision is in error.

b. Illinois proposes the following revised language for 62 IAC 1847.9(g):

(g) Burden of proof. The party seeking to reverse the Department's proposed release of bond shall have the burden of proving by a preponderance of the evidence that the Department's decision is in error.

III. Public Comment Procedures

We are reopening the comment period on the proposed Illinois program amendment to provide you an opportunity to reconsider the adequacy of the proposed amendment in light of the additional materials sent to us. Under the provisions of 30 CFR 732.17(h), we are requesting comments on whether the amendment satisfies the program approval criteria of 30 CFR

732.15. If the amendment is approved, it will become part of the Illinois program.

Written Comments

Your written comments should be specific and pertain only to the issues proposed in this rulemaking. You should explain the reason for any recommended change. We may not consider in the final rulemaking or include in the administrative record any comments we receive after the close of the comment period (see **DATES**) or at locations other than the Indianapolis Field Office.

IV. Procedural Determinations

Executive Order 12866

The Office of Management and Budget (OMB) exempts this rule from review under Executive Order 12866 (Regulatory Planning and Review).

Executive Order 12988

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

National Environmental Policy Act

This rule does not require an environmental impact statement since section 702(d) of SMCRA (30 U.S.C. 1292(d)) provides that agency decisions on State regulatory program provisions do not constitute major Federal actions within the meaning of section 102(2)(C) of the National Environmental Policy Act (42 U.S.C. 4332(2)(C)).

Paperwork Reduction Act

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

Regulatory Flexibility Act

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

Unfunded Mandates

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

List of Subjects in 30 CFR Part 913

Intergovernmental relations, Surface mining, Underground mining.

Dated: November 6, 1998.

Brent Wahlquist,

Regional Director, Mid-Continent Regional Coordinating Center.

[FR Doc. 98–30546 Filed 11–13–98; 8:45 am]

BILLING CODE 4310–05–P

DEPARTMENT OF THE INTERIOR

Office of Surface Mining Reclamation and Enforcement

30 CFR Part 913

[SPATS No. IL–093–FOR]

Illinois Abandoned Mine Land Reclamation Plan

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

ACTION: Proposed rule; public comment period and opportunity for public hearing.

SUMMARY: OSM is announcing receipt of a proposed amendment to the Illinois abandoned mine land reclamation plan (Illinois plan) under the Surface Mining Control and Reclamation Act of 1977 (SMCRA). Illinois is proposing revisions and additions to the Illinois plan relating to agency reorganization, legal opinion, definitions, project priorities, utilities and other facilities, eligible coal lands and water, eligible non-coal lands and water, project selection, annual grant process, liens, rights of entry, public participation, bidding requirements and conditions, contracts, and contractor responsibility. Illinois intends to revise the Illinois plan to be consistent with the corresponding Federal regulations and SMCRA and to improve operational efficiency.

DATES: Written comments must be received by 4:00 p.m., e.s.t., December 16, 1998. If requested, we will hold a public hearing on the amendment on December 11, 1998. We will accept requests to speak at the hearing until 4:00 p.m., e.s.t. on December 1, 1998.

ADDRESSES: You should mail or hand deliver written comments and requests to speak at the hearing to Andrew R. Gilmore, Director, Indianapolis Field Office, at the address listed below.

You may review copies of the Illinois program, the amendment, a listing of any scheduled public hearings, and all written comments received in response to this document at the addresses listed below during normal business hours, Monday through Friday, excluding holidays. You may receive one free copy of the amendment by contacting OSM's Indianapolis Field Office.

Andrew R. Gilmore, Director, Indianapolis Field Office, Office of Surface Mining Reclamation and Enforcement, Minton-Capehart Federal Building, 575 North Pennsylvania Street, Room 301, Indianapolis, Indiana 46204.

Illinois Department of Natural Resources, 524 South Second Street, Springfield, Illinois 62701–1787.

FOR FURTHER INFORMATION CONTACT: Andrew R. Gilmore, Director, Indianapolis Field Office. Telephone: (317) 226–6700. Internet: agilmore@mcrgw.osmre.gov.

SUPPLEMENTARY INFORMATION:

I. Background on Title IV of SMCRA

Title IV of SMCRA established an Abandoned Mine Land Reclamation (AMLR) program for the purposes of reclaiming and restoring lands and water resources adversely affected by past mining. This program is funded by a reclamation fee imposed upon the production of coal. As enacted in 1977, lands and waters that were mined or affected by mining and abandoned or left in an inadequate reclamation status before August 3, 1977, and for which there was no continuing reclamation responsibility under State or Federal

law, are eligible for reclamation. The AML Reclamation Act of 1990 (Pub. L. 101–508, Title VI, Subtitle A, Nov. 5, 1990, effective Oct. 1, 1991) amended SMCRA, 30 U.S.C. 1231 *et. seq.,* to provide changes in the eligibility of project sites for AML expenditures. Title IV of SMCRA now provides for reclamation of certain mine sites where the mining occurred after August 3, 1977. These include interim program sites where bond forfeiture proceeds were insufficient for adequate reclamation and sites affected any time between August 4, 1977, and November 5, 1990, for which there were insufficient funds for adequate reclamation due to the insolvency of the bond surety. Title IV provides that a State with an approved AML Plan has the responsibility and primary authority to implement the program.

II. Background on the Illinois Plan

On June 1, 1982, the Secretary of the Interior approved the Illinois plan. You can find background information on the Illinois plan, including the Secretary's findings, the disposition of comments, and the approval of the plan in the June 1, 1982, **Federal Register** (47 FR 23886). You can find later actions concerning the Illinois plan and amendments to the plan at 30 CFR 913.25.

III. Description of the Proposed Amendment

By letter dated October 22, 1998 (Administrative Record No. IL–5022), Illinois sent us an amendment to its plan under SMCRA. Illinois sent the amendment in response to a letter dated September 26, 1994 (Administrative Record No. IL–700–AML), that we sent to Illinois under 30 CFR 884.15(d). The amendment also includes changes made at Illinois' own initiative. Illinois proposes to amend the narrative and policy sections of its plan and its regulations at Title 62 Part 2501 and Title 44 Part 1150 of the Illinois Administrative Code (IAC). Below is a summary of the changes proposed by Illinois. The full text of the amendment is available for your inspection at the locations listed above under **ADDRESSES**.

A. Changes in the Narrative of the Illinois Abandoned Mine Reclamation Plan.

1. Introduction

Illinois revised this section to describe the history of the Illinois Abandoned Mined Lands Reclamation Program, the creation of the Department of Natural Resources, and the requirements of Title V of the Surface Mining Control and Reclamation Act of 1977.

2. State Reclamation Plan.

a. General. Illinois reorganized its State reclamation plan. Illinois also removed references to the Soil Conservation Service (SCS) and replaced them with references to the Natural Resource Conservation Service (NRCS).

b. Eligible Coal Lands and Water. Illinois added this section in response to 30 CFR 874.12(e). Illinois stated that 62 IAC 2501.10, Eligible Coal Lands and Water, provides the eligibility guidelines that correspond to this citation.

c. Exclusion of Certain Non-coal Reclamation Sites. Illinois added this section in response to 30 CFR 875.16. Illinois states that 62 IAC 2501.11, Eligible Non-coal Lands and Water, provides the eligibility guidelines that correspond to this citation.

d. Authorization by the Governor. Illinois revised this section by stating that P.A. 81–1020, the Abandoned Mined Lands and Water Reclamation Act, as amended, contains the Governor's authorization required by 30 CFR 884.13(a).

e. Legal Opinion. Illinois revised this section by providing a letter from the chief legal officer of the Department of Natural Resources as the legal opinion required by 30 CFR 884.13(h).

f. Project Selection. Illinois revised this section by stating that Sections 2501.7, 2501.8, 2501.10, 2501.11, 2501.13, 2501.16, and 2501.34 of the rules entitled ''Abandoned Mined Lands Reclamation'' provide the guidelines for project selection required by 30 CFR 884.13(c)(2).

g. Coordination of Reclamation Activities. Illinois revised the existing language in this section by changing the word ''semi-annual'' to ''annual.''

h. Reclamation of Private Land. Illinois revised this section to include an explanation of language found at 62 IAC 2501.25(b)(2).

i. Public Participation. Illinois revised the public participation sections for preparation of the original state plan, promulgation of rules and plan amendments, public participation in the reclamation program, compliance with Executive Order 12372, and the list of regional clearinghouses.

j. Administration. Illinois revised the administration section to reflect the reorganization of the Division of Abandoned Mined Lands Reclamation, within the Office of Mines and Minerals, Department of Natural Resources. They also updated the list of other State offices and agencies.

k. Personnel. Illinois revised the description of its administrative and management structure and its personnel staffing policies.

l. Procurement. Illinois removed a paragraph about Section 9.01 of the Illinois Purchasing Act.

m. Reclamation Activity. Illinois revised the amount of acreage in need of reclamation and the amount of acreage funded through the emergency response program. They also added a new paragraph on the reclamation activity entitled ''Reclamation of Mine Subsidence.''

n. Reports. Illinois added this section as a response to 30 CFR 884.13(f). Illinois states that the Department will submit the OSM–76 Form, or its electronic counterpart, in the Abandoned Mine Land Inventory System at the time of project completion as 30 CFR 884.13(f) requires.

o. Priorities. Illinois added this section in response to 20 ILCS 1920/2.03(4). Illinois states that legislative measures will be taken to ensure compatibility between state statutes and Federal regulations.

B. Changes in 62 IAC 2501

1. Reference Changes

Illinois made the following statutory reference changes throughout 62 IAC 2501: Ill. Rev. Stat. 1991, ch 96½, pars. 8001.01 *et seq.* was changed to 20 ILCS 1920; Ill. Rev. Stat. 1985, ch. 96½, par. 8001.03(a)(7) was changed to 20 ILCS 1920/1.03(5); Ill. Rev. Stat. 1985, ch. 96½, par. 8001.01 *et seq.* was changed to 20 ILCS 1920; Ill. Rev. Stat. 1991, ch. 127, par. 1001–1 *et seq.* was changed to 5 ILCS 100; Ill. Rev. Stat. 1989, ch. 96½, par. 8001.02(a) was changed to 20 ILCS 1920/1.02; Ill. Rev. Stat. 1989, ch. 96½, par. 8001.03(a) was changed to 20 ILCS 1920/2.03(a); Ill. Rev. Stat. 1985, ch. 96½, par. 8003.05 was changed to 20 ILCS 1920/3.05; Ill. Rev. Stat. 1989, ch. 96½, par. 8002.09(b) was changed to 20 ILCS 1920/2.09; Ill. Rev. Stat. 1983, ch. 96½, par. 800.04(d) was changed to 20 ILCS 1920/2.04(d); and Ill. Rev. Stat. 1985, ch. 127, pars. 133b1 *et seq.* was changed to 30 ILCS 605.

Illinois also made the following title changes throughout 62 IAC 2501: all references to the ''Council'' have been changed to the ''Department''; and all references to ''Soil Conservation Service'' have been changed to ''Natural Resource Conservation Service.''

2. Section 2501.1, Scope

In this section, Illinois removed the existing language and replaced it with the following:

This Part implements the Abandoned Mined Lands and Water Reclamation Act [20 ILCS 1920], which provides that the Department of Natural Resources shall administer a program for the reclamation of Abandoned Mined Lands (''AML''). This act is complementary to Title IV of the federal Surface Mining Control and Reclamation Act of 1977 (30 U.S.C. 1201 *et seq.*, P.L. 95–87, as amended).

3. Section 2501.4, Definitions

Illinois removed the definition of ''Council,'' added a definition for ''Department,'' and revised the definition of ''Federal Office.''

4. Section 2501.7, Objectives and Priorities

Illinois removed the language found at section 2501.7(c)(4). They also added new sections 2501.7(d) and (e) to read as follows:

(d) Generally, projects lower than a priority 2 should not be undertaken until all known higher priority coal projects either have been accomplished, are in the process of being reclaimed, or have been approved for funding by OSM, except in those instances where such lower priority projects may be undertaken in conjunction with a priority 1 or 2 site in accordance with OSM's ''Final Guidelines for Reclamation Programs and Projects'' (61 FR 68777–68785, December 30, 1996).

(e) When the Department finds in writing that the adverse effects of coal mining practices have an adverse economic impact upon a community, a project shall be designated as a priority 1 or 2 threat to the general welfare, regardless of the nature of the problem conditions.

Finally, at Section 2501.7(f), Illinois changed the date by which the Department may make expenditure obligations on lands mined for substances other than coal. The date was changed from August 14, 1994, to August 31, 1999.

5. Section 2501.8, Utilities and Other Facilities

In this new section, Illinois provides guidance on use of AML funds for water supplies. Section 2501.8(a) allows the Department to use up to 30 percent of the annual AML funds for the purpose of protecting, repairing, replacing, constructing, or enhancing facilities relating to water supplies, including water distribution facilities and treatment plants, to replace water supplies adversely affected by coal mining practices. Section 2501.8(b) provides that adverse effects on water supplies that occurred both before and after August 3, 1977, are eligible for AML funds, in spite of the criteria specified in Section 2501.10(b), if the Department finds as part of its eligibility opinion that the adverse effects are caused predominantly by mining processes undertaken and abandoned before August 3, 1977. Section 2501.8(c) provides that adverse effects on water supplies that occurred both before and after the dates (and under the criteria) set forth in Section 2501.10(d) are eligible for AML funds, notwithstanding the criteria specified in Section 2501.10(b), if the Department finds as part of its eligibility opinion that the adverse effects are caused predominately by mining processes undertaken and abandoned before those dates. Finally, section 2501.8(d) provides that enhancement of facilities or utilities includes upgrading to meet any local, State, or Federal public health or safety requirement. Enhancement does not include service area expansion not necessary to address a specific abandoned mine land problem.

6. Section 2501.10, Eligible Coal Lands and Water

In this section, Illinois removed section 2501.10(b) and redesignated section 2501.10(a) as Section 2501.10. Sections 2501.10 (a)(1) through (3) were redesignated as sections 2501.10(a) through (c). Illinois added new sections 2501.10(d) through (h) to read as follows:

(d) Notwithstanding subsections (a), (b) and (c) of this section, coal lands and waters damaged and abandoned after August 3, 1997 by coal mining processes are also eligible if the Department, with the concurrence of OSM, finds in writing that:

(1) They were mined for coal or affected by coal mining processes; and

(A) The mining occurred and the site was left in either an unreclaimed or inadequately reclaimed condition between August 4, 1977 and June 1, 1982, and any funds for reclamation or abatement that are available pursuant to a bond or other form of financial guarantee or from any other source are not sufficient to provide for adequate reclamation or abatement at the site, or

(B) The mining occurred between August 4, 1977 and November 5, 1990 and the surety of the mining operator became insolvent during that period, and as of November 5, 1990, funds immediately available from proceedings relating to insolvency, or from any financial guarantee or other source, are not sufficient to provide for adequate reclamation or abatement at the site; and

(2) The site qualifies as a priority 1 or 2 site under Section 2501.7(c) and (e) of this Part.

(e) The Department may expend funds available under subsections 402(g)(1) and (5) of the Surface Mining Control and Reclamation Act for reclamation and abatement of any site eligible under Subsection (d) above, if the Department, with concurrence of OSM, makes the findings required in subsection (d) above and the Department determines that the reclamation priority of the site is the same or more urgent that the reclamation priority for the lands and water eligible pursuant to subsections (a), (b) or (c) above that quality as a priority 1 or 2 site under Section 403(a) of the Surface Mining Control and Reclamation Act (30 U.S.C. 1233(a)).

(f) With respect to lands and waters eligible pursuant to subsection (d) or (e) above, monies available from sources outside the Abandoned Mine Reclamation Federal Trust Fund or that are ultimately recovered from responsible parties shall either be used to offset the cost of the reclamation or transferred to the Abandoned Mine Reclamation Federal Trust Fund if not required for further reclamation activities at the permitted site.

(g) If reclamation of a site covered by an interim or permanent program permit is carried out under the AML program, the permittee of the site shall reimburse the AML Fund for the cost of reclamation that is in excess of any bond forfeited to ensure reclamation. The Department, when performing reclamation under subsection (d) above shall not be held liable for any violations of any performance standards or reclamation requirements specified in Title V of the Federal Act, or in the Surface Coal Mining Land Conservation and Reclamation Act [225 ILCS 720], nor shall a reclamation activity undertaken on such lands or waters be held to any standards set forth in those Acts.

(h) Surface coal mining operations on lands eligible for remining shall not affect the eligibility of such lands for reclamation and restoration after the release of the bonds or deposits posted by any such operation. If the bond or deposit for a surface coal mining operation on lands eligible for remining is forfeited, AML funds may be used if the amount of such bond or deposit is not sufficient to provide for adequate reclamation or abatement, except that if emergency conditions warrant, the Department shall immediately exercise its authority under the Emergency program.

7. Section 2501.11, Eligible Non-Coal Lands and Water

Illinois added this new section to provide reclamation eligibility guidelines for non-coal lands and water. Non-coal lands and water are eligible for reclamation activities if they were mined or affected by mining processes; they were mined before August 3, 1977, and left or abandoned in either an unreclaimed or inadequately reclaimed condition; the operator, permittee, or agent of the permittee has no continuing responsibility for reclamation under statutes of the State or Federal Government due to bond forfeiture, and the forfeited bond is insufficient to pay the total cost of reclamation; the Governor agrees that reclamation is necessary and submits a letter of request to the Federal Office; it is necessary for the protection of the public health and safety, general welfare and property; and the lands and water are not designated for remedial action under the

Uranium Mill Tailings Radiation Control Act of 1978 or have been listed for remedial action under the Comprehensive Response Compensation and Liability Act of 1980.

8. Section 2501.13, Preliminary Project Selection

Illinois revised the language in section 2501.13(a). Currently, this section requires the Department to select reclamation projects from an abandoned mine site database that contains all known abandoned mine sites in the State affected prior to August 3, 1977 and which contain problem conditions. Illinois revised section 2501.13(a) to require the Department to select reclamation projects from a database that contains all known abandoned mine sites in the State which are eligible under Sections 2501.10 and 2501.11.

In section 2501.13(b), Illinois revised the list of problem conditions the Department is to use to determine which sites are in the most need of reclamation. New section 2501.13(b)(9) provides that flooding of roads or improved property caused by sedimentation from AML sites is a problem condition. New section 2501.13(b)(10) provides that hazardous recreational water bodies is a problem condition. Existing sections 2501.13(b)(9) and (10) were redesignated as sections 2501.13(b)(11) and (12). Finally, Illinois added new section 2501.13(b)(13) to provide that coal refuse material or spoilbanks adversely affecting lands or water resources is a problem condition.

Illinois made minor wording changes in section 2501.13(c)(3).

9. Section 2501.16, Final Selection and Project Deferment

Illinois revised section 2501.16(a) to require the Department to select from those abandoned mine sites identified under section 2501.13 projects for reclamation. The Department must base its selection upon the following criteria and consideration: satisfactory funding levels to complete reclamation; a complete application from the owner(s) of property that contains the significant portion of problem conditions on a site; and evidence that a timely Consent for Entry can be obtained from the owner(s) of the project site. Finally, Illinois removed section 2501.16(c).

10. Section 2501.19, Annual Grant Process

Illinois removed the language found in this section and replaced it with language requiring the Department to submit an annual grant application to OSM in accordance with the requirements of 30 CFR 886 to cover allowable costs of the AML program. These allowable costs include the actual costs of construction, operation and maintenance, planning and engineering, construction inspection, other necessary administrative costs, and up to 90 percent of the costs of acquisition of land. This section also requires the Department to provide copies of the annual AML grant application to the public upon written request to the Department. Finally, the Department must circulate notices of annual AML grant applications through the Illinois State Library System and the Illinois State Clearinghouse.

11. Section 2501.22, Reclamation Activities

Illinois revised this section to allow the Department to enter into cooperative agreements, as necessary and appropriate, with any person or governmental entity to reclaim abandoned land. The cooperative agreements may concern the furnishing of services, plans, layouts, materials, or any incidental services needed to reclaim the land. All parties that enter into a cooperative agreement must agree to comply with all applicable requirements of State and Federal law.

12. Section 2501.25, Reclamation on Private Lands

Illinois added new language at 2501.25(b)(3) to allow the Department to waive a lien if it finds, before construction, that the reclamation work is being undertaken solely to seal, fill, or mark an open or settled mine shaft, drift or slope entry, adit or other mine opening or a subsidence pit. In section 2501.25(b)(5), Illinois revised the existing language to allow landowners to file petitions for a hearing to determine the increase in market value of reclaimed land. The landowners are to file the petitions with the Department through the Director of the Office of Mines and Minerals. At section 2501.25(c)(2), Illinois added language to provide that a reclamation lien created under Section 2.09 of the State Act will continue to exist until satisfied, subject only to the 40-year limitation period and the requirements of Sections 13–118 through 13–121 of the Code of Civil Procedure [735 ILCS 5/13–118 *et seq.*]. Finally, Illinois added new section 2501.25(c)(3) to allow the Department to request appropriate foreclosure action by the Attorney General to satisfy the lien if the reclaimed property is transferred for an actual consideration in excess of the fair market value of the property after reclamation, and the lien is not satisfied at the time of transfer.

13. Section 2501.28, Rights of Entry

Illinois made minor word changes in section 2501.28(a).

14. Section 2501.40, Public Participation

Illinois added this new section to provide for public participation in the AML program and projects. Section 2501.40(a) provides that any interested party may submit information and comments to the Director of the Department, the Director of the Office of Mines and Minerals, or the Manager of the AML Division at any time. Section 2501.40(b) requires that the Department handle verbal and written requests for information as quickly as possible, and that requests made under the Freedom of Information Act (5 ILCS 140) be made and handled in accordance with the generally applicable procedures of the Department of Natural Resources. Section 2501.40(c) requires the Department to have available, upon request, copies of the Illinois State Reclamation Plan for Abandoned Mined Lands, Office of Mines and Minerals Annual and Bi-Annual Reports, specific project reports, and brochures and program materials. However, the availability of such reports, brochures and program materials can not be deemed a waiver of the Department's right to charge fees for its actual cost of reproducing and certifying public records requests under the Freedom of Information Act. Further, the Department may charge fees for its actual cost for providing multiple copies of free publications. Finally, section 2501.40(d) was added to read as follows:

(d) The Department shall hold such public meetings as it determines necessary and appropriate to advise the public of planned or ongoing AML projects, and to solicit input and participation in the AML program. Any interested person may request, in writing, that the Department hold a public meeting in connection with any AML project or program activity. Upon receipt of a written request to hold a public meeting, the Department shall contact the landowners directly involved in the project, as well as the local government bodies that may be interested. The Department shall schedule a public meeting if it determines that sufficient public interest exists to warrant the public meeting.

C. Changes in 44 IAC 1150

1. Reference Changes

Illinois made the following statutory reference changes throughout 44 IAC 1150: Ill. Rev. Stat. 1985, ch. 96½, pars. 8001.01 *et seq.* and Ill. Rev. Stat. 1991, ch.127, par. 1005–75 were changed to

20 ILCS 1920 and 5 ILCS 100/5–75, respectively.

Illinois made the following title changes throughout 44 IAC 1150: all references to the ''Abandoned Mined Lands Reclamation Council'' and ''Council'' have been changed to the ''Illinois Department of Natural Resources'' or ''Department'; all references to ''him'' have been revised to ''him/her'' or some other gender neutral reference; and all references to the ''Executive Director'' have been changed to the ''Director of the Office of Mines and Mineral,'' ''Director of the Department,'' or ''Director,'' as appropriate.

2. Section 1150.10, Purpose

Illinois revised the language in this section to read as follows:

The Abandoned Mined Lands and Water Reclamation Act (''Act'') [20 ILCS 1920] provides that the Illinois Department of Natural Resources shall administer a program for the reclamation of abandoned lands and waters in accordance with the Act. This Part describes standard procedures for the Department's Office of Mines and Minerals, Division of Abandoned Mined Lands Reclamation, for advertising, bidding and awarding contracts for construction on abandoned mined lands (''AML'') reclamation projects. This Part also prescribes standard procedures for obtaining the necessary outside professional services as needed in the administration of the AML program. The purpose is to prescribe procedures which will implement the AML program in a way which satisfies the requirements of the various State of Illinois purchasing laws, as well as federal grant requirements for funding pursuant to the Surface Mining Control and Reclamation Act of 1977, as amended (30 USC 1201 *et seq.*).

3. Section 1150.20, Scope

Illinois removed the first sentence in this section and made minor word changes.

4. Section 1150.30, Applicability

Illinois removed the existing language in this section, and replaced it with applicability guidelines for this part and its subparts. Section 1150.30(a) states that this part applies to all contracts by the Division of Abandoned Mined Lands Reclamation for reclamation construction and professional services contracts. Section 1150.30(b) states that subpart B applies to the advertising, bidding and awarding of contracts for construction on planned reclamation projects that have been designed in the normal course of the AML program. Section 1150.30(c) states that subpart C applies to construction contracts that are needed to minimize emergency conditions which involve public health and safety danger and cannot wait for normal program abatement procedures. Finally, section 1150.30(d) states that subpart D applies to the selection of Consultants to provide professional services covered by the Architectural, Engineering, and Land Surveying Qualifications Based Selections Act [30 ILCS 535].

5. Section 1150.100, Definition of Terms

Illinois removed the following definitions: ''Council'' and ''Executive Director.''

Illinois added the following definitions: ''AML''; ''AVS''; ''bid''; ''Department''; ''OSM''; ''subconsultant''; and ''subcontractor.''

Illinois revised the following definitions: ''advertisement''; ''award''; ''Contract''; ''contract bond''; ''Department of Transportation''; ''equipment''; ''plans''; ''specifications''; and ''proposal.''

6. Section 1150.200, Bidding Requirements and Conditions

Illinois revised section 1150.200(a)(1) to require the Department of Transportation to prequalify each bidder as provided in 44 Ill. Adm. Code 650. In section 1150.200(a)(4), Illinois revised the language to require the Department to send a written Notice of its action to the Contractor. Minor word changes were made at sections 1150.200(a)(4)(B), 1150.200(a)(4)(H), and 1150.200(a)(4)(K). At section 1150.200(a)(4)(M), a recommendation from OSM that the contractor is not eligible for an AML contract under 30 CFR 874.16 is added to the list of grounds for contractor suspension.

Illinois revised section 1150.200(a)(5) to read as follows:

In all actions suspending a contractor's eligibility to bid on reclamation project contracts, the Contractor may protest the Department's action by submitting to the Director of the Department a written statement of objection setting forth the facts and circumstances of the action which are alleged to be legally or otherwise objectionable. The written statement of objection must be received by the Director within 14 calendar days of the objectionable action. The Director shall provide the Contractor with a hearing in accordance with procedures set forth in 17 Ill. Adm. Code 2530. Notwithstanding the provisions of Sections 2530.320—2530.350 concerning initiation of proceedings by the Department, the Contractor shall initiate the proceedings.

In section 1150.200(b)(1), Illinois revised the language to require the Department to publish notice to bidders and advertisement for bids in the Illinois Procurement Bulletin once, no less than 14 days before the bid opening. Section 1150.200(b)(2) was revised to provide that the Department of Transportation will publish the Illinois Procurement Bulletin. Finally, at section 1150.200(b)(3), Illinois made minor wording changes.

In section 1150.200(c)(1), Illinois removed the existing language and replaced it with language requiring the Department of Transportation to furnish a proposal form to prequalified, prospective bidders, stating the location and description of the contemplated construction, showing the estimate of the various quantities and kinds of work to be performed and/or materials to be furnished, and having a schedule of items for which unit bid prices are invited. The proposal form also will state the time in which the work must be completed, the amount of the proposal guaranty, labor requirements, and the date, time and place of the opening of proposals. Finally, the form will include Special Provisions and requirements that adapt the Standard Specifications to AML projects and provide for project specific conditions and requirements.

Illinois revised section 1150.200(g)(1) to read as follows:

The prospective bidder shall, before submitting a bid, carefully examine the provisions of the contract. The bidder shall inspect in detail the site of the proposed work, investigate and become familiar with all the local conditions affecting the contract and fully acquaint itself with the detailed requirements of construction. Submissions of a bid shall be a conclusive assurance and warranty that the bidder has made these examinations and that the bidder understands all requirements for the performance of the work. If his/her bid is accepted, the bidder will be responsible for all errors in the proposal resulting from his/her failure or neglect to comply with this subsection (g)(1). The Department will, in no case, be responsible for any costs, expenses, losses, or change in anticipated profits resulting from such failure or neglect of the bidder to make these examinations.

Illinois added a new section 1150.200(g)(2) which prohibits bidders from taking advantage of any error or omission in the proposal and advertised contract. If bidders want an explanation or interpretation of the plans, specifications or any contract documents, they may submit requests in writing to the Supervisor of Project Management. The requests must allow sufficient time for the Department to respond in writing to all prospective bidders before submission of their bids. All responses to bidder requests will be supplied to all prospective bidders in the form determined by the Department if the Department determines that the information would aid competition. Oral explanations, interpretations, or instructions given before the submission

of bids unless at a pre-bid conference will not be binding on the Department.

Illinois made minor word changes in section 1150.200(h) and 1150.200(i)(1). New section 1150.200(i)(2) was added to require bidders to submit separate proposals on each individual contract if a combination bid is submitted on two or more proposals. If separate bids are not submitted, the Department will not consider the combination bid. If the bidder wants to submit a combination bid, the bidder must state the amount of the combination bid for the entire combination in the place provided in the proposal form. Illinois added new section 1150.200(i)(3) to read as follows:

(3) If a combination bid is submitted on any stipulated combination, and errors are found to exist in computing the gross sum bid on any one or more of the individual proposals, corrections shall be made, by the Department and the amount of the combination bid shall be corrected so that it will be in the same proportion to the sum of the corrected gross sum bid as the combination bid submitted was to the sum bid submitted.

The following provisions shall govern combination bidding:

(A) A combination bid which is submitted for 2 or more proposal and awarded on that basis shall have the bid prorated against each proposal in proportion to the bid submitted for each proposal.

(B) Separate contracts shall be executed for each individual proposal included in the combination.

(C) The completion date for all contracts awarded on a combination bid shall be the latest completion date designated in any one or more of the contracts included in the combination, unless otherwise provided in the contracts. The working days for all contracts awarded on a combination bid shall be the largest number of working days designated in any one or more of the contracts included in the combination, unless otherwise provided in the contracts.

(D) An extension of time for any one or more contracts awarded on a combination bid shall automatically extend all contracts awarded on the combination.

(E) In the event the Contractor fails to complete any one or all of the contracts on the combination bid by the contract completion date plus any authorized extension, or the contract working days plus any authorized extension, the liquidated damages shall be determined from the schedule of deductions for each day of overrun in contract time as provided in the contract, based on the combination bid total, and shall be computed on the combination and prorated against the 2 or more individual contracts based on the dollar value of each.

(F) The plans and Special Provisions for each separate contract shall be construed separately for all requirements, except as described in subsections (a) through (e) above.

Finally, at section 1150.200(m), Illinois removed language prohibiting a bidder from resubmitting a withdrawn proposal at the same letting.

7. Section 1150.300, Award and Execution of Contract

At section 1150.300(a)(2), Illinois revised the language to allow the Department to reject any or all proposals, to waive technicalities, or to advertise for new proposals if the Department believes that it will serve the best interests of the Department.

Illinois revised section 1150.300(b)(1) to require the Department to award the contract within 45 days after the opening of proposals to the lowest responsible and qualified bidder. The Department must notify the successful bidder that his/her bid has been accepted and, subject to sections 1150.300(b) (2) and (3), he/she will be the Contractor. New section 1150.300(b)(2) states that the State is not bound by a contract until the Department executes it. The Department may cancel the award any time before execution in order to protect the public interest and integrity of the bidding process or for any reason if, in the judgement of the Department, the best interest of the Department will be served. Finally, section 1150.300(b)(3) was revised to allow a bidder to withdraw his/her bid 45 days after the opening of proposals, or the time specified on the Notice to Bidders.

Illinois added a new section 1150.300(c), entitled ''Notice of Contract Award,'' to require the Department to publish each and every contract that is let or awarded in the next available Illinois Procurement Bulletin.

Illinois revised section 1150.300(d)(1) require the Department to return the guaranty checks promptly. Section 1150.300(d)(2) was revised to allow the two lowest bidders to substitute bid bonds for their guaranty checks after a period of three working days after the date of opening proposals has elapsed.

Illinois added new section 1150.300(e), entitled ''Applicant Violator System'' to read as follows:

(1) Under 30 CFR 874.16, every successful bidder for a federally funded AML contract must be eligible under 30 CFR 773.15(b)(1) at the time of contract award to receive a permit or conditional permit to conduct surface coal mining operations. Bidder eligibility must be confirmed by the federal Office of Surface Mining, Reclamation and Enforcement's automated Applicant/Violator System (AVS) for each contract to be awarded.

(2) At the time the successful bidder is notified by letter of intent that his/her bid will be accepted, the Department will provide to the bidder an Ownership/Control (''O/C'') information package. The bidder shall completely fill out the forms and return the completed forms to the Department. The Department will forward the completed forms to OSM at the Lexington, Kentucky AVS office for data entry and compliance check.

(3) All subcontractors who will receive 10% or more of the total contract funding will also be required to submit an O/C information package and be subject to the OSM/AVS compliance check, prior to receiving the Department's approval of subcontractor.

(4) Any contract inspector, selected through a bidding process, regardless of the percentage of contract funding, will also be required to submit an O/C information package and be subject to the OSM/AVS compliance check.

(5) The Department shall deny a contract and cancel the award upon OSM's recommendation that the successful bidder is not eligible for an AML contract. The Department shall deny approval of a subcontractor upon OSM's recommendation that the subcontractor is not eligible for an AML contract. The Department shall deny an inspection contract upon OSM's recommendation that the contract inspector is not eligible for an AML contract.

(6) Any person denied an AML contract or participation in an AML funded project, shall appeal the decision and recommendation of OSM directly to OSM. Appeal should be made to establish eligibility for future AML projects. The Department will not delay a project pending appeal. The Department's role in the AVS compliance check process is ministerial and does not involve exercise of independent judgement or review of OSM's decision and recommendation. The Department shall not be responsible for any damages sustained by any person by reason of OSM's determination as to eligibility for AML contracts.

(7) After a Contractor, subcontractor, or contract inspector has once submitted an O/C information package and has been entered into the AVS in connection with an AML project, the Department may, in connection with subsequent projects, provide dated AVS printouts reflecting the information submitted and the current AVS recommendation, along with an AML Contractor O/C Data Certification form. The Contractor, subcontractor, or contract inspector shall complete and submit the certification in place of the O/C information package, in the same manner as provided above.

(8) Any potential AML Contractor, subcontractor or contract inspector may submit O/C information directly to OSM and the Lexington AVS Office, to predetermine eligibility for AML contracts.

Illinois removed the existing language at section 1150.300(f) and replaced it with language requiring the Contractor to furnish a performance and payment bond with good and sufficient sureties in the full amount of the contract as the penal sum to the Department. The surety shall be acceptable to the Department, shall waive notice of any changes and extensions of time, and shall submit its bond on the form furnished by the Department.

8. Section 1150.400, Contracts Involving Expenditures of $30,000.00 or Less

Illinois revised this section to allow the Department to waive the prequalification and bidding requirements of Section 1150.300 when the reclamation project expenditures are $30,000.00 or less.

9. Section 1150.500, Emergency Contracting

In section 1150.500(b)(1), Illinois made minor word changes. This section requires the Department to maintain a list of prequalified contractors for the type of construction work encountered in AML Emergency reclamation projects. Illinois proposes to add language requiring the Department to include on this list those contractors who have demonstrated responsibility and competence through past performance on AML Emergency reclamation projects. Finally, Illinois removed the word ''prequalified'' from the remaining text in this section and replaced it with the word ''listed.''

10. Section 1150.700, Applicability

Illinois revised this section to state that this subpart applies to all architectural, engineering, or land surveying professional services provided to the Department under a contract. This section does not apply to those services covered by the Architectural, Engineering, and Land Surveying Qualifications Based Selections Act [30 ILCS 535] and related services that may be performed by persons not required to be licensed under the Illinois Architecture Practice Act of 1989 [225 ILCS 305]; the Professional Engineering Practice Act of 1989 [225 ILCS 325]; the Structural Engineering Licensing Act of 1989 [225 ILCS 340]; or the Illinois Professional Land Surveyor Act of 1989 [225 ILCS 330].

11. Section 1150.800, Prequalification

Illinois removed the existing language in this section and replaced it with language requiring the Department of Transportation to prequalify all architectural, engineering, or land surveying consultants wanting to provide services to the Department of Natural Resources relating to the AML program.

12. Section 1150.900, Subcontracting

Illinois removed the existing language in this section and replaced it with the following:

(a) Professional Services Consultants may subcontract no more than 50 percent of the project work.

(b) The Professional Services contract shall include the names and addresses of all subconsultants and the anticipated amount of money which they will receive pursuant to the contract [30 ILCS 505/9.04].

(c) If at any time a Professional Services Consultant who had not intended to utilize the services of a subconsultant, decides to utilize a subconsultant, the Department and the Consultant shall file an amendment to the original contract with the Comptroller stating the names and addresses of all subconsultants and the anticipated amount of money which they will receive pursuant to the original contract [30 ILCS 505/9.04].

13. Section 1150.1000, Requests for Proposals

In this section, Illinois removed the existing language and replaced it with language requiring a selection committee, consisting of the Director of the Office of Mines and Mineral, the Manager of the AML Reclamation Division, and the Supervisor of the Project Management Section, or their designees, to select firms to provide architectural, engineering, and land surveying services on AML reclamation projects. When evaluating the proposals, the committee must take into consideration the following qualification factors: the ability of professional personnel; the past record and experience on AML projects and projects with similar professional disciplinary requirements; the firm's performance data on file; the willingness of the firm to meet time requirements; the location of the Consultant's office in relation to the project site and the Department's AML office that will be managing the project; the workload of the consultant; and any other qualifications based on factors that the Department may determine in writing are applicable on a project specific basis. The committee must also assign knowledgeable technical staff to provide preliminary technical review, as necessary and appropriate, to assure that all project considerations are taken into account. Formal and informal submissions of verbal and written estimates of costs or proposals in terms of dollars, hours required, percentage of construction cost, or any other measure of compensation may not be solicited before the committee selects a firm for negotiation. Finally, the committee can conduct discussions and require public presentations by the Consultants, deemed to be the most qualified, regarding their qualifications, approach to the project, and ability to furnish the required services.

14. Section 1150.1200, Selection Procedure

Illinois removed the existing language in this section, and replaced it with guidelines for selecting a consultant to provide architectural, engineering, and land surveying services on AML reclamation projects. Section 1150.1200(a) requires the committee to select, on the basis of evaluations, discussions and any presentations, at least three qualified Consultants to provide services for the project. The Consultants must be ranked in order of qualifications, and the committee must contact the Consultant ranked most preferred to negotiate a contract for fair and reasonable compensation. Section 1150.1200(b) provides that if less than three Consultants submit letters of interest and are determined to be qualified, the Department may proceed to contract negotiation as described in section 1150.1200(a). Section 1150.1200(c) states that the decision of the Department shall be final and binding. Finally, section 1150.1200(d) requires the Department to publish each and every contract awarded by the Department in the next available Illinois Procurement Bulletin.

15. Section 1150.1300, Contract Negotiations

The existing language in this section was removed and replaced with the following:

(a) The Department shall prepare a written description of the scope of the proposed services, entitled ''Scope of Work,'' to be used as a basis for negotiations and shall negotiate a contract with the highest ranked qualified Consultant at a compensation that the Department determines in writing to be fair and reasonable. In making this decision, the Department shall take into account the estimated value, scope, complexity, and professional nature of the services to be rendered.

(b) If the Department is unable to negotiate a satisfactory contract with the Consultant that is most preferred, negotiations with that Consultant will be terminated. The Department shall then begin negotiations with the next ranked Consultant. If the Department is unable to negotiate a satisfactory contract with that Consultant, negotiations with that Consultant shall be terminated. The Department shall then begin negotiations with the next ranked Consultant.

(c) If the Department is unable to negotiate a satisfactory contract with any of the selected Consultants, the Department shall re-evaluate the architectural, engineering, or land surveying services requested, including the estimated value, scope, complexity, and fee requirements. The Department shall then compile a second list of not less than three qualified Consultants and proceed in accordance with the provisions of the Subpart.

(d) A Consultant negotiating a contract with the Department shall negotiate any approved subcontracts for architectural, engineering, and land surveying services at compensation that the Consultant determines in writing to be fair and reasonable based upon a written description of the proposed services of the subconsultant.

16. Section 1150.1325, Exemptions

Illinois added this new section to provide that the provisions of Sections 1150.1000, 1150.1100, and 1150.1200 of this Part do not apply to architectural, engineering, and land surveying contracts of less than $25,000. The provisions also do not apply to the procurement of these services by the Department when the Department determines in writing that it is in the best interests of the State to proceed with the immediate selection of a firm, or in emergencies when immediate services are necessary to protect the public health, safety and general welfare from the adverse effects of mining.

17. Section 1150.1350, Firm Performance Evaluations

Illinois added this new section to require the Department to evaluate the performance of each consultant upon completion of a contract. The evaluation must be made available to the Consultant when he/she requests it. The Consultant may respond in writing to the evaluation, and the evaluation and response must be retained solely by the State. The evaluation and response cannot be made available to any other person or firm and is exempt from disclosure under the Freedom of Information Act [54 ILCS 140].

IV. Public Comment Procedures

Under the provisions of 30 CFR 884.15(a), we are requesting comments on whether the amendment satisfies the applicable State reclamation plan approval criteria of 30 CFR 884.14. If we approve the amendment, it will become part of the Illinois plan.

Written Comments

Your written comments should be specific and pertain only to the issues proposed in this rulemaking. You should explain the reason for any recommended change. In the final rulemaking, we will not necessarily consider or include in the Administrative Record any comments received after the time indicated under **DATES** or at locations other than the Indianapolis Field Office.

Public Hearing

If you wish to speak at the public hearing, contact the person listed under **FOR FURTHER INFORMATION CONTACT** by 4:00 p.m., e.s.t. on December 1, 1998. We will arrange the location and time of the hearing with those persons requesting the hearing. If you are disabled and need special accommodation to attend a public hearing, contact the individual listed under **FOR FURTHER INFORMATION CONTACT**. The hearing will not be held if no one requests an opportunity to speak at the public hearing.

You should file a written statement at the time you request the hearing. This will allow us to prepare adequate responses and appropriate questions. The public hearing will continue on the specified date until all persons scheduled to speak have been heard. If you are in the audience and have not been scheduled to speak and wish to do so, you will be allowed to speak after those who have been scheduled. We will end the hearing after all persons scheduled to speak and persons present in the audience who wish to speak have spoken.

Public Meeting

If only one person requests an opportunity to speak at a hearing, a public meeting, rather than a public hearing, may be held. If you wish to meet with us to discuss the amendment, request a meeting by contacting the person listed under **FOR FURTHER INFORMATION CONTACT**. All such meetings are open to the public and, if possible, we will post notices of meetings at the locations listed under **ADDRESSES**. We also make a written summary of each meeting a part of the Administrative Record.

V. Procedural Determinations

Executive Order 12866

The Office of Management and Budget (OMB) exempts this rule from review under Executive Order 12866 (Regulatory Planning and Review).

Executive Order 12988

The Department of the Interior has conducted the reviews required by section 3 of Executive Order 12988 (Civil Justice Reform) and has determined that, to the extent allowed by law, this rule meets the applicable standards of subsections (a) and (b) of that section. However, these standards are not applicable to the actual language of State and Tribal abandoned mine land reclamation plans and revisions since each plan is drafted and promulgated by a specific State or Tribe, not by OSM. Decisions on proposed abandoned mine land reclamation plans and revisions submitted by a State or Tribe are based on a determination of whether the submittal meets the requirements of Title IV of SMCRA (30 U.S.C. 1231–1243) and 30 CFR Part 884.

National Environmental Policy Act

This rule does not require an environmental impact statement since agency decisions on proposed State and Tribal abandoned mine land reclamation plans and revisions are categorically excluded from compliance with the National Environmental Policy Act (42 U.S.C. 4332) by the Manual of the Department of the Interior (516 DM 6, appendix 8, paragraph 8.4B(29)).

Paperwork Reduction Act

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

Regulatory Flexibility Act

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

Unfunded Mandates

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

List of Subjects in 30 CFR Part 913

Intergovernmental relations, Surface mining, Underground mining.

Dated: November 6, 1998.

Brent Wahlquist,

Regional Director, Mid-Continent Regional Coordinating Center.

[FR Doc. 98–30545 Filed 11–13–98; 8:45 am]

BILLING CODE 4310–05–P

DEPARTMENT OF TRANSPORTATION

Coast Guard

33 CFR Part 181

[CGD 92–065]

RIN 2115–AE37

Hull Identification Numbers for Recreational Boats

AGENCY: Coast Guard, DOT.

ACTION: Request for comments.

SUMMARY: For several years the Coast Guard has been working on a regulatory project to expand the existing 12-character Hull Identification Number (HIN) required for all recreational boats manufactured in or imported into the United States. Many State law enforcement personnel, bankers, insurers, and theft investigators favor a longer HIN containing vessel-specific characters and a check digit. They believe it would deter both boat theft and the alteration of HIN's for fraudulent purposes. Therefore, the purpose of this notice is to solicit comments from interested people, groups, and businesses about whether the expected benefits to society of an expanded HIN format outweigh the paperwork burdens on boat manufacturers.

DATES: Comments must reach the Coast Guard on or before February 16, 1999.

ADDRESSES: You may mail comments to the Executive Secretary, Marine Safety Council (G–LRA/3406) (CGD 92–065), U.S. Coast Guard Headquarters, 2100 Second Street SW., Washington, DC 20593–0001, or deliver them to room 3406 at the same address between 9:30 a.m. and 2 p.m., Monday through Friday, except Federal holidays. The telephone number is 202–267–1477.

The Executive Secretary maintains the public docket for this rulemaking. Comments, and documents as indicated in this preamble, will become part of this docket and will be available for inspection or copying at room 3406, U.S. Coast Guard Headquarters, between 9:30 a.m. and 2 p.m., Monday through Friday, except Federal holidays.

FOR FURTHER INFORMATION CONTACT: Alston Colihan, Office of Boating Safety, Recreational Boating Product Assurance Division, 202–267–0981. A copy of this notice may be obtained by calling the U.S. Coast Guard Infoline at 1–800–368–5647 or may be found on the Internet at the Office of Boating Safety Web Site at URL address *www.uscgboating.org.*

SUPPLEMENTARY INFORMATION:

Request for Comments

Persons submitting comments should include their names and addresses, identify this notice (CGC 92–065) and the specific area of concern to which each comment applies, and give the reason for each comment. Please submit two copies of all comments and attachments in an unbound format, no larger than 8½ by 11 inches, suitable for copying and electronic filing. If you want us to acknowledge receipt of your comments, please enclose a stamped, self-addressed postcard or envelope.

Background and Purpose

The Secretary of Transportation is required to establish the Vessel Identification System (VIS) (46 U.S.C. chapters 125, 131, and 313) for use by the public and law enforcement officials. The Secretary has delegated to the Commandment, U.S. Coast Guard, the authority to implement VIS. VIS will provide a nationwide pool of vessel and vessel owner information that will help in identification and recovery of stolen vessels and deter vessel theft.

Regulatory History

The Coast Guard published a Notice of Proposed Rulemaking in the **Federal Register** (59 FR 23651) on May 6, 1994, to expand the existing 12-character HIN to include certain vessel-specific information similar to the Vehicle Identification Number (VIN) on an automobile. A check digit in the expanded HIN would have made alteration of an HIN more difficult, thereby helping to prevent fraud in the sale of vessels. The comment period closed on September 9, 1994.

Various parties commenting on the proposal opposed the 19-character HIN and one comment from an association sought an extension of the comment period. Therefore, on November 9, 1994, a notice announcing a workshop and the reopening of the comment period was published in the **Federal Register** (59 FR 55823). The purpose of the workshop was to receive oral comments on the proposed 19-character HIN and explore various alternatives. Several organizations, including the International Organization for Standardization (ISO), the National Association of State Boating Law Administrators, the National Marine Manufacturers Association, the American Boat and yacht Council, the National Association of Marine Investigators, and the North American Paddlesports Association were specifically invited to give oral presentations. The comment period for the NPRM was extended until January 9, 1995.

The major obstacle to the proposed 19-character HIN is the increased information collection burdens, particularly on small entities and the builders of high-volume, low cost boats, such as canoes, kayaks, and inflatables.

The Coast Guard received 114 comments on the proposal, the majority of which were opposed to a 19-character HIN format or recommended a different format. None of the comments from State, insurance, theft investigation, or law enforcement organizations indicated that they would support exceptions to the proposed requirements for small entities or builders of high-volume, lost-cost boats. Preliminary estimates of the time required to manually calculate the check digit for a single boat is 15 minutes.

Several comments, including one from the National Marine Manufacturers Association, which represents approximately 200 of the larger boat manufacturers, indicated that the International Standards Organization had finalized a HIN standard consisting of the existing Coast Guard 12-character HIN format preceded by a 2-character country code and a hyphen. The comments indicated that manufacturers would be using the ISO HIN standard beginning with the 1996 model year. If the Coast Guard adopted a different HIN format, manufacturers would have to place two different HIN's in the same location, creating worldwide documentation and importation problems for all involved.

Federal agencies with regulatory programs are subject to the Paperwork Reduction Act, which is enforced by the Office of Management and Budget (OMB). The intent of the Act is to ensure that the Federal Government imposes only the minimum burden on the public in collecting information and maintaining records and that the information collected or maintained is necessary and useful. Regulations requiring manufacturers to display labels, such as HIN's, are examples of collection-of-information requirements.

During the comment period, OMB contacted the Coast Guard and indicated that it had received many negative comments on the project and that OMB would be taking a very close look at the proposed collection of information requirements. None of the comments in favor of the proposal for a 19-character HIN were willing to allow exceptions for builders of high volume, low-cost boats. Therefore, because of Coast Guard concerns about information-collection burdens and the OMB comments, the

Coast Guard published a Supplemental Notice of Proposed Rulemaking (SNPRM) in the **Federal Register** on February 21, 1997 (62 FR 7971). The Coast Guard indicated that it would align the HIN with the recently adopted ISO 14-character HIN standard. The comment period closed May 22, 1997.

The Coast Guard received 31 comments nearly all of which were opposed to the 14-character ISO HIN format. Some of the comments indicated that, if the Coast Guard were to adopt the ISO format, instead of a 17- or 19-character HIN format, some States might refuse to participate in the development of the Vessel Identification System (VIS).

Discussion

There are two opposing views about how to expand the HIN format: (1) the States, bankers, insurers, and theft investigators favor an expanded format with vessel-specific characters and a check digit to deter both boat theft and the alteration of HIN's for fraudulent purposes; and (2) boat builders favor the recently adopted 14-character ISO HIN format. The Coast Guard is developing the Vessel Identification System (VIS), which will provide a nationwide pool of vessel and vessel owner information that will help in identifying and recovering of stolen vessels and deterring vessel theft. If just a few States with large recreational vessel populations refuse to participate in VIS, the usefulness of the system could be seriously jeopardized. However, the Coast Guard lacks detailed information about the anticipated costs and benefits of the HIN format favored by the States, bankers, insurers, and theft investigators. Also, we will believe that, if an expanded HIN format consisting of vessel-specific characters and a check digit is ever adopted, the Coast Guard should be allowed to exempt small manufacturers and manufacturers of high-volume, low-cost boats to minimize costs and information collection burdens. Therefore, the Coast Guard encourages you to comment on (1) the expected benefits of an expanded Hull Identification Number with vessel-specific characters and a check digit; (2) the manner in which the Coast Guard should exempt small entities and the builders of high-volume, low cost boats, such as canoes, kayaks, and inflatables; and (3) the estimated burdens and costs to boat manufacturers if the HIN regulations were revised to require vessel-specific characters and a check digit. We particularly need your help in answering the following questions:

1. *Expanded Hull Identification Number.* What are the expected benefits if the HIN regulations include vessel specific characters delineating a vessel's length, hull material, and means of propulsion and a check digit to help detect fraudulent alterations of HIN's? What are the estimated numbers of thefts that would be prevented? What are the estimated numbers of lost or stolen boats that would be recovered? What is the estimated value of insurance company losses that would be prevented? What are the estimated numbers of fraud attempts that would be prevented? What are the estimated reductions in investigatory expenditures?

1. *Small entities.* The Coast Guard believes that, if it returns to a proposal for regulations to require an HIN consisting of additional vessel-specific characters and a check digit, then we have to be able to exempt some builders to minimize costs and information collection burdens on small manufacturers and manufacturers of high-volume, low-cost boats. Should the Coast Guard consider exempting all builders of non-powered boats? Should the Coast Guard consider exempting manufacturers of boats that sell for less than a certain amount? What alternatives are available that would reduce adverse impacts on small entities and builders of high-volume, low-cost boats?

3. *Costs and burdens.* Preliminary estimates of the time required to manually calculate the check digit for a single boat is 15 minutes. Is this estimate valid? How does this estimate translate into annual costs for manufacturers of various types of recreational boats?

Additional information about the benefits of an expanded HIN consisting of vessel-specific characters and a check digit and possible exceptions for small entities and builders of high-volume, low-cost boats is needed if the Coast Guard is to reconsider an expanded HIN.

Dated: November 5, 1998.

Ernest R. Riutta,

Rear Admiral, U.S. Coast Guard, Assistant Commandant for Operations.

[FR Doc. 98–30597 Filed 11–13–98; 8:45 am]

BILLING CODE 4910–15–M

FEDERAL COMMUNICATIONS COMMISSION

47 CFR Part 64

[CC Docket No. 97–213, FCC 98–282]

Communications Assistance for Law Enforcement Act

AGENCY: Federal Communications Commission.

ACTION: Proposed rule.

SUMMARY: This *Further Notice of Proposed Rulemaking* (Further NPRM) addresses alleged deficiencies in industry-developed technical requirements for wireline, cellular and broadband Personal Communications Services (PCS) carriers to comply with the assistance capability requirements prescribed by the Communications Assistance for Law Enforcement Act of 1994 (CALEA, or the Act). The Act authorizes the Commission to establish, by rule, technical requirements or standards that meet the assistance capability requirements, if industry or standards setting organizations have failed to set such standards, or if any party believes that an industry standard is deficient.

DATES: Comments are due December 14, 1998; reply comments are due January 13, 1999.

FOR FURTHER INFORMATION CONTACT: Rodney Small, Office of Engineering and Technology, (202) 418–2452.

SUPPLEMENTARY INFORMATION: This is a summary of the Commission's *Further Notice of Proposed Rulemaking,* CC Docket 97–213, FCC 98–282, adopted October 22, 1998, and released November 5, 1998. The full text of this Commission decision is available for inspection and copying during normal business hours in the FCC Reference Center (Room CY–C404), 445 Twelfth Street, S.W., Washington, D.C., and also may be purchased from the Commission's duplication contractor, International Transcription Service, (202) 857–3800, 1231 20th Street, N.W., Washington, D.C. 20036.

Summary of the Further Notice of Proposed Rulemaking

1. The Further NPRM addresses alleged deficiencies in industry-developed technical requirements for wireline, cellular, and broadband PCS carriers to comply with the assistance capability requirements prescribed by CALEA. Industry developed these technical requirements in an attempt to satisfy the ''safe harbor'' provision of the Act, which permits telecommunications carriers to be found in compliance with

CALEA if carriers comply with publicly available technical requirements adopted by an industry association or standard-setting organization, or by the Commission. The Act authorizes the Commission to establish, by rule, technical requirements or standards that meet the assistance capability requirements, if industry or standards-setting organizations have failed to set such standards, or if any party believes that an industry standard is deficient. The Commission has received four petitions for rulemaking asking us to establish such requirements or standards pursuant to our statutory authority under the Act. In addition, in response to a *Public Notice* the Commission's Wireless Telecommunications Bureau and Office of Engineering and Technology released on April 20, 1998, we have received numerous comments disputing whether certain specific technical requirements are necessary to comply with CALEA.

2. In light of petitioners' claims that the interim standard adopted by industry is deficient with regard to particular technical requirements it currently includes, this Further NPRM analyzes those specific requirements and reaches tentative conclusions regarding which of them meet the definitions of CALEA Section 103. The Further NPRM also seeks comment on a range of issues associated with the Commission's obligations under the Act. In addition, we seek comment on what role, if any, we can or should play in assisting telecommunications carriers other than wireline, cellular, and broadband PCS carriers to set standards for, or to achieve compliance with, CALEA's requirements.

3. Since 1970, telecommunications carriers have been required to cooperate with law enforcement agencies in conducting electronic surveillance. Recent advances in technology, however, most notably the introduction of digital transmission and processing techniques and the proliferation of wireless services, have hampered the law enforcement community's ability to conduct lawfully authorized surveillance. CALEA was enacted in 1994 to address such problems, and to ensure that law enforcement surveillance efforts would not be unintentionally thwarted by the development and deployment of new telecommunications technologies and services. At the same time, however, Congress recognized the need to protect privacy interests within the context of court-authorized electronic surveillance. In defining the terms and requirements of the Act, therefore, Congress sought to balance three important policies: ''(1) to preserve a narrowly focused capability for law enforcement agencies to carry out properly authorized intercepts; (2) to protect privacy in the face of increasingly powerful and personally revealing technologies; and (3) to avoid impeding the development of new communications services and technologies.'' Based on these considerations, Congress envisioned that the requirements of CALEA would serve as ''both a floor and a ceiling,'' defining the minimum capabilities that should be provided to law enforcement, while also establishing limits as to what can be provided.

4. CALEA directs carriers to ensure that their equipment, facilities, and services are capable of meeting certain requirements to assist law enforcement in carrying out lawfully authorized electronic surveillance. To accomplish this, the Act sets out general assistance capability requirements that telecommunications carriers must meet, and defines the obligations of the industry, the law enforcement community, and the Commission in developing the technical requirements or standards necessary to meet these requirements. To date, industry and the law enforcement community, although they have reached agreement on many issues, disagree on whether certain specific features and/or technical requirements must be provided by carriers to comply with the Act's assistance capability requirements. Consequently, as authorized by the Act, representatives of industry, law enforcement, and the privacy community have petitioned the Commission to establish such technical requirements or standards. In this Further NPRM, therefore, we consider whether certain specific technical requirements are necessary for wireline, cellular and broadband PCS carriers to meet CALEA's assistance capability requirements. Below we discuss the relevant provisions of the Act.

CALEA Assistance Capability Requirements

5. The basic requirements for meeting CALEA's mandates are contained in Section 103, which establishes four general ''assistance capability requirements'' that carriers must meet to achieve compliance. Specifically, Section 103 requires a telecommunications carrier to:

(a) [E]nsure that its equipment, facilities, or services that provide a customer or subscriber with the ability to originate, terminate, or direct communications are capable of—

(1) Expeditiously isolating and enabling the government, pursuant to a court order or other lawful authorization, to intercept, to the exclusion of any other communications, all wire and electronic communications carried by the carrier within a service area to or from equipment, facilities, or services of a subscriber of such carrier concurrently with their transmission to or from the subscriber's equipment, facility, or service, or at such later time as may be acceptable to the government;

(2) Expeditiously isolating and enabling the government, pursuant to a court order or other lawful authorization, to access call-identifying information that is reasonably available to the carrier—

(A) Before, during, or immediately after the transmission of a wire or electronic communication (or at such later time as may be acceptable to the government); and

(B) In a manner that allows it to be associated with the communication to which it pertains,

except that, with regard to information acquired solely pursuant to the authority for pen registers and trap and trace devices (as defined in section 3127 of title 18, United States Code), such call-identifying information shall not include any information that may disclose the physical location of the subscriber (except to the extent that the location may be determined from the telephone number);

(3) Delivering intercepted communications and call-identifying information to the government, pursuant to a court order or other lawful authorization, in a format such that they may be transmitted by means of equipment, facilities, or services procured by the government to a location other than the premises of the carrier; and

(4) Facilitating authorized communications interceptions and access to call-identifying information unobtrusively and with a minimum of interference with any subscriber's telecommunications service and in a manner that protects—

(A) The privacy and security of communications and call-identifying information not authorized to be intercepted; and

(B) Information regarding the government's interception of communications and access to call-identifying information.

6. CALEA does not specify how these four assistance capability requirements are to be met. Rather, it states only that telecommunications carriers, in consultation with manufacturers and telecommunications support service providers, must ensure that the carriers' equipment, facilities, and services comply with the requirements. Manufacturers and telecommunications support service providers are subject to a ''cooperation'' requirement, i.e., they are required to make available to carriers the features and modifications necessary for carriers to comply with the requirements ''on a reasonably timely basis and at a reasonable charge.'' Additionally, the Attorney General of the United States must consult with appropriate industry associations and

standards-setting organizations; with representatives of users of telecommunications equipment, facilities, and services; and with state utility commissions ''to ensure the efficient and industry-wide implementation of the assistance capability requirements.''

7. Section 107(a)(2) of CALEA contains a ''safe harbor'' provision, stating that ''[a] telecommunications carrier shall be found to be in compliance with the assistance capability requirements under Section 103, and a manufacturer of telecommunications transmission or switching equipment or a provider of telecommunications support services shall be found to be in compliance with section 106, if the carrier, manufacturer, or support service provider is in compliance with publicly available technical requirements or standards adopted by an industry association or standard-setting organization, or by the Commission under subsection (b), to meet the requirements of Section 103.'' Thus, the Act envisions that an industry association or a standards-setting organization would set applicable standards. Individual carriers, however, are free to choose any technical solution that meets the assistance capability requirements of CALEA, whether based on an industry standard or not. Carriers, therefore, have some degree of flexibility in deciding how they will comply with CALEA's Section 103 requirements. CALEA specifically states, however, that the absence of industry standards does not relieve a carrier of its obligation to comply with the assistance capability requirements.

8. In addition to the safe harbor provision, section 107 also defines certain Commission responsibilities under the Act. Specifically, upon petition, section 107(b) authorizes the Commission to establish, by rule, technical requirements or standards necessary for implementing Section 103. Section 107(b) provides that a petition may be filed with the Commission (1) if industry associations or standard-setting organizations fail to issue technical requirements or standards, or (2) if a government agency or any other person believes that requirements or standards that were issued are deficient.

9. Section 107(b) specifies five factors that the Commission must consider as part of its efforts to establish technical requirements or standards to meet the assistance capability requirements of Section 103. Such technical requirements or standards must:

- Meet the assistance capability requirements of Section 103 by cost-effective methods;
- Protect the privacy and security of communications not authorized to be intercepted;
- Minimize the cost of such compliance on residential ratepayers;
- Serve the policy of the United States to encourage the provision of new technologies and services to the public; and
- Provide a reasonable time and conditions for compliance with and the transition to any new standard, including defining the obligations of telecommunications carriers under Section 103 during any transition period.

10. Section 107(c) authorizes the Commission to extend the compliance date for telecommunications carriers' equipment, facilities, and services. On September 11, 1998, the Commission exercised its authority under section 107(c) by extending the deadline for compliance with Section 103 requirements from October 25, 1998 to June 30, 2000. This extension applies to all telecommunications carriers proposing to install or deploy, or having installed or deployed, any equipment, facility or service prior to the effective date of Section 103, for that part of the carrier's business on which the new equipment, facility or service is used.

Development of Industry Interim Standard J–STD–025

11. Since early 1995, Subcommittee TR45.2 of the Telecommunications Industry Association (TIA) has been working to develop an industry standard that would satisfy the assistance capability requirements of Section 103 for wireline, cellular, and broadband PCS carriers. The standards-setting effort has included participation by industry and law enforcement. In 1996, the Subcommittee received from the Federal Bureau of Investigation (FBI) a document known as the Electronic Surveillance Interface (ESI). The ESI was law enforcement's recommendation for the logical and physical interfaces between a wireline, cellular, or broadband PCS carrier's network and a law enforcement agency's electronic surveillance collection facility. The ESI was developed at the request of industry to describe law enforcement's vision and recommendations for the interface. The ESI defined the requirements for the delivery of both call content and call-identifying information to a law enforcement agency (LEA).

12. By the spring of 1997, TIA developed a final draft of a proposed CALEA industry standard. The draft standard defined services and features to support lawfully authorized electronic surveillance and the interfaces to deliver authorized intercepted communications and call-identifying information to a LEA. Specifically, the draft standard defined the intercept function in terms of five broad categories: access, delivery, service provider administration, collection, and law enforcement administration. This standard was submitted for balloting to all participants in the standards-setting process under procedures of the American National Standards Institute (ANSI). The law enforcement community unanimously opposed adoption of this standard, and it was voted down. The FBI, on behalf of this community, attached a lengthy critique of the draft standard to its ballot, including specific recommendations for changes.

13. The FBI's objections to the draft standard centered around a list of technical capabilities that it contended are necessary to meet CALEA's requirements, but that were not included in the industry interim standard. The FBI's list, which has come to be known as the ''punch list,'' originally contained 11 items, and now contains nine items. Specifically, the FBI's punch list identifies the following capabilities it believes must be provided under CALEA:

(1) Content of subject-initiated conference calls—Would enable law enforcement to access the content of conference calls supported by the subject's service (including the call content of parties on hold).

(2) Party hold, join, drop—Messages would be sent to law enforcement that identify the active parties of a call. Specifically, on a conference call, these messages would indicate whether a party is on hold, has joined or has been dropped from the conference call.

(3) Subject-initiated dialing and signaling information—Access to all dialing and signaling information available from the subject would inform law enforcement of a subject's use of features (such as the use of flash-hook and other feature keys).

(4) In-band and out-of-band signaling (notification message)—A message would be sent to law enforcement whenever a subject's service sends a tone or other network message to the subject or associate (e.g., notification that a line is ringing or busy).

(5) Timing information—Information necessary to correlate call-identifying information with the call content of a communications interception.

(6) Surveillance status—Message that would verify that an interception is still functioning on the appropriate subject.

(7) Continuity check tone (c-tone)—Electronic signal that would alert law enforcement if the facility used for delivery of call content interception has failed or lost continuity.

(8) Feature status—Would affirmatively notify law enforcement of any changes in features to which a subject subscribes.

(9) Dialed digit extraction—Information would include those digits dialed by a subject after the initial call setup is completed.

14. After the close of balloting, Subcommittee TR45.2 held a number of meetings and made changes to the draft industry standard, including a number of changes recommended by the FBI. However, based on the concerns discussed below, none of the FBI punch list items were added to the industry standard. The Subcommittee recommended that the revised standard be considered as a joint TIA/Committee T1 Interim Standard and reballoted under TIA procedures rather than ANSI's. An interim standard, however, is valid for a period of only three years and is considered by ANSI as a ''trial use.'' TIA adopted the recommendations, and the revised draft standard was submitted for voting in the fall of 1997. Because no law enforcement agencies are members of the TIA or Committee T1, however, only industry entities were eligible to cast ballots.

15. The industry unanimously approved the draft standard as fulfilling the requirements mandated by CALEA. In December 1997, the TIA and Committee T1, sponsored by the Alliance for Telecommunications Industry Solutions, announced the joint publication of interim standard J–STD–025, *Lawfully Authorized Electronic Surveillance* (J–STD–025, interim standard, or industry interim standard). This standard defines services and features required to support lawfully authorized electronic surveillance and specifies interfaces necessary to deliver intercepted communications and call-identifying information to a LEA. TIA stated that compliance with J–STD–025 satisfies the ''safe harbor'' provisions of CALEA.

Petitions for Rulemaking

16. In July 1997, before the industry interim standard was released, the Cellular Telecommunications Industry Association (CTIA) filed a petition for rulemaking on behalf of its members requesting that the Commission establish a standard to implement the requirements of Section 103, pursuant to the Commission's authority under section 107(b). CTIA contended that the standards setting process was deadlocked, and that it was unlikely that a standard would be developed in the near future. CTIA attached to its petition the draft industry standard that ultimately became J–STD–025, and argued that this draft standard met the functional requirements of CALEA in their entirety.

17. In August 1997, comments on the CTIA petition were filed jointly by the Center for Democracy and Technology (CDT) and the Electronic Frontier Foundation (EFF). CDT/EFF generally supported CTIA's request to adopt the proposed industry standard; however, they recommended the deletion of provisions relating to subject location and packet-mode information. In March 1998, following adoption of the industry interim standard, DoJ/FBI jointly filed a motion to dismiss CTIA's Petition for Rulemaking on the grounds that the December 1997 adoption of the interim standard rendered CTIA's petition moot. As discussed below, we agree, and dismiss CTIA's July 1997 Petition for Rulemaking.

18. On March 26, 1998, CDT filed a petition for rulemaking, requesting that the Commission intervene in the implementation of CALEA. CDT reiterated the position it and EFF had enunciated in August 1997, arguing that J–STD–025 goes too far in permitting location information capabilities and fails to protect the privacy of packet-mode communications. CDT further argued that the additional surveillance enhancements sought by the FBI in the punch list are not required under CALEA. CDT stated that the telecommunications industry and the FBI had failed to agree on a plan for preserving a narrowly-focused surveillance capability that would protect privacy and, further, were now mired in an argument over designing additional surveillance features into the nation's telecommunications system. Finally, CDT stated that compliance with J–STD–025 was not reasonably achievable and requested that the Commission indefinitely delay implementation of CALEA while a more narrowly-focused standard consistent with the intent of CALEA is developed.

19. On March 27, 1998, DoJ and the FBI jointly filed a petition for expedited rulemaking, asking the Commission to correct deficiencies in the industry standard by establishing additional technical standards that meet the requirements of CALEA. DoJ/FBI claim that the interim standard adopted by industry is deficient because: (1) It does not ensure that law enforcement will be able to receive all of the communications content and call-identifying information that carriers are obligated to deliver under CALEA; and, (2) it fails to ensure that information will be delivered in a timely manner. DoJ/FBI set forth, as a proposed rule, the features (*i.e.*, the punch list items) they believe should be added to the interim standard to correct its deficiencies. DoJ/FBI request that the Commission leave the industry interim standard in effect pending the issuance of a final decision.

20. On April 2, 1998, TIA filed a petition for rulemaking, asking the Commission to resolve the dispute as to whether the interim standard is overinclusive or underinclusive. TIA requested that we: (1) Immediately announce suspension of enforcement of CALEA until we make our determination of a permanent standard; (2) establish a reasonable compliance schedule of at least 24 months to implement the permanent standard; (3) undertake an expedited schedule for establishing a permanent standard; and (4) remand any further technical standardization work to TIA Subcommittee TR45.2.

21. On April 20, 1998, the Commission's Wireless Telecommunications Bureau and Office of Engineering and Technology released a *Public Notice* in this proceeding soliciting comment on the above petitions, as well as soliciting comment on whether the October 25, 1998 deadline for compliance with CALEA's capability requirements should be extended. The *Public Notice* also requested specific comment on the scope of the assistance capability requirements necessary to satisfy the obligations imposed by CALEA. In particular, the *Public Notice* requested analyses of whether the technical requirements discussed in the petitions from CDT and from DoJ/FBI are necessary for carriers to meet CALEA's Section 103 requirements. Finally, the *Public Notice* requested comment on remanding any additional standards development to TIA Subcommittee TR45.2.

22. A number of parties petitioned the Commission to extend the October 25, 1998 deadline for complying with the core features of CALEA, and on September 11, 1998, the Commission released a *Memorandum Opinion and Order* (*Extension Order*) granting such an extension until June 30, 2000. Pursuant to our authority under section 107(c) of CALEA, we determined that compliance with the assistance capability requirements of Section 103 was not reasonably achievable by any telecommunications carrier through the application of available technology by CALEA's compliance deadline of

October 25, 1998. Therefore, we granted a blanket extension of CALEA's compliance deadline until June 30, 2000, for all telecommunications carriers similarly situated to the petitioners, *i.e.,* those carriers proposing to install or deploy, or having installed or deployed, any equipment, facility or service prior to the effective date of Section 103, for that part of the carrier's business on which the new equipment, facility or service is used.

Authority and Approach

23. Section 107(b) of CALEA empowers the Commission to establish, by rule, technical requirements or standards to meet the assistance capability requirements of Section 103. Additionally, section 301(a) of CALEA states that ''[t]he Commission shall prescribe such rules as are necessary to implement the requirements of [CALEA].''

24. In fulfilling our obligations under CALEA, our evaluation in this proceeding will closely follow the plain language of the Act. Pursuant to our statutory authority, we will separately examine the two contested features of the J–STD–025 standard (i.e., the location information and packet-mode features opposed by CDT) and the punch list items sought by the FBI, to determine whether each meet the mandates of Section 103.

25. As an initial matter, we will first determine whether the specific item we are evaluating meets the assistance capability requirements set forth in Section 103(a)(1)–(4). In doing so, we propose to interpret these provisions narrowly. As noted above, we look to the plain language, its context, and, if necessary, any legislative history that assists in ascertaining Congressional intent. Specifically, we explore below the intent of Congress' use of the terms ''equipment, facilities or services'' in Section 103(a)(1) as it relates to the content of subject-initiated conference calls. We also seek to interpret Section 103(a)(2)'s provision that call-identifying information must be provided to a LEA only if that information is ''reasonably available'' to a telecommunications carrier. In this regard, we tentatively conclude that before we can make a determination whether a specific technical requirement meets the mandates of Section 103's assistance capability requirements, the Commission must determine whether the information to be provided to a LEA under Section 103(a)(2) is reasonably available to the carrier. The Act does not specify how the term ''reasonably available'' should be defined or interpreted, and the Act's legislative history offers little additional guidance. We therefore request comment on what factors the Commission should use in determining whether the information to be provided to a LEA under Section 103(a)(2) is reasonably available.

26. Specifically, we request comment on how cost should be considered in our determination of reasonable availability. Further, we note that carriers use a variety of system architectures and different types of equipment, leading us to believe that reasonable availability is also likely to vary from carrier to carrier. Commenters should discuss how the Commission can evaluate whether a particular technical requirement is reasonably available in these circumstances and discuss how the application or interpretation of these terms in Section 103(a)(2) is similar to or different from the application or interpretation of ''reasonably achievable'' in section 109(b), and the factors listed there.

27. We also ask commenters to evaluate the type of information that has been traditionally available under pen register and trap-and-trace authorizations, and whether the provision of such information to LEAs, in light of the statutory definitions of ''pen register'' and ''trap and trace device'', and judicial interpretations of them, provide guidance or represent possible factors for determining ''reasonable availability.''

28. Finally, we also invite comment on whether and, if so, under what circumstances and to what extent, information that does not qualify as call-identifying information under Section 102(2) or otherwise is not ''reasonably available'' under Section 103(a)(2), may nevertheless qualify as call content information under Section 103(a)(1) and the definitions of ''wire and electronic communications'' in 18 U.S.C. § 2510(1), (12). Commenters should take into account that the provisions of Section 103(a)(1) do not include a criterion of ''reasonable availability.''

29. If we conclude that the item in question constitutes a technical requirement that meets the Section 103 assistance capability requirements, we will then proceed to analyze each of the factors identified by section 107(b) and seek comment on whether a particular technical requirement: (1) Meets the assistance capability requirements of Section 103 by cost-effective methods; (2) protects the privacy and security of communications not authorized to be intercepted; (3) minimizes the cost of such compliance on residential ratepayers; and, (4) serves the policy of the United States to encourage the provision of new technologies and services to the public. Additionally, section 107(b)(5) requires the Commission to provide a reasonable time and conditions for compliance with and the transition to any new standard, including defining the obligations of telecommunications carriers under Section 103 during any transition period. Thus, we will also seek comment on issues bearing on our section 107(b)(5) determinations. If, on the other hand, we tentatively conclude that a specific technical requirement falls outside of the parameters of the assistance capability requirements established by Section 103, we will seek comment on our tentative conclusion, and request that commenters responding to this conclusion provide support for their agreement or disagreement by thoroughly analyzing the section 107(b) factors mentioned above.

30. We emphasize that, because CALEA specifically requires us to consider the section 107(b) factors, commenters are strongly encouraged to provide us with information as detailed and specific as possible. For sections 107(b)(1) and (3), for example, we seek detailed comment regarding the costs of adding a feature to a telecommunications carrier's network and on what, if any, impact of such costs will have on residential ratepayers. Commenters should consider the costs to manufacturers in developing the equipment or software needed to implement the technical requirement, as well as the cost to carriers to install and deploy such equipment. Commenters should be specific as to which entities would incur the cost of adding particular features; e.g., manufacturers, local exchange carriers (LECs), interexchange carriers (IXCs), or commercial mobile radio service (CMRS) providers, etc. Commenters should also be specific as to what costs would be incurred for hardware, as opposed to software upgrades to carriers' networks, and whether some of these upgrades would have other uses in the networks. If costs are likely to be passed on to residential ratepayers, those costs should be identified, as well as specific mechanisms that could be used to minimize such costs.

31. Under section 107(b)(2), if a party believes that a proposed technical requirement would not protect the privacy and security of communications not authorized to be intercepted, we request comment on modifications or alternative technical requirements that would enable Section 103's capability requirements to be met. In addition, we

seek detailed information on whether our determination that a particular feature must be provided under CALEA will encourage or discourage the provision of new technologies and services to the public. Will the implementation of a particular technical requirement constrain a carrier's ability to develop new services or technologies? Commenters should provide a projected timeline for each technical requirement, identifying the time needed to develop, test, and deploy it. Additionally, commenters should address the extent to which the capacity requirements of section 104 should affect our determinations under section 107(b). Finally, we ask for comment on any conditions necessary for compliance and any specific obligations that should be imposed on telecommunications carriers during the transition to a new standard.

32. We note that the tentative conclusions we reach in this Further NPRM focus on the technical requirements that the petitioners have asked us to address in their petitions pending before us; *i.e.*, the two contested features of J–STD–025 and the nine punch list items. In making our tentative decision, we recognize that CALEA requires carriers to ensure that their networks can provide the capabilities defined in Section 103, but does not mandate use of, or adherence to, any particular standard. In other words, compliance with the industry standard is voluntary, not compulsory. As a result, carriers are free to develop CALEA solutions in any manner they choose. Thus, a carrier may choose to utilize an industry standard as a safe harbor, or they may choose to implement other solutions that meet the capability requirements of Section 103. However, in order for an adopted industry standard to satisfy the safe harbor provision of section 107(a), it must incorporate all of the technical requirements that we ultimately determine meet the assistance capability requirements of Section 103.

33. We note further that this proceeding does not involve any attempt to interpret statutes other than CALEA or define the scope of authorizations needed by LEAs to intercept or obtain call content or call-identifying information. Rather, this proceeding is limited to determining, as a safe harbor, what capabilities each carrier must provide if and when presented with a proper authorization or court order to expeditiously provide LEAs access to call content and call-identifying information.

34. We believe that industry is in the best position to determine how to implement these technical requirements most effectively and efficiently. Standards-setting organizations, manufacturers, and/or individual telecommunications carriers should develop the technical requirements consistent with our ultimate determinations reached in this proceeding. We tentatively conclude that it would then be appropriate for industry, in consultation with the law enforcement community, to develop a final ''safe harbor'' standard for CALEA compliance. We seek comment on this conclusion.

35. Finally, we also note that manufacturers and carriers are free to develop and deploy additional features and capabilities, beyond those required by CALEA, in efforts to assist law enforcement agencies in conducting lawfully-authorized electronic surveillance. Such capabilities, however, will not be subject to any of CALEA's obligations, including cost recovery, and will not affect any party's obligations under CALEA in any way. Thus, nothing in the instant Further NPRM should be construed as limiting or proposing to limit telecommunications manufacturers, carriers or support service providers' ability to negotiate with law enforcement agencies to add additional capabilities to the carrier's systems, nor to define a maximum level of capabilities available to law enforcement under the applicable provisions of law. We now turn to a discussion of whether we should reexamine the uncontested portions of J–STD–025 as part of our section 107(b) inquiry.

Industry Interim Standard J–STD–025

36. The industry interim standard, J–STD–025, which applies only to wireline, cellular, and broadband PCS carriers, specifies that telecommunications carriers are to provide LEAs with two telecommunications channels to perform electronic surveillance—call content channels (CCCs) and call data channels (CDCs). J–STD–025 defines the five functions of the intercept architecture to be used. Those functions are:

- Access—Provides the LEA with the ability to isolate the subject's call content or call-identifying information accurately and unobtrusively. The access function helps to prevent the unauthorized access, manipulation, and disclosure of intercept controls, call content, and call-identifying information.
- Delivery—Accepts call content and call-identifying information from the access function and delivers it to one or more LEA collection functions. Ensures that the call content and call-identifying information that are delivered are authorized for a particular LEA, and thus also prevents the unauthorized access, manipulation, and disclosure of intercept controls, call content, and call-identifying information.
- Collection—Receives and processes call content and call-identifying information for the subject. (This function is the responsibility of the LEA.)
- Service Provider Administration—Controls the carrier's electronic surveillance functions. (This function is beyond the scope of the interim standard.)
- Law Enforcement Administration—Controls the LEA electronic surveillance functions. (This function is the responsibility of the LEA, and is also beyond the scope of the interim standard.)

37. In seeking to fulfill our obligations under the Act, the Commission acknowledges the immense time and effort both industry and government representatives have put into the development of CALEA standards. We also appreciate the input and involvement of privacy organizations in this proceeding. We further note that the Act expresses a preference for industry to set CALEA standards, in consultation with the Attorney General, and that the Act's legislative history also reveals that Congress envisioned that industry would have primary responsibility in defining standards. Consequently, we believe that the most efficient and effective method for ensuring that CALEA can be implemented as soon as possible is to build on the work that has been done to date.

38. We therefore do not intend to reexamine any of the uncontested technical requirements of the J–STD–025 standard. Instead, we will make determinations only regarding whether each of the location information and packet-mode provisions currently included within J–STD–025, and the nine punch list items that are currently not included, meet the assistance capability requirements of Section 103. We base this approach on the fact that the issues raised in the petitions and comments filed in this proceeding focus solely on the location information and packet-mode provisions of J–STD–025 and the nine punch list items sought by the FBI. Accordingly, these features will be evaluated separately. We further note that no party has raised any specific challenges to J–STD–025 other than with respect to these issues, and we have not been presented with any

compelling reason to reexamine the entire standard. We tentatively conclude that by limiting our inquiry to only these specific technical issues, we will better enable manufacturers and carriers to build on the extensive work already completed or in process, and permit them to deploy CALEA solutions on a more expedited basis. Accordingly, the uncontested technical requirements are beyond the scope of this proceeding.

39. In establishing technical requirements or standards, section 107(b)(5) requires the Commission to provide a ''reasonable time'' for carriers to comply with and/or transition to any new standards and to define the obligations of telecommunications carriers under Section 103 during any transition period. We previously concluded in our decision under section 107(c) that telecommunications carriers must have installed CALEA-compliant equipment and facilities based on the ''core'' features of J–STD–025 by June 30, 2000. A footnote in that decision indicated that the ''core'' of J–STD–025 excludes both the location information feature and the packet-mode feature. We now clarify those findings as follows. J–STD–025 represents an attempt by industry to develop a standard that carriers may choose to adopt voluntarily as a means to comply with CALEA's ''safe harbor'' provision set forth in section 107(a). We further recognize that the statute leaves carriers with the discretion to choose to comply with CALEA by other means. We emphasize that in requiring carriers to comply with the core features of J–STD–025 by June 30, 2000, we did not intend for the *Extension Order* to alter the substantive requirements of CALEA. Rather, we meant only to extend the deadline for compliance. Thus, we now clarify our *Extension Order* by requiring that by June 30, 2000, carriers must either have installed the core features of J–STD–025 to take advantage of the ''safe harbor'' provision of section 107(a) of CALEA or have otherwise developed an individual solution and installed capabilities that meet the assistance capability requirements of Section 103. We believe that this approach is more consistent with the language of the statute and the legislative history on this point. In addition, we now propose to modify footnote 139 of the *Extension Order* to include the location information feature as part of the core of J–STD–025 which, if chosen by carriers as a means to qualify for the ''safe harbor,'' must be implemented by the June 30, 2000 deadline.

40. As detailed in the *Extension Order,* an extension until June 30, 2000, provides sufficient time for manufacturers to produce CALEA compliant equipment based on the core features of J–STD–025 or to develop individual network solutions and provides telecommunications carriers sufficient time to purchase, test and install such equipment throughout their networks. We further recognize that the additional ''non-core'' technical requirements we propose to be adopted in this rulemaking may require additional time for manufacturers to design and develop these capabilities and for telecommunications carriers to incorporate them into their networks. Thus, we will consider establishing another deadline or an implementation schedule for telecommunications carriers to comply with any new technical requirements we ultimately adopt in the instant proceeding. We seek comment on this proposal. Specifically, we ask carriers and manufacturers to supply us with timelines that detail how they plan to develop and deploy the additional technical requirements noted herein.

Location Information

41. J–STD–025 includes a ''location'' parameter that would identify the location of a subject's ''mobile terminal'' whenever this information is reasonably available at the intercept access point and its delivery to law enforcement is legally authorized. Location information would be available to the LEA irrespective of whether a call content channel or a call data channel was employed.

42. We tentatively conclude that location information is call-identifying information under CALEA. The Act states that call-identifying information is ''dialing or signaling information that identifies the origin, direction, destination, or termination of each communication generated or received by a subscriber by means of any equipment, facility, or service of a telecommunications carrier.'' We believe, that location information identifies the ''origin'' or ''destination'' of a communication and thus is covered by CALEA.

43. We also observe that in the wireline environment, irrespective of the precise nature of law enforcement's surveillance authorization, LEAs have been able to obtain location information routinely from the telephone number because the telephone number corresponds with location. With the telephone number, location information is available from a LEA's own 911/Enhanced 911 (E911) database or from the telephone company's electronic records, such as the Loop Maintenance Operating System (LMOS).

44. We note, however, that the location feature as it currently appears in J–STD–025 is unclear. In particular, we note that this feature refers to the identification of the location of a subject's ''mobile terminal,'' but does not specifically state whether it is the precise location of the mobile terminal or handset that is intended, or simply the location of the cell site to which the terminal or handset is connected. Also unstated in J–STD–025 is whether continuous location tracking is intended to be provided, or only the location at the beginning and termination of the call.

45. In view of the above analysis, we tentatively affirm that location information should be construed to mean cell site location at the beginning and termination of a call. We seek comment on these proposals and, as required by section 107(b), on the other factors that we must consider in establishing a technical requirement or standard. We note that location information is already included in J–STD–025, the interim standard adopted by industry, and was opposed solely by the privacy groups. Therefore, we request comment in particular on whether our proposal raises issues regarding the protection of privacy and security of communications which are not authorized to be intercepted. Since the location information feature was included by industry in J–STD–025, we find that the June 30, 2000 CALEA compliance deadline is also sufficient for development and implementation of compliant equipment that includes this feature.

46. Finally, we tentatively conclude that location information is reasonably available to telecommunications carriers, because this technical requirement was developed by industry and is included in the interim standard. However, we request comment on how the Commission should decide or interpret the term ''reasonably available'' in the context of the proposed location information requirement. For example, it appears that location information is already available through the wireless carriers' billing, hand-off and system use features. Additionally, wireless carriers will be required to have a location information capability as part of their E911 obligations. We seek comment as to whether the location information feature in these other contexts can be used to address the needs of law enforcement under CALEA. We request comment on any other issues that may impact our determination as to whether the location information that would be

required to be provided to a LEA is reasonably available to carriers.

47. Commenters should also note CALEA's express statement that ''with regard to information acquired solely pursuant to the authority for pen registers and trap and trace devices (as defined in section 3127 of title 18, United States Code), . . . call-identifying information shall not include any information that may disclose the physical location of the subscriber (except to the extent that the location may be determined from the telephone number).'' We agree with DoJ/FBI that this provision does not exclude location information from the category of ''call-identifying information,'' but simply imposes upon law enforcement an authorization requirement different from that minimally necessary for use of pen registers and trap and trace devices. We seek comment on this issue.

Packet-Mode

48. J–STD–025 provides for LEA access to call-identifying information and the interception of wire and electronic telecommunications, regardless of whether the telecommunications are carried in circuit-mode or in packet-mode. It further states that the ''call-identifying information associated with the circuit-mode content surveillance is provided on the [call data channel],'' but does not specifically address whether call-identifying information, if any, associated with packet-mode surveillance must be provided over a call data channel.

49. Packet data and packet-switching technology are potentially usable for both information services and telecommunications services. We first observe that Section 103(b)(2)(A) of CALEA expressly excludes ''information services'' from its assistance capability requirements. Thus, packet data and packet-switching technology is subject to these requirements only to the extent it is used to provide telecommunications services, and not for information services. Packet-mode telecommunications services are expected to grow rapidly in the near future. J–STD–025 appears to be appropriately limited to apply only to ''telecommunications services'' as defined by the Commission. Second, we observe that CALEA requires telecommunications carriers to provide information to the LEA ''in a manner that protects . . . the privacy and security of communications . . . not authorized to be intercepted.'' This mandate would seem to be violated if the carrier were to give the LEA both call-identifying and call content information when only the former were authorized. Under those circumstances, the LEA would be receiving call content information without having the requisite authorization.

50. The record before us, however, is not sufficiently developed to support a proposal of any particular CALEA technical requirements for packet-mode telecommunications. Additional analysis is needed. We are aware that packet-mode technology is rapidly changing, and that different technologies may require differing CALEA solutions. We do not believe that the record sufficiently addresses packet technologies and the problems that they may present for CALEA purposes. While it is premature to impose any particular technical requirements for packet-mode telecommunications at this time, it is appropriate to ask for a full range of comment on this issue.

51. In seeking to develop a full record, we first set forth an analytical framework we believe will prove useful for evaluating the issue of setting CALEA technical requirements for packet-mode telecommunications. First, we advise commenters to consider the difference between connection-oriented and connectionless packet-mode services, and also between permanent virtual circuits, which have no per-call information, and switched virtual circuits. With these distinctions in mind, we request that commenters provide detailed comments regarding whether and, if so, how the statutory requirements of Section 103(a) of CALEA apply to packet-mode telecommunications. We request comment on what constitutes the equivalent of ''call-identifying information'' for packet-mode telecommunications services within the context of CALEA. Will packet-mode call-identifying information (or its equivalent) be reasonably available to carriers and, thus, subject to the provisions of Section 103(a)(2) of CALEA? How could packet-mode call content and call-identifying information (or its equivalent) be separated for delivery to law enforcement in compliance with CALEA?

52. In addition, we seek comment on the other section 107(b) factors that we must consider in establishing technical requirements. Specifically, we seek comment on any cost-effective methods for incorporating CALEA packet-mode requirements into a telecommunications carrier's system, and whether or not this can be accomplished in a manner that minimizes costs to residential ratepayers. Further, we request additional comment on whether the inclusion of packet-mode technical requirements to meet the assistnace capability requirements envisioned by Section 103 raises issues regarding the protection of privacy and security of communications which are not authorized to be intercepted. Additionally, we solicit comment on whether the inclusion of such technical requirements would have a positive or negative effect on the provision of new technologies and services to the public. Commenters are also asked to provide detailed information regarding the amount of time and conditions that they believe will be necessary to successfully develop and deploy packet-mode technical requirements in telecommunications systems. Finally, we recognize that packet-mode issues are complex, and that relative to the other issues under consideration herein, additional time may be required to resolve them.

Content of Subject-initiated Conference Calls

53. This capability would permit the LEA to monitor the content of conversations connected via conference call set up by the facilities under surveillance. Surveillance of all portions of a conference call would continue, even if any party to the call utilized services such as hold, call waiting, or three-way calling. For example, if anyone involved in a conference call were placed on hold, all remaining conversations would continue to be available to the LEA for monitoring. The ability to monitor would continue even after the subject drops off the conference call.

54. We tentatively conclude that the provision of the content of subject-initiated conference calls is a technical requirement that meets the assistance capability requirements of Section 103. With appropriate lawful authorization, the LEA is entitled to ''intercept, to the exclusion of any other communications, all wire and electronic communications carried by the carrier within a service area to or from equipment, facilities, or services of a subscriber.'' TIA asserts that we must first determine whether a conference call capability would unduly expand Title III's concept of ''facilities'' before deciding whether such a capability is required under CALEA. We note, however, that the plan language of CALEA's Section 103 includes the terms ''equipment'' and ''services'', in addition to ''facilities'' thus, extending LEAs entitlement to access the ''services and equipment'', as well as the ''facilities'', of a subscriber. According to the legislative history, ''conference calling'' is one of the ''features and

services'' that is covered by CALEA. We seek comment on this proposal. We also seek comment as to how the Commission should define or interpret Section 103's use of the phrase ''equipment, facilities, or services'' in the context of subscriber-initiated conference calls.

55. We recognize that not all carriers' system architecture is the same. Some carriers, for example, may have systems that support continuation of conference calls after the subscriber drops off the call, while others may not. For those network configurations in which, when a subscriber drops off a conference call, the call nevertheless remains routed through the subscriber's ''equipment, facilities, or services,'' we tentatively interpret CALEA as requiring the carrier to continue to provide the LEA the call content of the remaining parties, pursuant to court order or other lawful authorization. For those configurations, however, in which, when the subscriber drops off the call, the call is either disconnected or rerouted, and the ''equipment, facilities, or services of a subscriber'' are no longer used to maintain the conference call, we tentatively conclude that CALEA does not require the carrier to provide the LEA access to the call content of the remaining parties. Moreover, in some cases where the call is re-routed, the content of the call may no longer be classifiable as ''communications carried by the carrier within a service area'' pursuant to Section 103(a)(1) and (d). Thus, under such circumstances, CALEA would not require the carrier to modify its system architecture in order to support this particular technical requirement. We seek comment on this tentative conclusion. Commenters should address how Sections 103(a)(1) and (d) should be interpreted in this context. Also, we tentatively conclude that CALEA does not extend to conversations between a participant of the conference call other than the subject and any person with whom the participant speaks on an alternative line (*e.g.*, when A, the subjects, is on a conference call with B and C, we tentatively conclude that C's conversation with D on call waiting is beyond CALEA's requirements. We also seek comment on this tentative conclusion.

56. Additionally, we seek comment on the section 107(b) factors that we must consider in establishing a technical requirement or standard. Are there cost-effective methods of incorporating access to conference call content into a telecommunications carrier's system? Can it be accomplished in a manner that minimizes costs to residential ratepayers? Further, we request comment on whether this proposal raises issues regarding the protection of privacy and security of communications which are not authorized to be intercepted. Additionally, we solicit comment on whether the inclusion of this technical requirement within the assistance capability requirements envisioned by Section 103 would positively or negatively affect the provision of new technologies and services to the public. Would, for example, networks have to be redesigned in such a way as to preclude certain new technologies or services? Finally, commenters are asked to provide detailed information regarding the amount of time and conditions that they believe will be necessary to successfully develop and deploy this technical requirement in telecommunications systems.

Party Hold, Join, Drop on Conference Calls

57. This item also involves features designed to aid a LEA in the interception of conference calls. This feature would permit the LEA to receive from the telecommunications carrier messages identifying the parties to a conversation at all times. The party hold message would be provided whenever one or more parties are placed on hold. The party join message would report the addition of a party to an active call or the reactivation of a held call. The party drop message would report when any party to a call is released or disconnects and the call continues with two or more other parties.

58. We tentatively conclude that party hold/join/drop information falls within CALEA's definition of ''call-identifying information'' because it is ''signaling information that identifies the origin, direction, destination, or termination of each communication generated or received'' by the subject. For example, party join information appears to identify the origin of a communication; party drop, the termination of a communication; and party hold, the temporary origin, temporary termination, or re-direction of a communication. This capability also appears to be necessary to enable the LEA to isolate call-identifying and content information because, without it, the LEA would be unable to determine who is talking to whom, and, more accurately, to focus on the subject's role in the conversation. Further, by isolating the call-identifying information in this manner, the LEA can ascertain and isolate third parties who are not privy to the communications involving the subject, thereby furthering the minimization concept.

59. Accordingly, we propose that provision of party hold/join/drop information, if reasonably available to the carrier, is a technical requirement that meets the assistance capability requirements of Section 103. We base this conclusion on the statutory language found in Sections 103(a)(2) and 102(2). We note, however, that LEA access to this information would be required only in those cases where the carrier's facilities, equipment or services are involved in providing the service; in other words, when a network signal is generated. To the extent that customer premises equipment (CPE) is used to provide such features, we tentatively conclude that party hold/join/drop information could not be made available to the LEA since no network signal would be generated. For example, many telephone sets have a ''hold'' button that does not signal the network—thus, from the carrier's point of view, the call's status is unchanged. We seek comment on this tentative conclusion. We also seek comment on TIA's assertion that party/hold/join drop information is already substantially available to the LEA and, if so, whether it is or needs to be provided in real time.

60. We seek comment on our proposal and, as required by section 107(b), on the other factors that we must consider in establishing a technical requirement or standard. Are there cost-effective methods of incorporating a party hold/join/drop capability into a telecommunications carrier's system? Can it be accomplished in a manner that minimizes costs to residential ratepayers? Further, we request comment on whether this proposal raises issues regarding the protection of privacy and security of communications which are not authorized to be intercepted. Additionally, we solicit comment on whether the inclusion of this technical requirement within the assistance capability requirements envisioned by Section 103 would positively or negatively affect the provision of new technologies and services to the public. Further, commenters are asked to provide detailed information regarding the amount of time and conditions that they believe will be necessary to successfully develop and deploy this technical requirement in telecommunications systems.

Subject-initiated Dialing and Signaling Information

61. This capability would permit the LEA to be informed when a subject using the facilities under surveillance

uses services such as call forwarding, call waiting, call hold, three-way calling. DoJ/FBI requests this information for each communication initiated by the subject. This capability would require the telecommunications carrier to deliver a message to the LEA, informing the LEA that the subject has invoked a feature which would place a party on hold, transfer a call, forward a call, or add/remove a party to a call.

62. We tentatively conclude that subject-initiated dialing and signaling information fits within the definition of call-identifying information contained in section 102(2) of CALEA. For example, call-forwarding signaling information identifies the direction and destination of a call, and call-waiting signaling information identifies the origin and termination of each communication. We request comment on whether remote operation of these features should affect our tentative conclusion. For example, a subject may be able to change some aspects of his/her service from a pay telephone, as well as from the subject's telephone.

63. We also tentatively conclude that access to subject-initiated dialing and signaling information may be necessary in order for the LEA to isolate and correlate call-identifying and call content information. Knowing what features a subject is using will ensure that the LEA receives information ''in a manner that allows it to be associated with the communication to which it pertains.'' For example, without knowing that a subject has switched over to a call on call-waiting, the LEA may not be able to associate the call-identifying information with the call content to which it pertains and thus could be more likely to mistake one call for another. Once again, to the extent CPE is used to perform any of the functions described here, and no network signal is generated, that information will not be reasonably available to a carrier, and thus, should not be required to be provided.

64. We observe that signaling data indicating that the subject is accessing his/her voice mail is properly classified as ''call-identifying information.'' The contents of the voice mail fall outside the scope of CALEA. This is because voice mail ''permits a customer to retrieve stored information from . . . information storage facilities,'' and CALEA does not apply to information services. The requirement we propose below is consistent with this distinction because it provides only the call identifying information and is not capable of providing voice content.

65. Accordingly, we propose to include information on subject-initiated dialing and signaling that is reasonably available to the carrier as a technical requirement necessary to meet the assistance capability requirements of Section 103. We base our conclusion regarding subject-initiated dialing and signaling information that is reasonably available to the carrier on the statutory language found in Section 103(a)(2). We seek comment on this proposal and, as required by section 107(b), on the other factors that we must consider in establishing a technical requirement or standard. Are there cost-effective methods of providing subject-initiated dialing and signaling information? Can this requirement be accomplished in a manner that minimizes costs to residential ratepayers? Further, we request comment on whether this proposal or tentative conclusion raises issues regarding the protection of privacy and security of communications which are not authorized to be intercepted. Additionally, we solicit comment on whether the inclusion of this technical requirement within the assistance capability requirements envisioned by Section 103 would positively or negatively affect the provision of new technologies and services to the public. Commenters are asked to provide detailed information regarding the amount of time and conditions that they believe will be necessary to successfully develop and deploy this technical requirement in telecommunications systems. In addition, excluding those CPE-controlled features noted above, and consistent with our proposed ruling regarding voice mail as noted above, we request comment on whether information required to provide LEAs with subject-initiated dialing and signaling activity is reasonably available to carriers. Finally, we recognize that some commenters assert that at least portions of this technical requirement may be provided through other features of J–STD–025. We request comment on the accuracy of these contentions. Commenters should demonstrate clearly how the features required are provided, or not provided, elsewhere in J–STD–025.

In-band and Out-of-band Signaling

66. This technical requirement would allow a telecommunications carrier to send a notification message to the LEA when any network message (ringing, busy, call waiting signal, message light, *etc.*) is sent to a subject using facilities under surveillance. For example, if someone leaves a voice mail message on the subject's phone, the notification to the LEA would indicate the type of message notification sent to the subject (such as the phone's message light, audio signal, text message, *etc.*). For calls the subject originates, a notification message would also indicate whether the subject ended a call when the line was ringing, busy (a busy line or busy trunk), or before the network could complete the call.

67. We believe that certain types of in-band and out-of-band signaling information, such as notification that a voice mail message has been received by a subject, constitute call-identifying information under CALEA; while there may be other types of in-band and out-of-band signaling information that would constitute call content information and thus would raise questions as to under what authority they should be provided to the LEA. However, for purposes of this proceeding, we do not address such questions of whether or what type of authorization LEAs would need to access such information. This is up to the judicial branch. Unless necessary to establish technical standards under CALEA's safe harbor, it is not our intention to specifically decide whether certain types of in-band or out-of-band signaling is either call content or call-identifying information since CALEA requires carrier have the ability to provide access to both. We request comment on what types of in-band and out-of-band signaling should constitute a technical requirement necessary to meet the assistance capability requirements envisioned by Section 103.

68. Also, in the event that we ultimately determine that in-band and out-of-band signaling is a technical requirement necessary to meet the assistance capability requirements under Section 103, we request comment on whether there are cost-effective methods of providing in-band and out-of-band signaling to a LEA. Can this requirement be accomplished in a manner that minimizes costs to residential ratepayers? Further, we request comment on whether this requirement raises issues regarding the protection of privacy and security of communications which are not authorized to be intercepted. Additionally, we solicit comment on whether the inclusion of this technical requirement within the assistance capability requirements envisioned by Section 103 would positively or negatively affect the provision of new technologies and services to the public. Commenters are asked to provide detailed information regarding the amount of time and conditions that they believe will be necessary to successfully develop and deploy this technical

requirement in telecommunications systems.

Timing Information

69. In those cases where the LEA has obtained authorization to intercept both content and call-identifying information, this capability would require that a telecommunications carrier send call timing information to the LEA so that the LEA could associate the call-identifying information with the actual content of the call. There would be two elements to this capability:

(1) Each call-identifying message (answer message, party join message, party drop message, etc.) would be time stamped within a specific amount of time from when the event triggering the message occurred in the intercept access point. This time-stamp would allow the LEA to associate the message to the call content information (i.e., the conversation).

(2) A carrier would be required to send the message to the LEA within a defined amount of time from the event to permit the LEA to associate the number dialed to the conversation.

70. We tentatively conclude that time stamp information fits within the definition of call-identifying information contained within section 102(2) of CALEA and will allow such information ''to be associated with the communication to which it pertains.'' We propose to include timing information that is reasonably available to the carrier as a technical requirement necessary to meet the assistance capability requirements of Section 103(a). We seek comment on this proposal. We base this conclusion on the statutory language found in Section 103(a)(2), and on our tentative conclusion that such information falls within the definition of call-identifying information in section 102(2). A time stamp permits identification of a given call from a series of calls made within a short timeframe, and is necessary to allow a LEA to associate call-identifying information with the communication to which it pertains. We note, however, that CALEA does not impose a specific timing requirement on carriers. Rather, it states that carriers must ''expeditiously'' isolate and enable the government to access call-identifying information ''before, during, or immediately after the transmission of a wire or electronic communication (or at such later time as may be acceptable to the government); and in a manner that allows it to be associated with the communication to which it pertains.'' Therefore, we seek comment on what is a reasonable amount of time to require the carriers to deliver the time stamped message to the LEA. We note that DoJ/FBI have requested delivery within 3 seconds of the beginning of the event and with an accuracy of 100 milliseconds. Commenters should address whether this is a reasonable time frame, and whether there are any technical barriers to implementing such a requirement. Commenters proposing an alternative time frame should also address technical feasibility and how such a time frame will satisfy the requirements of the statute.

71. In addition, we seek comment, as required by section 107(b), on the factors that we must consider in establishing a technical requirement. Are there cost-effective methods of providing timing information to a LEA? Can this requirement be accomplished in a manner that minimizes costs to residential ratepayers? Further, we request comment on whether this proposal raises issues regarding the protection of privacy and security of communications which are not authorized to be intercepted. Additionally, we solicit comment on whether the inclusion of this technical requirement within the assistance capability requirements envisioned by Section 103 would positively or negatively affect the provision of new technologies and services to the public. Commenters are asked to provide detailed information regarding the amount of time and conditions that they believe will be necessary to successfully develop and deploy this technical requirement in telecommunications systems.

Surveillance Status

72. This capability would require the telecommunications carrier to send information to the LEA to verify that a wiretap has been established and is still functioning correctly. This information could include the date, time, and location of the wiretap; identification of the subscriber whose facilities are under surveillance; and identification of all voice channels that are connected to the subscriber. This information would be transmitted to the LEA when the wiretap is activated, updated or deactivated, as well as periodically (varying from once every hour to once every 24 hours).

73. CALEA requires carriers to ensure that authorized wiretaps can be performed in an expeditious manner, and we believe that a surveillance status message could assist carriers and LEAs in determining the status of such wiretaps. We tentatively conclude, however, that a surveillance status message does not fall within any of the provisions of Section 103. We do not believe that it is call-identifying information as defined by CALEA, since the information such a feature would provide is unrelated to any particular call. Nor does a surveillance status message appear to be required under Section 103(a)(1), since it is not necessary to intercept either wire or electronic communications carried on a carrier's system. Nor are we persuaded by the FBI's interpretation that a surveillance status message is required by CALEA's direction that a carrier ''shall ensure'' that its system is capable of meeting the Section 103(a) requirements. Rather, we note that the Act expressly states: ''a telecommunications carrier shall ensure that its equipment, facilities, or services . . . are capable of'' intercepting communications and allowing LEA access to call-identifying information. We interpret the plain language of the statute to mandate compliance with the capability requirements of Section 103(a), but not to require that such capability be proven or verified on a continual basis.

74. Thus, we tentatively conclude that the surveillance status punch list item is not an assistance capability requirement under Section 103. However, we invite comment as to how, generally, carriers intend to ensure that wiretaps remain operational. How, specifically, would ''human intervention'' be exercised? For example, do carriers plan to periodically check the circuit manually and notify the LEA that the wiretap remains operational? Further, to the extent commenters continue to believe that an automated surveillance status message is necessary to implement the requirements of Section 103, we seek comment on the 107(b) factors that the Commission must evaluate under CALEA. In what manner could such a feature be provided? Are there cost effective methods of providing surveillance status information to a LEA? Can this requirement be accomplished in a manner that minimizes costs to residential ratepayers? Could such provision of surveillance status messages compromise the privacy and security of communications not authorized to be intercepted? Would the provision of such information constrain a carrier's ability to develop and deploy new technologies and services? What period of time would be required to develop and deploy such a feature? And, to the extent that this information were to fall under the definition of call-identifying information, is it reasonably available to carriers?

Continuity Check Tone

75. This technical requirement would require that, in cases where a LEA has obtained authority to intercept wire or electronic communications, a C-tone or dial tone be placed on the call content channel received by the LEA from the telecommunications carrier until a user of the facilities under surveillance initiates or receives a call. At that point, the tone would be turned off, indicating to the LEA that the target facilities were in use. This capability would permit correlation between the time a call is initiated and the time the connection is established. The C-tone would also verify that the connection between the carrier's switch and the LEA is in working order.

76. As with the case of surveillance status messages, we believe that continuity tone could assist the LEA in determining the status of a wiretap, but that this technical requirement is not necessary to meet the mandates of Section 103(a). Similar to our reasoning regarding surveillance status messages, we do not believe that a continuity tone falls within CALEA's definition of call-identifying information, nor does it appear to be required under Section 103(a)(1), since it is not necessary to intercept either wire or electronic communications carried on a carrier's system. Furthermore, as explained above, the plain language of the statute mandates compliance with the capability requirements of Section 103(a), but does not require that such capability be proven or verified on a continual basis. Thus, we tentatively conclude that the continuity tone punch list item is not an assistance capability requirement under Section 103.

77. However, to the extent commenters continue to believe such a technical requirement is necessary to implement the requirements of Section 103, we seek comment on the 107(b) factors that the Commission must evaluate under CALEA. In what manner could such a feature be provided? Are there cost effective methods of providing a continuity tone to a LEA? Can this requirement be accomplished in a manner that minimizes costs to residential ratepayers? Could provision of a continuity tone somehow compromise the privacy and security of communications not authorized to be intercepted? For example, could such a tone be detected by the subscriber whose facilities are under surveillance? Would the provision of such information constrain a carrier's ability to develop and deploy new technologies and services? And finally, what period of time would be required to develop and deploy such a feature?

Feature Status

78. This technical requirement would require a carrier to notify the LEA when specific subscription-based calling services are added to or deleted from the facilities under surveillance, including when the subject modifies capabilities remotely through another phone or through an operator. Examples of such services are call waiting, call hold, three-way calling, conference calling, and call return. Also, the carrier would be required to notify the LEA if the telephone number of the facilities under surveillance was changed or service was disconnected.

79. Similar to surveillance status messages and continuity tones, we believe that feature status messages could be useful to a LEA, but that provision of these messages from a carrier to a LEA is not required to meet the mandates of Section 103(a). First, we believe it is clear that feature status messages do not constitute call-identifying information because they do not pertain to the actual placement or receipt of individual calls. Further, feature status messages do not appear to be required under Section 103(a)(1) because they are not necessary to intercept either wire or electronic communications carried on a carrier's system. Rather, they would simply aid a LEA in determining how much capacity is required to implement and maintain effective electronic surveillance of a target facility, information that could be useful in assuring that an interception is fully effectuated and the intercepted material delivered as authorized. However, as noted by AT&T, the information that would be provided by feature status messages can be provided by other means, such as a subpoena to the carrier. In any event, we reiterate our view that the plain language of the Act mandates compliance with the assistance capability requirements of Section 103(a), but does not require carriers to implement any specific quality control capabilities to assist law enforcement. Thus, we tentatively conclude that the feature status punch list item does not meet the assistance capability requirements of Section 103.

80. We note, however, that at least some of the information that would be provided by feature status messages—for example, a change to the phone number of the facilities under surveillance—must be provided to the LEA expeditiously if electronic surveillance is to be effective. We request comment on whether this information can be provided in such an expeditious manner by other means. We also request comment on any other aspects or interpretations of a feature status capability that might cause at least some portion of this feature to meet the assistance capability requirements of Section 103. To the extent commenters believe that such a capability is necessary to implement the requirements of Section 103, we seek a particularized description of such a capability and comment on the 107(b) factors that the Commission must evaluate under CALEA. In what manner could such a capability be provided? Are there cost effective methods of providing feature status messages to a LEA? Can this requirement be accomplished in a manner that minimizes costs to residential ratepayers? Could provision of feature status messages to a LEA compromise the privacy and security of communications not authorized to be intercepted? Would the provision of such information constrain a carrier's ability to develop and deploy new technologies and services? And finally, what period of time would be required to develop and deploy such a capability?

Dialed Digit Extraction

81. This capability would require the telecommunications carrier to provide to the LEA on the call data channel any digits dialed by the subject after connecting to another carrier's service (also known as ''post-cut-through digits''). One example of such dialing and signaling would occur when the subject dials an 800 number to access a long distance carrier. After connecting to the long distance carrier through the 800 number, the subject then dials the telephone number that is the ultimate destination of the call.

82. We tentatively conclude that post-cut-through digits representing all telephone numbers needed to route a call, for example, from the subscriber's telephone through its LEC, then through IXC and other networks, and ultimately to the intended party are call-identifying information. We seek additional comment on whether such call-identifying information is reasonably available to the carrier originating the call. Currently, the second set of numbers a subject dials (the final destination of the call) apparently is transmitted over the CCC (the content portion of the connection) and not over the CDC (a separate signaling channel). This method of transmission raises two primary questions: (1) Since the post-cut-through digits are provided on the content portion of the connection,

should those numbers be considered content for purposes of CALEA?; and (2) Technically, how can such post-cut-through digits be extracted from the content channel and delivered to a LEA by a carrier? We seek comment on whether originating, intermediate, or terminating carriers can deliver such call-identifying information by cost-effective means. We are also aware of the concerns expressed by industry and privacy advocates that this dialed digit extraction feature could prove to be inordinately expensive to design, build, and incorporate into telephone network infrastructures. The record established thus far does not reflect any specific cost estimates but does raise the possibility that there may be newly available, less expensive solutions for this feature, although it is not clear if such solutions have the capability of separating post-cut-through call-identifying digits from those dialed to perform other functions. We seek comment on this proposal and, as required by section 107(b), on the other factors that we must consider in establishing a technical requirement. Can it be accomplished in a manner that minimizes costs to residential ratepayers? Additionally, we solicit comment on whether our proposal would positively or negatively affect the provision of new technologies and services to the public. Commenters are asked to provide detailed information regarding the amount of time and conditions that they believe will be necessary to successfully develop and deploy this technical requirement in telecommunications systems. Finally, we request detailed comment on how the privacy and security of communications that are not authorized to be intercepted can be protected. In particular, we request comment on whether and how such call-identifying information can be distinguished from digits dialed to perform other functions (e.g., to input a credit card number or to access information services after the call reaches its final destination in the PSTN).

Disposition of J–STD–025

83. We believe that the technical requirements proposed herein can be most efficiently implemented by permitting Subcommittee TR45.2 of the TIA to develop the necessary specifications in accord with our determinations. We note that CALEA contemplates that standards will be developed either ''by an industry association or standard-setting organization, or by the Commission.'' We note that LEAs, carriers, and manufacturers are voting members of the Subcommittee. While we could undertake this task, we believe that the Subcommittee already has the experience and resources in place to resolve these issues more quickly. Both law enforcement agencies and telecommunications manufacturers and carriers participate on the Subcommittee. The Subcommittee worked diligently over a period of several years to craft J–STD–025 and both LEAs and privacy groups agree with—or, at least do not raise any specific objections to—the vast majority of the features of that standard. A Commission-based standard-setting activity would necessarily have to rely heavily on the Subcommittee to modify J–STD–025 in any event, and thus would very likely take longer than industry-based processes to develop a final safe harbor standard. Our decision to rely on industry to develop the final technical specifications reflects our commitment to achieve a CALEA solution as expeditiously as possible.

84. Accordingly, we expect TIA to undertake the task of modifying J–STD–025 to be consistent with the technical requirements we ultimately adopt in this proceeding. Further, we expect the TIA to complete any such modifications to J–STD–025 within 180 days of release of the Report and Order in this proceeding. While this is an ambitious schedule, we believe it is achievable because the TIA has been examining CALEA technical standards issues for several years, and the modifications to J–STD–025 are likely to be relatively limited. In fact, all of the technical requirements that we have identified for modification were previously considered in detail by TIA Subcommittee TR45.2. We note that any telecommunications carrier conforming with the revised standard will be considered to have complied with CALEA's safe harbor provisions under section 107(a)(2). We consider 180 days a sufficient time period for industry to adopt revised technical standards compliant with CALEA and we believe that industry will be able to comply with the core requirements of J–STD–025 (excluding the packet-mode feature) by June 30, 2000. Therefore, we do not plan to extend the CALEA compliance deadline for the core J–STD–025 requirements beyond that date, except in the case of individual extenuating circumstances, to which the criteria of section 107(c) of CALEA would apply. Based on comments received in response to this Further NPRM, we will set a separate deadline for compliance with the additional technical requirements that we determine CALEA mandates. We seek comment on these tentative findings and conclusions.

Other Technologies and Systems

85. We seek comment on what role, if any, the Commission can or should play in assisting those telecommunications carriers not covered by J–STD–025 to set standards for, or to achieve compliance with, CALEA's requirements. Insofar as such carriers argue that CALEA contemplates multiple or different standards for services such as paging, digital dispatch and wireless data, we seek comment regarding how our determinations regarding J–STD–025, the FBI's punch list items, and location and packet-mode information will affect the requirements and standards already adopted or currently being established by these other industry segments. For example, can the Commission's determinations in this rulemaking proceeding be adapted to these other technologies? Further, we request comment on if and how we should consider the impact of the technical requirements we ultimately adopt in this proceeding on these other technologies and services.

Other Matters

86. As previously discussed, in March 1998 CDT submitted a petition for rulemaking to the Commission. In its petition, CDT requests relief from the Commission under section 109 (as well as section 107) of CALEA. CDT argues that ''compliance with CALEA is not reasonably achievable with respect to equipment, facilities, and services deployed after January 1, 1995, for the simple reason that carriers have had to make changes to their systems not knowing what was required to comply with CALEA.'' Lack of a CALEA standard, or a dispute about the CALEA standard, however, is not grounds for a rulemaking under section 109. Rather, a section 109 determination by the Commission presupposes that the final requirements that must be met by telecommunications carriers under Section 103 are in place. Those requirements, however, are still in dispute. Accordingly, we are herein dismissing without prejudice that portion of CDT's petition that relies on section 109.

87. Also, as previously discussed, in July 1997 CTIA filed a petition for rulemaking requesting that the Commission establish a standard to implement the mandates of Section 103, and in March 1998 DoJ/FBI submitted a motion to dismiss that petition on the grounds that the December 1997 adoption of J–STD–025 rendered CTIA's petition moot. CTIA agrees with DoJ/FBI

that its petition is moot, both because the adoption of the industry interim standard supersedes its request for the Commission to establish a CALEA standard by rule and because its request in its petition to extend the CALEA compliance deadline has been addressed in this proceeding. We agree. Accordingly, we herein dismiss as moot CTIA's July 16, 1997 Petition for Rulemaking.

Initial Regulatory Flexibility Analysis

88. As required by the Regulatory Flexibility Act (RFA), the Commission has prepared an Initial Regulatory Flexibility Analysis (IRFA) of the expected significant economic impact on small entities by the policies and rules suggested in this Communications Assistance for Law Enforcement Act, Further Notice of Proposed Rulemaking (CALEA Further NPRM). Written public comments are requested on the IRFA. Comments must be identified as responses to the IRFA and must be filed by the deadlines for comments on the CALEA Further NPRM provided above on the first page, in the heading. The Secretary shall send a copy of the CALEA Further NPRM, including the IRFA, to the Chief Counsel for Advocacy of the Small Business Administration (SBA) in accordance with paragraph 603(a).

Need for and Objectives of the Proposed Rules

89. This *Further Notice of Proposed Rulemaking* responds to the legislative mandate contained in the Communications Assistance for Law Enforcement Act, Pub. L. No. 103–414, 108 Stat. 4279 (1994) (codified as amended in sections of 18 U.S.C. and 47 U.S.C.).

Legal Basis

90. The proposed action is authorized under the Communications Assistance for Law Enforcement Act, Public Law 103–414, 108 Stat. 4279 (1994) (codified as amended in scattered sections of 18 U.S.C. and 47 U.S.C.). The proposed action is also authorized by sections 1, 4, 201, 202, 204, 205, 218, 229, 332, 403 and 503 of the Communications Act of 1934, as amended, 47 U.S.C. sections 151, 154, 201–205, 218, 229, 301, 303, 312, 332, 403, 501 and 503.

Description and Estimate of the Number of Small Entities To Which the Proposed Rules Will Apply

91. The proposals set forth in this proceeding may have a significant economic impact on a substantial number of small telephone companies identified by the SBA. We seek comment on the obligations of a telecommunications carrier for the purpose of complying with CALEA.

92. The RFA generally defines ''small entity'' as having the same meaning as the term ''small business,'' ''small organization,'' and ''small governmental jurisdiction'' and the same meaning as the term ''small business concern'' under the Small Business Act, unless the Commission has developed one or more definitions that are appropriate to its activities. Under the Small Business Act, a ''small business concern'' is one that: (1) is independently owned and operated; (2) is not dominant in its field of operation; and (3) meets any additional criteria established by the Small Business Administration (SBA). The SBA has defined a small business for Standard Industrial Classification (SIC) categories 4812 (Radiotelephone Communications) and 4813 (Telephone Communications, Except Radiotelephone) to be small entities when they have fewer than 1,500 employees. We first discuss generally the total number of small telephone companies falling within both of those SIC categories. Then, we discuss the number of small businesses within the two subcategories, and attempt to refine further those estimates to correspond with the categories of telephone companies that are commonly used under our rules.

93. *Telephone Companies (SIC 483).* Consistent with our prior practice, we shall continue to exclude small incumbent LECs from the definition of a small entity for the purpose of this IRFA. Nevertheless, as mentioned above, we include small incumbent LECs in our IRFA. Accordingly, our use of the terms ''small entities'' and ''small businesses'' does not encompass ''small incumbent LECs.'' We use the term ''small incumbent LECs'' to refer to any incumbent LECs that arguably might be defined by SBA as ''small business concerns.''

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

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

96. *Local Exchange Carriers.* Neither the Commission nor SBA has developed a definition of small providers of local exchange services (LECs). The closest applicable definition under SBA rules is for telephone communications companies other than radiotelephone (wireless) companies. The most reliable source of information regarding the number of LECs nationwide of which we are aware appears to be the data that we collect annually in connection with the Telecommunications Relay Service (TARS). According to our most recent data, 1,347 companies reported that

they were engaged in the provision of local exchange services. Although it seems certain that some of these carriers are not independently owned and operated, or have more than 1,500 employees, we are unable at this time to estimate with greater precision the number of LECs that would qualify as small business concerns under SBA's definition. Consequently, we estimate that there are fewer than 1,347 small incumbent LECs that may be affected by the decisions and rules recommended for adoption in this NPRM.

97. *Interexchange Carriers.* Neither the Commission nor SBA has developed a definition of small entities specifically applicable to providers of interexchange services (IXCs). The closest applicable definition under SBA rules is for telephone communications companies other than radiotelephone (wireless) companies. The most reliable source of information regarding the number of IXCs nationwide of which we are aware appears to be the data that we collect annually in connection with TARS. According to our most recent data, 130 companies reported that they were engaged in the provision of interexchange services. Although it seems certain that some of these carriers are not independently owned and operated, or have more than 1,500 employees, we are unable at this time to estimate with greater precision the number of IXCs that would qualify as small business concerns under SBA's definition. Consequently, we estimate that there are fewer than 130 small entity IXCs that may be affected by the decisions and rules recommended for adoption in this NPRM.

98. *Competitive Access Providers.* Neither the Commission nor SBA has developed a definition of small entities specifically applicable to providers of competitive access services (CAPs). The closest applicable definition under SBA rules is for telephone communications companies other than radiotelephone (wireless) companies. The most reliable source of information regarding the number of CAPs nationwide of which we are aware appears to be the data that we collect annually in connection with the TARS. According to our most recent data, 57 companies reported that they were engaged in the provision of competitive access services. Although it seems certain that some of these carriers are not independently owned and operated, or have more than 1,500 employees, we are unable at this time to estimate with greater precision the number of CAPs that would qualify as small business concerns under SBA's definition. Consequently, we estimate that there are fewer than 57 small entity CAPs that may be affected by the decisions and rules recommended for adoption in this NPRM.

99. *Operator Service Providers.* Neither the Commission nor SBA has developed a definition of small entities specifically applicable to providers of operator services. The closest applicable definition under SBA rules is for telephone communications companies other than radiotelephone (wireless) companies. The most reliable source of information regarding the number of operator service providers nationwide of which we are aware appears to be the data that we collect annually in connection with the TARS. According to our most recent data, 25 companies reported that they were engaged in the provision of operator services. Although it seems certain that some of these companies are not independently owned and operated, or have more than 1,500 employees, we are unable at this time to estimate with greater precision the number of operator service providers that would qualify as small business concerns under SBA's definition. Consequently, we estimate that there are fewer than 25 small entity operator service providers that may be affected by the decisions and rules recommended for adoption in this NPRM.

100. *Wireless (Radiotelephone) Carriers.* SBA has developed a definition of small entities for radiotelephone (wireless) companies. The Census Bureau reports that there were 1,176 such companies in operation for at least one year at the end of 1992. According to SBA's definition, a small business radiotelephone company is one employing fewer than 1,500 persons. The Census Bureau also reported that 1,164 of those radiotelephone companies had fewer than 1,000 employees. Thus, even if all of the remaining 12 companies had more than 1,500 employees, there would still be 1,164 radiotelephone companies that might qualify as small entities if they are independently owned are operated. Although it seems certain that some of these carriers are not independently owned and operated, we are unable at this time to estimate with greater precision the number of radiotelephone carriers and service providers that would qualify as small business concerns under SBA's definition. Consequently, we estimate that there are fewer than 1,164 small entity radiotelephone companies that may be affected by the decisions and rules recommended for adoption in this NPRM.

101. *Cellular and Mobile Service Carriers:* In an effort to further refine our calculation of the number of radiotelephone companies affected by the rules adopted herein, we consider the categories of radiotelephone carriers, Cellular Service Carriers and Mobile Service Carriers. Neither the Commission nor the SBA has developed a definition of small entities specifically applicable to Cellular Service Carriers and to Mobile Service Carriers. The closest applicable definition under SBA rules for both services is for telephone companies other than radiotelephone (wireless) companies. The most reliable source of information regarding the number of Cellular Service Carriers and Mobile Service Carriers nationwide of which we are aware appears to be the data that we collect annually in connection with the TARS. According to our most recent data, 792 companies reported that they are engaged in the provision of cellular services and 117 companies reported that they are engaged in the provision of mobile services. Although it seems certain that some of these carriers are not independently owned and operated, or have more than 1,500 employees, we are unable at this time to estimate with greater precision the number of Cellular Service Carriers and Mobile Service Carriers that would qualify as small business concerns under SBA's definition. Consequently, we estimate that there are fewer than 792 small entity Cellular Service Carriers and fewer than 138 small entity Mobile Service Carriers that might be affected by the actions and rules adopted in this NPRM.

102. *Broadband PCS Licensees.* The broadband PCS spectrum is divided into six frequency blocks designated A through F, and the Commission has held auctions for each block. The Commission defined ''small entity'' for Blocks C and F as an entity that has average gross revenues of less than $40 million in the three previous calendar years. For Block F, an additional classification for ''very small business'' was added, and is defined as an entity that, together with its affiliates, has average gross revenues of not more than $15 million for the preceding three calendar years. These regulations defining ''small entity'' in the context of broadband PCS auctions have been approved by SBA. No small businesses within the SBA-approved definition bid successfully for licenses in Blocks A and B. There were 90 winning bidders that qualified as small entities in the Block C auctions. A total of 93 small and very small business bidders won approximately 40% of the 1,479 licenses for Blocks D, E, and F. However,

licenses for Blocks C through F have not been awarded fully, therefore there are few, if any, small businesses currently providing PCS services. Based on this information, we conclude that the number of small broadband PCS licenses will include the 90 winning C Block bidders and the 93 qualifying bidders in the D, E, and F blocks, for a total of 183 small PCS providers as defined by the SBA and the Commissioner's auction rules.

103. *Resellers.* Neither the Commission nor SBA has developed a definition of small entities specifically applicable to resellers. The closest applicable definition under SBA rules is for all telephone communications companies. The most reliable source of information regarding the number of resellers nationwide of which we are aware appears to be the data that we collect annually in connection with the TARS. According to our most recent data, 260 companies reported that they were engaged in the resale of telephone services. Although it seems certain that some of these carriers are not independently owned and operated, or have more than 1,500 employees, we are unable at this time to estimate with greater precision the number of resellers that would qualify as small business concerns under SBA's definition. Consequently, we estimate that there are fewer than 260 small entity resellers that may be affected by the decisions and rules recommended for adoption in this NPRM.

Description of Projected Reporting, Recordkeeping and Other Compliance Requirements

104. The rules proposed in the NPRM require telecommunications carriers to establish policies and procedures governing the conduct of officers and employees who are engaged in surveillance activity. Those proposed rules require telecommunications carriers to maintain records of all interceptions of communications and call identification information. Further, those proposed rules require telecommunications carriers classified as Class A companies pursuant to 47 U.S.C. § 32.11 to file individually with the Commission a statement of its processes and procedures used to comply with the systems security rules promulgated by the Commission. Telecommunications carriers classified as Class B companies pursuant to 47 U.S.C. § 32.11 may elect to either file a statement describing their security processes and procedures or to certify that they observe procedures consistent with the security rules promulgated by the Commission.

105. We tentatively conclude that a substantial number of telecommunications carriers, who have been subjected to demands from law enforcement personnel to provide lawful interceptions and call-identifying information for a period time preceding CALEA, already have in place practices for proper employee conduct and recordkeeping. We seek comment on this tentative conclusion. As a practical matter, telecommunications carriers need these practices to protect themselves from suit by persons who claim they were the victims of illegal surveillance. By providing general guidance regarding the conduct of carrier personnel and the content of records in this Further NPRM, the Commission permits telecommunications carriers to use their existing practices to the maximum extent possible. Thus, we tentatively conclude that the additional cost to most telecommunications carriers for conforming to the Commission regulations contained in this Further NPRM, should be minimal. We seek comment on this tentative conclusion.

Significant Alternatives to Proposed Rules Which Minimize Significant Economic Impact on Small Entities and Accomplish Stated Objectives

106. As we noted in Part I of this IRFA, *supra*, the need for the proposed regulations is mandated by Federal legislation. The legislation is specific on the content of employee conduct and recordkeeping regulations for telecommunications carriers, which removes from Commission discretion the consideration of alternative employee conduct and recordkeeping regulations for smaller telecommunications carriers. The legislation, however, provides for Commission discretion to formulate compliance reporting requirements for telecommunications carriers that favor smaller telecommunications carriers, and in the NPRM the Commission exercised that discretion by proposing rules that allow smaller carriers the option to file a certification of compliance with the Commission instead of a statement of the policies, processes and procedures they use to comply with the CALEA regulations.

Federal Rules That May Overlap, Duplicate, or Conflict With the Proposed Rules

107. As we noted in Part I of this IRFA, *supra*, the need for the proposed regulations is mandated by Federal legislation. The purpose of CALEA was to empower and require the Federal Communications Commission and the Department of Justice to craft regulations pursuant to specific statutory instructions. Because there were no other Federal Rules in existence before CALEA was enacted, there are no duplicate Federal Rules. In addition, there are no overlapping, duplicating, or conflicting Federal Rules to the Federal Rules proposed in this proceeding.

Ordering Clauses

108. Accordingly, pursuant to sections 1, 4, 229, 301, 303, and 332 of the Communications Act of 1934, as amended, and 107(b) of the Communications Assistance for Law Enforcement Act, 47 U.S.C. sections 151, 154, 229, 301, 303, 332, and 1006(b), *it is ordered* that this Further Notice of Proposed Rulemaking is hereby adopted. *It is further ordered* that the Petition for Rulemaking filed by the Cellular Telecommunications Industry Association on July 16, 1997 *is dismissed* as moot. *It is further ordered* that the Petition for Rulemaking filed by the Center for Democracy and Technology *is dismissed* without prejudice to the extent the petition seeks relief under section 109 of CALEA, 47 U.S.C. section 1008. *It is further ordered* that the Commission *shall send* a copy of this Further Notice of Proposed Rulemaking, including the Initial Regulatory Flexibility Analysis, to the Chief Counsel for Advocacy of the Small Business Administration.

List of Subjects in 47 CFR Part 64

Communications common carriers.

Federal Communications Commission.

Magalie Roman Salas,

Secretary.

[FR Doc. 98–30552 Filed 11–13–98; 8:45 am]

BILLING CODE 6712–01–P

NATIONAL AERONAUTICS AND SPACE ADMINISTRATION

48 CFR Parts 1842 and 1852

Application of Earned Value Management (EVM)

AGENCY: National Aeronautics and Space Administration (NASA).

ACTION: Proposed rule.

SUMMARY: This proposed rule would effect a change to the NASA FAR Supplement relative to the application of Earned Value Management (EVM) at NASA. The proposed change would establish NASA-wide clauses and provisions compatible with those used by DoD. Specifically, the change would clarify the role of the Defense Contract Management Command (DCMC) with

respect to its responsibility for reviewing earned value management system (EVMS) plans and verifying initial and continuing contractor compliance with NASA and DoD EVMS criteria, and with NASA Policy Directive 9501.3, Earned Value Performance Management, and DoD 5000.2-R.

DATES: Comments should be submitted on or before January 15, 1999.

ADDRESSES: Interested parties should submit written comments to Kenneth A. Sateriale, NASA Headquarters, Office of Procurement, Contract Management Division (Code HK), Washington, DC 20546. Comments may also be submitted by e-mail to kenneth.sateriale@hq.nasa.gov.

FOR FURTHER INFORMATION CONTACT: Kenneth A. Sateriale, (202) 358-0491.

SUPPLEMENTARY INFORMATION:

Background

EVM is a commonly used performance (i.e. cost, schedule, and technical) measurement tool for program managers in the aerospace industry. NASA and DoD are major customers in the Government sector of the aerospace industry, and cooperate to align their business practices wherever practicable in order to realize cost and resource efficiencies. Therefore, they have collaborated closely over the last several years to align their approaches to the use of EVM. This change completes that alignment process.

Impact

NASA certifies that this regulation will not have a significant economic impact on a substantial number of small business entities under the Regulatory Flexibility Act (5 U.S.C. 601 *et seq.*) since the changes do no more than align NASA practices with those already in place at DoD, which shares essentially the same industry sector. This proposed rule does not impose any reporting or recordkeeping requirements subject to the Paperwork Reduction Act.

List of Subjects in 48 CFR Parts 1842 and 1852

Government procurement.

Tom Luedtke,

Acting Associate Administrator for Procurement.

Accordingly, 48 CFR Parts 1842 and 1852 are proposed to be amended as follows:

1. The authority citation for 48 CFR Parts 1842 and 1852 continues to read as follows:

Authority: 42 U.S.C. 2473(c)(1)

PART 1842—CONTRACT ADMINISTRATION AND AUDIT SERVICES

2. Subpart 1842.3 is added to read as follows:

Subpart 1842.3—Contract Administration Office Functions

§ 1842.302 Contract administration functions. (NASA supplements paragraph (a))

(a) In addition to the responsibilities listed in FAR 42.302(a), responsibility for reviewing earned value management system (EVMS) plans and verifying initial and continuing contractor compliance with NASA and DoD EVMS criteria is normally delegated to DCMC.

3. Section 1842.7003 is added to read as follows:

1842.7003 Modified cost performance report.

(a) Modified cost performance reporting is required for RDT&E contracts with values between $25 million and $60 million, and production contracts with values less than $250 million. Modified cost performance reporting for RDT&E contracts with values of $25 million or less may be required at the discretion of the contracting officer.

(b) The contracting officer shall insert the clause at 1852.242–76, Modified Cost Performance Report, in solicitations and contracts, other than for firm-fixed-price, time-and-materials, or labor-hour, when modified cost performance reporting is required.

(c) The contracting officer shall insert the provision at 1852.242–77, Modified Cost Performance Report Plans, in solicitations for contracts, other than firm-fixed-price, time-and-materials, or labor-hour, when modified cost performance reporting is required.

4. Subpart 1842.74 is added to read as follows:

Subpart 1842.74—Earned Value Management

Subpart 1842.74—Earned Value Management

1842.74 Earned Value Management Systems (EVMS).

(a) Earned value is a management technique that relates resource planning to schedules and to technical cost and schedule requirements. All work is planned, budgeted, and scheduled in time-phased ''planned value'' increments constituting a cost and schedule measurement baseline. There are two major objectives of an earned value system: to encourage contractors to use effective internal cost and schedule management control systems; and to permit the customer to be able to rely on timely data produced by those systems for determining product-oriented contract status. Any system used by the contractor in planning and controlling the performance of significant contracts shall be certified as meeting the NASA EVM Criteria (the Criteria), unless waived by the NASA Chief Financial Officer (CFO).

(b) Criteria-based EVMS is required in RDT&E contracts with a total estimated final value of $60 million or more, with a period of performance in excess of one year, and production contracts with a total value of $250 million or more. On RDT&E contracts with a total anticipated value greater than $25 million but less than $60 million, or production contracts less than $250 million, the Criteria normally is not applied. However, noncriteria-based EVM is required on these contracts, and is optional on contracts valued at $25 million or less at the discretion of the contracting officer. NASA Center CFO's have been delegated the authority to waive this requirement for contracts meeting the thresholds established for noncriteria contracts.

(c) When an offeror or contractor is required to provide an EVMS plan to the Government, the contracting officer shall forward a copy of the plan to the cognizant administrative contracting officer (ACO) to obtain the assistance of the ACO in determining the adequacy of the proposed EVMS plan.

1842.7402 Solicitation provision and contract clause.

When the Government requires Earned Value Management, the contracting officer shall insert:

(a) The provision at 1852.242–74, Notice of Earned Value Management System, in solicitations; and

(b) The clause at 1852.242–75, Earned Value Management System, in solicitations and contracts.

PART 1852—SOLICITATION PROVISIONS AND CONTRACT CLAUSES

5. Sections 1852.242–74, 1852.242–75, 1852.242–76, and 1852.242–77 are added to read as follows:

1852.242–74 Notice of Earned Value Management System.

As prescribed in 1842.7402(a), insert the following provision:

Notice of Earned Value Management System

(XXX)

(a) The offeror shall provide documentation that the cognizant Administrative Contracting Officer (ACO) has recognized that the proposed earned value management system (EVMS) complies with the EVMS criteria of NASA Policy Directive (NPD) 9501.3, Earned Value Management, or DoD 5000.2–R, Mandatory Procedures for Major Defense Acquisition Programs and Major Automated Information Systems Acquisition Programs.

(b) If the offeror proposes to use a system that does not meet the requirements of paragraph (a) of this provision, the successful offeror shall submit a plan for compliance with the NASA EVM criteria as described in NPD 9501.3.

(1) The plan shall—

(A) Describe the EVMS the offeror intends to use in performance of the contract;

(B) Distinguish between the offeror's existing management system and modifications proposed to meet the criteria;

(C) Describe the management system and its application in terms of the criteria;

(D) Describe the proposed procedure for administration of the criteria as applied to subcontractors; and

(E) Provide documentation describing the process and results of any third-party or self-evaluation of the system's compliance with EVMS criteria.

(2) The offeror shall provide information and assistance as required by the Contracting Officer to support review of the plan.

(3) The Government will review and evaluate the successful offeror's plan for EVMS, including the selection of subcontracted effort to which EVMS would be applied, within sixty days following contract award.

(c) Offerors shall identify in their proposals the major subcontractors, or major subcontracted effort if major subcontractors have not been selected, planned for application of EVMS.

(End of Provision)

1852.242–75 Earned Value Management Systems.

As prescribed at 1842.7402(b), insert the following clause:

Earned Value Management System

(XXX)

(a) In the performance of this contract, the Contractor shall use an earned value management system (EVMS) that has been recognized by the cognizant Administrative Contracting Officer (ACO) as complying with the criteria provided in NASA Policy Directive 9501.3, Earned Value Management, or DoD 5000.2–R, Mandatory Procedures for Major Defense Acquisition Programs and Major Automated Information Systems Acquisition Programs.

(b) If, at the time of award, the Contractor's EVMS has not been recognized by the cognizant ACO as complying with EVMS criteria or the Contractor does not have an existing cost schedule control system (C/SCS) that has been accepted by the Government, the Contractor shall apply that system to the contract and be prepared to demonstrate to the ACO that its EVMS complies with the EVMS criteria referenced in paragraph (a) of this clause.

(c) The Government may require integrated baseline reviews. Such reviews shall be scheduled as early as practicable and should be conducted within 180 calendar days after contract award, the exercise of significant contract options, or the incorporation of major contract modifications. The objectives of the integrated baseline review are for the Government and the Contractor to jointly assess areas, such as the Contractor's planning, to ensure complete coverage of the statement of work, logical scheduling of the work activities, adequate resourcing, and identification of inherent risks.

(d) Unless a waiver is granted by the ACO, Contractor proposed EVMS changes require approval of the ACO prior to implementation. The ACO shall advise the Contractor of the acceptability of such changes within 30 calendar days after receipt of the notice of proposed changes from the Contractor. If the advance approval requirements are waived by the ACO, the Contractor shall disclose EVMS changes to the ACO and the NASA CO at least 14 calendar days prior to the effective date of implementation.

(e) The Contractor agrees to provide access to all pertinent records and data requested by the ACO or a duly authorized representative. Access is to permit Government surveillance to ensure that the EVMS complies, and continues to comply, with the criteria referenced in paragraph (a) of this clause.

(f) The Contractor shall require the subcontractors specified below to comply with the requirements of this clause: (Insert list of applicable subcontractors)

(End of clause)

1852.242–76 Modified Cost Performance Report.

As prescribed in 1842.7003(b), insert the following clause:

Modified Cost Performance Report

(XXX)

(a) The Contractor shall use management procedures in the performance of this contract that provide for:

(1) Planning and control of costs;

(2) Measurement of performance (value for completed tasks); and

(3) Generation of timely and reliable information for the Modified Cost Performance Report (M/CPR).

(b) As a minimum, these procedures must provide for—

(1) Establishing the time-phase budgeted cost of work scheduled (including work authorization, budgeting, and scheduling), the budgeted cost for work performed, the actual cost of work performed, the budget at completion, the estimate at completion, and provisions for subcontractor performance measurement and reporting;

(2) Applying all direct and indirect costs and provisions for use and control of management reserve and undistributed budget;

(3) Incorporating changes to the contract budget base for both Government directed changes and internal replanning;

(4) Establishing constraints to preclude subjective adjustment of data to ensure performance measurement remains realistic. The total allocated budget may exceed the contract budget base only after obtaining prior written approval of the NASA Contracting Officer. For cost-reimbursement contracts, the contract budget base shall exclude changes for cost growth increases, other than for authorized changes to the contract scope; and

(5) Establishing the capability to accurately identify and explain significant cost and schedule variances, both on a cumulative basis and a projected-at-completion basis.

(c) The Contractor may use a cost/schedule control system that has been recognized by the cognizant Administrative Contracting Officer (ACO) as complying with the earned value management system criteria provided in NASA Policy Directive 9501.3, Earned Value Management, or DoD 5000.2–R, Mandatory Procedures for Major Defense Acquisition Programs and Major Automated Information Systems Acquisition Programs.

(d) The Government may require integrated baseline reviews. Such reviews shall be scheduled as early as practicable and should be conducted within 180 calendar days after contract award, the exercise of significant contract options, or the incorporation of major modifications. The objectives of the integrated baseline review are for the Government and the Contractor to jointly assess areas, such as the Contractor's planning, to ensure complete coverage of the statement of work, logical scheduling of the work activities, adequate resourcing, and identification of inherent risks.

(e) The Contractor shall provide access to all pertinent records, company procedures, and data requested by the ACO, or authorized representative, to—

(1) Show proper implementation of the procedures generating the cost and schedule information being used to satisfy the M/CPR contractual data requirements to the Government; and

(2) Ensure continuing application of the accepted company procedures in satisfying the M/CPR data item.

(f) The Contractor shall submit any substantive changes to the procedures and their impact to the ACO for review.

(g) The Contractor shall require a subcontractor to furnish M/CPR in each case where the subcontract is other than firm-fixed-price, time-and-materials, or labor-hour, is 12 months or more in duration, and has critical or significant tasks related to the prime contract. Critical or significant tasks shall be identified by either the Government or the Contractor. Each subcontractor's reported cost and schedule information shall be incorporated into the Contractor's M/CPR.

(End of clause)

1852.242–77 Modified Cost Performance Report Plans.

As prescribed in 1842.7003(c), insert the following provision;

Modified Cost Performance Plans

(XXX)

(a) The offeror shall submit in its proposal a written summary of the management procedures it will establish, maintain, and use in the performance of any resultant contract to comply with the requirements of the clause at 1852.242–74 Modified CostPerformance Report.

(b) If the offeror proposes to use a cost/schedule control system that has been recognized by the cognizant Administrative Contracting Officer as complying with the earned value management system criteria of NASA Policy Directive 9501.3, Earned Value Management, or DoD 5000.2–R, Mandatory Procedures for Major Defense Acquisition Programs and Major Automated Information Systems Acquisition Programs, the offeror may submit a copy of the documentation of such recognition instead of the written summary required by paragraph (a) of this provision.

(End of provision)

[FR Doc. 98–30554 Filed 11–13–98; 8:45 am]

BILLING CODE 7510–01–P

DEPARTMENT OF THE INTERIOR

Fish and Wildlife Service

50 CFR Part 17

Endangered and Threatened Wildlife and Plants; 90-day Finding on a Petition To List the Redband Trout in the Great Basin as Threatened or Endangered

AGENCY: Fish and Wildlife Service, Interior.

ACTION: Notice of 90-day petition finding and initiation of status review.

SUMMARY: We (the U.S. Fish and Wildlife Service) announce a 90-day finding for a petition to list the redband trout (*Oncorhynchus mykiss* ssp.) in the Great Basin as an endangered or threatened species throughout its range, pursuant to the Endangered Species Act of 1973 (16 U.S.C. 1531 *et seq.*), as amended (Act). We find that the petition presents substantial scientific or commercial information indicating that listing at the level of the Great Basin population of redband trout as a whole or at the level of each of the six sub-populations may be warranted. We are initiating a status review to determine if listing any or all of the subpopulations is warranted. All further reference in this notice to redband trout in the Great Basin will identify this fish as the Great Basin redband trout.

DATES: The finding announced in this document was made on November 6, 1998. To be considered in the 12-month finding for this petition, information and comments should be submitted to us by January 15, 1999.

ADDRESSES: Information, written comments and materials, or questions concerning this petition should be submitted to the Supervisor, U.S. Fish and Wildlife Service, 2600 SE 98th Avenue, Suite 100, Portland, Oregon 97266. The petition finding, supporting data, and comments are available for public inspection, by appointment, during normal business hours at the above address.

FOR FURTHER INFORMATION CONTACT: Antonio Bentivoglio, biologist, at the above address or telephone 503–231–6179.

SUPPLEMENTARY INFORMATION:

Background

Section 4(b)(3)(A) of the Endangered Species Act of 1973, as amended (Act) (16 U.S.C. 1531 *et seq.*), requires that we make a finding on whether a petition to list, delist, or reclassify a species, presents substantial scientific or commercial information to demonstrate that the petitioned action may be warranted. This finding is to be based on all information available to us at the time the finding is made. To the maximum extent practicable, this finding is to be made within 90 days of receipt of the petition, and the finding is to be published promptly in the **Federal Register**. If we find substantial information present, we are required to promptly commence a review of the status of the species if one has not already been initiated under our internal candidate assessment process.

We have made a 90-day finding on a petition to list the Great Basin redband trout (*Oncorhynchus mykiss* ssp.). The petition, dated September 4, 1997, was submitted by the Oregon Natural Desert Association, Oregon Trout, Native Fish Society, and Oregon Council of Trout Unlimited, and was received by us on September 8, 1997. The petition requests the listing of the indigenous redband trout in the Great Basin as endangered or threatened throughout its range in southeastern Oregon, northeastern California, and northwestern Nevada, in particular the redband trout populations in Catlow, Fort Rock (Silver Lake), Harney (Malheur Lake), Goose Lake, Warner, and Chewaucan (Lake Abert/Summer Lake) basins (together these six closed basins make up the Great Basin as described in the petition). The petition also requests the designation of critical habitat concurrent with listing. The letter clearly identified itself as a petition and contained the names, signatures, and addresses of the petitioners. Accompanying the petition was supporting information relating to taxonomy, ecology, threats, and past and present distribution of the Great Basin redband trout.

The petition, supporting documentation, and other information available in our files have been reviewed to determine if substantial information is available to indicate that the requested action may be warranted. On the basis of the best scientific and commercial information available, we find the petitioned action may be warranted for the Great Basin redband trout because of threats to existing populations and declines in population numbers. A status review will be commenced in accordance with the final listing priority guidance for fiscal years 1998 and 1999 (63 FR 25502) published on May 8, 1998.

At the time the petition was received, we were operating under the final listing priority guidance for fiscal year 1997, published December 5, 1996 (61 FR 64475), and the extension of that listing priority guidance published October 23, 1997 (62 FR 55268). The fiscal year guidance clarified the order in which we would continue to process the backlog of rulemakings following two related events—(1) the lifting, on April 26, 1996, of the moratorium on final listings imposed on April 10, 1995 (Public Law 104–6); and (2) the restoration of significant funding for listing through passage of the omnibus budget reconciliation law on April 26, 1996, following severe funding constraints imposed by a number of continuing resolutions between November 1995, and April 1996. Based on biological considerations, the guidance established a ''multi-tiered approach that assigned relative priorities, on a descending basis, to actions to be carried out under section 4 of the Act'' (61 FR 64479). The guidance called for giving highest priority (Tier 1) to handling emergency situations, second highest priority (Tier 2) to resolving the listing status of the outstanding proposed listings, third priority (Tier 3) to resolving the conservation status of candidate species and processing administrative findings on petitions, and lowest priority (Tier 4) to preparation of proposed or final critical habitat designations, and processing delistings and reclassifications from endangered to threatened status. On November 10, 1997, we notified the petitioners that based on the listing priority guidance for fiscal year 1997, the processing of their petition fell under Tier 3. We further indicated that our Oregon State Office (which was assigned the

responsibility for processing the petition) would continue to direct personnel and budget toward accomplishment of ongoing Tier 2 and Tier 3 activities for species judged to be in greater need of the Act's protection than Great Basin redband trout. As these higher priority activities were accomplished, and personnel and funds became available however, we would proceed with the 90-day finding on the petition for Great Basin redband trout.

On May 8, 1998, final listing priority guidance for fiscal years 1998 and 1999 (63 FR 25502) was published. This new guidance changed the four tier priority system to a three-tier system. Under the three tier system, first priority (Tier 1) is completion of emergency listings for species facing the greatest risk to their well-being. Second priority (Tier 2) is processing final decisions on pending proposed listings; processing new proposals to add species to the lists; processing 90-day and 12-month administrative findings on petitions to add species to the lists and petitions to delist or reclassify species; and delisting or downlisting actions on species that have achieved or are moving toward recovery. Third priority (Tier 3) is processing petitions for critical habitat designations and preparing proposed and final critical habitat designations. Under this new guidance, the processing of this petition finding is a Tier 2 action.

Both rainbow trout and redband trout belong in the species *Oncorhynchus mykiss.* The generally accepted geographic boundary between rainbow and redband trout is the crest of the Cascade Mountains. Trout in the species *O. mykiss* found east of the crest of the Cascade Mountains are referred to as interior redband trout and those west of the crest as coastal rainbow trout. Behnke (1992) clearly includes Great Basin redband trout as part of the interior redband trout complex but states that ''their classification is a matter of personal preference and professional judgment.'' Williams et al. (1989) recognize three subspecies within the Great Basin redband trout complex—the Catlow Valley redband trout (*O. mykiss* ssp.), Goose Lake redband trout (*O. mykiss* ssp.) and Warner Valley redband trout (*O. mykiss* ssp.), but did not name them using subspecific designation. Other researchers have stated that although the Great Basin redband trout have no subspecific designation, any or all of the basins might contain distinct subspecies (Williams et al. 1989, Behnke 1992, Kowtow 1995).

Although Great Basin redband trout are not officially described as a subspecies, the petitioners supply supporting information for the recognition of the Great Basin redband trout as a Distinct Vertebrate Population Segment (DPS). In accordance with our policy on DPSs, for a taxon to be considered a DPS, two elements must be considered—discreteness and significance of the taxon (February 7, 1996; 61 FR 4721). Discreteness refers to the separation of a population segment from other members of the species based on either (1) physical, physiological, ecological, or behavioral factors, or (2) international boundaries that result in significant differences in exploitation control, habitat management, conservation status, or regulatory mechanisms. Great Basin redband trout, in each of the six basins, are physically isolated from each other and are isolated from outside aquatic influences by the presence of mountain ranges. Because of this, the redband trout in each of the six basins would be considered discrete.

Significance refers to the biological and ecological importance or contribution of a discrete population to the species throughout its range. Examples of significance include—(1) persistence of a discrete population segment in a unique or unusual ecological setting; (2) evidence that loss of a discrete segment would result in a significant gap in the range of the species; (3) evidence that the discrete population segment represents the only surviving natural occurrence of a taxon that may be more abundant elsewhere as an introduced population outside its historic range; or, (4) evidence that the discrete segment differs markedly from other populations of the species in genetic characteristics (61 FR 4721). The petitioners provide the following justification relating to example (1). Among all *Oncorhynchus mykiss,* Great Basin redband trout are the only group that exists in isolated desert watersheds that have been physically isolated from other watersheds for thousands of years. Equally important is the fact that these fish are adapted to harsh, high desert environments characterized by hot summers, cold winters, large diurnal temperature fluctuations, drought, intermittent stream flows and alkali waters. The petitioners provide the following justification relating to example (2). Hatchery rainbow trout stocked in any of the six basins, do not appear to survive long enough to reproduce. This appears to be due to the unique ecologically harsh parameters found in these six basins. If Great Basin redband trout are lost from these basins there is little likelihood that hatchery stocked trout would be able to survive in this area, thus a significant gap in the range of the species would occur. The petitioners provide the following justification relating to example (4). Publications by Berg (1987), Phelps et al. (1996), and Currens (1997) indicate evidence of genetic differences among the populations of redband trout in the Great Basin. Currens' (1997) allozyme data appear to indicate that, for the Great Basin redband trout, each basin's redband trout population is genetically distinct.

For these reasons, we believe that the Great Basin redband trout should be considered discrete and significant. Whether all six basins are one DPS or six separate DPSs has yet to be determined, and would be a focal issue of the status review.

In most basins, interior redband trout have adfluvial life histories, migrating between highly productive rearing areas in lakes with adjacent marshes and spawning areas in streams, or between productive marshes and streams. Marshes and lakes provide connections among various stream populations. During drought episodes that cause complete desiccation of the lakes and marshes, streams provided refuges for populations that return to the lakes when they refill (Kowtow 1995). Great Basin redband trout abundance is generally correlated with healthy riparian vegetation, presence of undercut banks, large woody debris and general stream habitat complexity. In-stream habitat varies from higher gradient channels to lakes and marshes with spawning occurring in loose gravel and well-oxygenated water. Water temperatures should not exceed 21 degrees Celsius and those above 26.6 degrees Celsius can be lethal. The smaller stream-resident redband are generally insectivorous while larger lake-resident fishes eat insects and small fishes (Kunkel 1976, Lee 1997, Bowers et al. 1979, Charlon et al 1970).

The petition contains a substantial amount of information relating to the decline of Great Basin redband trout. The petitioners assert that the Great Basin redband trout has evolved in and is therefore adapted to the harsh Great Basin environment. However, human impacts have decreased suitable habitat, which has led to the decline of Great Basin redband trout. Although exact historic distribution is unclear, the petitioners cite references stating that declines have occurred (Kowtow 1995, Dambacher and Stevens 1996, Bowers and Perkins 1996, Lee et al. 1997).

The petitioners indicate that declines in Great Basin redband trout have been most strongly associated with the destruction, modification, and

curtailment of this trout's aquatic habitat and range through degradation of riparian and stream habitat. The petition provides information regarding effects of habitat degradation and its relationship to Great Basin redband trout. The petitioners indicate that habitat degradation from improper livestock grazing practices, irrigation, stream channel manipulation, and timber harvest affects redband trout by increasing erosion of banks, increasing sedimentation, reducing stream bottom complexity, widening and shallowing of the stream cross section, increasing stream temperature, reducing streamside vegetation, fragmenting populations, dewatering streams, reducing watertables, and reducing the amount of large woody debris (Fleichner 1994, Bowers et al. 1979, Lee et al. 1997, USDA 1996). The petitioners present the effects of such degradation for each individual basin and as widespread occurrences in the Great Basin.

The petitioners provide evidence that introgression and competition by introduced fishes are threats to the continued existence of Great Basin redband trout. Introgression (i.e., introduction of a gene from one gene complex into another) resulting from Great Basin redband trout interbreeding with stocked hatchery rainbows reduces the native redband offspring's ability to survive harsh Great Basin conditions; introduced non-native fishes (both hatchery rainbows and exotic species like brook trout, carp, bass, catfish and crappie) compete with native redband for resources and can degrade the habitat (Hosford and Pribyl 1983, Kowtow 1995, Lee et al. 1997).

The petitioners also assert that threats to Great Basin redband trout remain because of the inadequacy of existing regulations. Emergency fishing regulations, conservation/protective designations by government agencies and professional societies, water quality protection measures, and other current and planned conservation measures have failed to stop the decline of Great Basin redband trout.

We reviewed the petition, as well as other available information, published and unpublished studies and reports, and agency files. On the basis of the best scientific and commercial information available, we find that there is sufficient information to indicate that listing of the Great Basin redband trout as threatened or endangered, throughout all or parts of its range, may be warranted. The petitioners also requested that critical habitat be designated for this species. Designation of critical habitat is not petitionable under the Act. However, if the 12-month finding determines that the petitioned action to list the Great Basin redband trout is warranted, then the designation of critical habitat would be addressed in the subsequent proposed rule.

Information Solicited

When we make a finding that substantial information exists to indicate that listing a species may be warranted, we are also required to promptly commence a review of the status of the species. To ensure that the status review is complete and based on the best available scientific and commercial data, we are soliciting information concerning the following—(1) information on historic distribution and information on current distribution in each basin; (2) habitat conditions in each basin; (3) basic biology including age-frequency distribution of the population(s) in each basin; (4) ongoing efforts to protect Great Basin redband trout and their habitat; (5) threats to the species and its habitat; (6) any information regarding distinct vertebrate population segment status of Great Basin redband trout as one unit or as six individual units; and (7) metapopulation dynamics and interactions between lake and stream morph fishes. In addition to information pertaining to the Great Basin redband trout, we are requesting any information in categories 1–7, above, that relates to Interior redband trout. ''Interior redband trout'' is a common term referring to any rainbow/redband type trout found east of the crest of the Cascade Mountains.

References Cited

A complete list of all references cited herein is available on request from the Oregon State Office (See **ADDRESSES** section).

Author

The primary author of this document is Antonio Bentivoglio, biologist, Oregon State Office, U.S. Fish and Wildlife Service (see **ADDRESSES** section).

Authority

The authority for this action is the Endangered Species Act of 1973 as amended (16 U.S.C. 1531 *et seq.*).

Dated: November 6, 1998.

Jamie Rappaport Clark,

Director, Fish and Wildlife Service.

[FR Doc. 98–30541 Filed 11–13–98; 8:45 am]

BILLING CODE 4310–55–P

DEPARTMENT OF THE INTERIOR

Fish and Wildlife Service

50 CFR Part 17

Endangered and Threatened Wildlife and Plants; 90-Day Finding for a Petition To List Agave Eggersiana and Solanum Conocarpum as Endangered

AGENCY: Fish and Wildlife Service, Interior.

ACTION: Notice of 90-day petition finding and initiation of status review.

SUMMARY: The Fish and Wildlife Service (Service) announces a 90-day finding for a petition to list two plants, *Agave eggersiana* and *Solanum conocarpum* (marron bacora), under the Endangered Species Act of 1973, as amended. The Service finds that the petition presents substantial information indicating that listing these species may be warranted. A status review is initiated.

DATES: The finding announced in this document was made on October 16, 1998. To be considered in the 12-month finding for this petition, information and comments should be submitted to the Service by January 15, 1999.

ADDRESSES: Questions, comments, data, or information concerning this petition should be sent to the Field Supervisor, Boquerón Field Office, U.S. Fish and Wildlife Service, P.O. Box 491, Boquerón, Puerto Rico 00622. The petition finding, supporting data, and comments are available for public inspection, by appointment, during normal business hours at the above address.

FOR FURTHER INFORMATION CONTACT: Ms. Susan Silander (see **ADDRESSES** section); telephone 787/851–7297, facsimile 787/851–7440.

SUPPLEMENTARY INFORMATION:

Background

Section 4(b)(3)(A) of the Endangered Species Act (Act) of 1973, as amended (16 U.S.C. 1531 *et seq.*), requires that the Service make a finding on whether a petition to list, delist, or reclassify a species presents substantial scientific or commercial information to demonstrate that the petitioned action may be warranted. This finding is to be based on all information available to the Service at the time the finding is made. To the maximum extent practicable, the finding shall be made within 90 days following receipt of the petition and promptly published in the **Federal Register**. Following a positive finding, section 4(b)(3)(B) of the Act requires the Service to promptly commence a status review of the species.

The Service published Listing Priority Guidance for Fiscal Years 1998 and 1999 on May 8, 1998 (63 FR 25502). The guidance clarifies the order in which the Service will process rulemakings giving highest priority (Tier 1) to processing emergency rules to add species to the Lists of Endangered and Threatened Wildlife and Plants (Lists); second priority (Tier 2) to processing final determinations on proposals to add species to the Lists, processing new proposals to add species to the Lists, processing administrative findings on petitions (to add species to the Lists, delist species, or reclassify listed species), and processing a limited number of proposed or final rules to delist or reclassify species; and third priority (Tier 3) to processing proposed or final rules designating critical habitat. Processing of this petition finding is a Tier 2 action.

The Service has made a 90-day finding on a petition to list two plants, *Agave eggersiana* and *Solanum conocarpum* as endangered. The petition, dated November 20, 1996, was submitted by the Department of Planning and Natural Resources, Division of Fish and Wildlife, of the U.S. Virgin Islands.

Agave eggersiana, of the family Agavaceae (century plant family), is known only from the island of St. Croix of the U.S. Virgin Islands. Members of the genus *Agave* are robust perennial herbs with large succulent or fibrous leaves with a stiff spine at the apex. The inflorescence (mode of flower bearing) is paniculate, racemose or spikelike, often from 5 to 7 meters (m) (16 to 23 feet (ft)) in height, and the flowers are borne in umbellate (flat-topped inflorescence whose rays arise from a common point) or cymose (a broad, more or less flat-topped flower whose central flowers open first) clusters. Flowers are large, with a funnelform or tubular yellow or green perianth. The fruit is a many-seeded capsule with flattened black seeds. *Agave eggersiana* is currently known from an apparently small number of wild and cultivated plants on privately owned land in St. Croix, (D. Nellis, pers. comm. 1997). It is known to be in cultivation in St. Croix and at the Fairchild Botanical Garden in Florida. Habitat on the island of St. Croix is under intense pressure for both residential and tourism development (Acevedo-Rodriguez 1996, R. Boulon and B. Kojis, pers. comm. 1996). *Agave eggersiana* was considered a category 2 candidate for listing as endangered or threatened by the Service, as published in the Notice of Review dated September 30, 1993 (58 FR 51144). At that time, a category 2 species was one for which the Service had information that proposing as endangered or threatened may be appropriate but for which sufficient information was not currently available to support a proposed rule. Designation of category 2 species was discontinued in the February 28, 1996, Notice of Review (61 FR 7596).

Solanum conocarpum (marron bacora), of the family Solanaceae, is known only from the island of St. John of the U.S. Virgin Islands. *Solanum conocarpum* is an unarmed shrub which may reach 3 m (9.8 ft) in height. Leaves are from 3.5 to 7 centimeters (cm) (1.4 to 2.7 inches (in)) long and 1.6 to 3 cm (.62 to 1.2 in) wide, oblong-elliptic or oblanceolate (a leaf broader at the distal third than at the middle), coriaceous (leathery texture), glabrous (not hairy), with a yellowish midvein. The plant's young parts are densely covered with appressed (flatly pressed), multicellular hairs. The flowers are usually paired and in nearly sessile (not stalked) lateral or terminal cymes (flat-topped flower cluster). The corolla (inner circle of floral envelopes) is light violet, greenish at the center and about 2 cm (.78 in) wide. The fruit, a berry, is ovoid-conical, 2 to 3 cm (.78 to 1.2 in) long, and turns from green to yellow (Acevedo-Rodriguez 1996).

Solanum conocarpum is only known from a few old collections and from two recent collections. Old collections and reports indicate that the species may have occurred on St. Thomas and one herbarium specimen from Virgin Gorda has been located; however, the identification is questionable since the specimen has no flowers or fruit. Only two plants are currently known to exist and both are located on the island of St. John. One individual is found within the Virgin Islands National Park (Park) and the other is located on privately owned land (Acevedo-Rodriguez 1996, Woodbury and Weaver 1987, R. Boulon and B. Kojis, pers. comm. 1996). Privately owned land on St. John is under intense pressure for residential and tourism development. One individual is known from the Park, and while the National Park Service is aware of its presence, management practices such as trail and facility maintenance and construction may affect the species. Both feral pigs and donkeys are present in the Park and may adversely impact the vegetation. Information provided by the Virgin Island Department of Planning and Natural Resources indicates that the species may be functionally dioecious (male and female flowers on different plants), thereby making its rarity even more critical. *Solanum conocarpum* was among the plants being considered as a category 1 candidate by the Service, as published in the Notices of Review dated September 27, 1985 (50 FR 39526) and February 21, 1990 (55 FR 6184). Category 1 candidates were species for which the Service had substantial information supporting the appropriateness of proposing to list them as endangered or threatened. In the Notice of Review of September 30, 1993 (58 FR 51144), the species was reclassified to category 2 due to a lack of available information on the species distribution and abundance.

The Service has reviewed the petition, its accompanying information, and other literature and information in our files. On the basis of the best scientific and commercial information available, the Service finds that the petition presents substantial information that listing these two plant species may be warranted. The finding is based on information which indicates that the species are restricted to very few localities and subject to potential impacts from both residential and tourism development. The Service is in need of additional information on the species, including its distribution and abundance, biology, the location of any additional populations, and current or planned activities in the areas where the plants occur and there possible impacts. Within nine months from the date the petition finding is made, a finding will be made as to whether listing *Agave eggersiana* and *Solanum conocarpum* is warranted, as required by section 4(b)(3)(B) of the Act.

References Cited

Acevedo-Rodriguez, Pedro. 1996. Flora of St. John. The New York Botanical Garden. Bronx, New York. 581 pp.

Center for Plant Conservation. 1992. Report on the Rare Plants of Puerto Rico. Missouri Botanical Garden, St. Louis, Missouri.

Woodbury, R.O. and P.L. Weaver. 1987. The Vegetation of St. John and Hassel Island, U.S. Virgin Islands. U.S. Department of the Interior, National Park Service. 101 pp.

Author

The primary author of this document is Susan Silander, Boquerón Field Office (see **ADDRESSES** section).

Authority

The authority for the action is the Endangered Species Act (16 U.S.C. 1531 *et seq.*).

Dated: October 16, 1998.

Jamie Rappaport Clark,

Director, Fish and Wildlife Service.

[FR Doc. 98–30540 Filed 11–13–98; 8:45 am]

BILLING CODE 4310–55–P

DEPARTMENT OF THE INTERIOR

Fish and Wildlife Service

50 CFR Part 17

Endangered and Threatened Wildlife and Plants; 90-Day Finding for a Petition to List Silene spaldingii (Spalding's catchfly) as Endangered or Threatened

AGENCY: Fish and Wildlife Service, Interior.

ACTION: Notice of 90-day petition finding and initiation of status review.

SUMMARY: We (U.S. Fish and Wildlife Service) are announcing a 90-day finding on a petition to list *Silene spaldingii* (Spalding's catchfly) under the Endangered Species Act of 1973, as amended (Act). We find that the petition presents substantial information indicating that listing this plant species may be warranted. With publication of this finding, we are initiating a status review for this species, which occurs in southeastern Washington, adjacent portions of Idaho and Oregon, and northwestern Montana.

DATES: The finding announced in this document was made on November 5, 1998. To be considered in the 12-month finding for this petition, information and comments concerning this finding should be submitted to us by January 15, 1999.

ADDRESSES: Data, information, comments, or questions concerning this finding should be submitted to the Supervisor, Snake River Basin Office, U.S. Fish and Wildlife Service, 1387 S. Vinnell Way, Room 368, Boise, Idaho 83709. The petition finding and supporting data are available for public inspection, by appointment, during normal business hours at the above address.

FOR FURTHER INFORMATION CONTACT: Edna Rey-Vizgirdas, botanist, at the above address (telephone: 208/378–5243).

SUPPLEMENTARY INFORMATION:

Background

Section 4(b)(3)(A) of the Endangered Species Act (Act) of 1973, as amended (16 U.S.C. 1531 *et seq.*), requires that we make a finding on whether a petition to list, delist, or reclassify a species presents substantial scientific or commercial information indicating that the requested action may be warranted. This finding is to be based on all information available to us at the time the finding is made. To the maximum extent practicable, this finding is to be made within 90 days following receipt of the petition, and the finding is to be published promptly in the **Federal Register**. If the finding is that substantial information was presented, we also are required to promptly commence a review of the status of the species involved, if one has not already been initiated under our internal candidate assessment process.

The processing of this petition conforms with our listing priority guidance published in the **Federal Register** on May 8, 1998 (63 FR 25502). This guidance clarifies the order in which we will process rulemakings giving highest priority (Tier 1) to processing emergency listings, second priority (Tier 2) to resolving the listing status of outstanding proposed listings, resolving the conservation status of candidate species, processing administrative findings on petitions to add species to the Lists of Endangered and Threatened Wildlife and Plants, or reclassify species from threatened to endangered status, and delisting or downlisting (reclassifying from endangered to threatened status) actions. The processing of critical habitat designations are the lowest priority actions and are placed in Tier 3. The processing of this petition finding is a Tier 2 action.

We have made a 90-day finding on a petition to list *Silene spaldingii* (Spalding's catchfly). The petition, dated February 23, 1995, was submitted by the Biodiversity Legal Foundation (BLF) of Boulder, Colorado, the Montana and Washington Native Plant Societies, and Mr. Peter Lesica of Missoula, Montana (BLF et al. 1995). The petition requested listing of *Silene spaldingii* within the conterminous United States as threatened or endangered under the Act, and was received by us on February 27, 1995. The petition requested that the species be listed as threatened or endangered across its entire known historic range, which includes southeastern Washington, adjacent portions of Oregon and Idaho, and northwestern Montana. The petition submitted information stating that this species is threatened by improper livestock grazing practices, competition with non-native and woody vegetation, improper herbicide application, inbreeding depression, and fire suppression.

A member of the pink family (Caryophyllaceae), *Silene spaldingii* is a long-lived perennial herb that grows 20 to 40 centimeters (cm) (8 to 16 inches (in)) tall (Lesica 1993, Lesica and Heidel 1996). It has four to seven pairs of lance-shaped leaves, and a spirally arranged inflorescence (flower cluster) consisting of small greenish-white flowers which range from 1 to 2 cm (0.4 to 0.8 in) long (Lesica 1993, Lesica and Heidel 1996). The foliage is lightly to densely covered with sticky hairs. The species was originally described by Watson (1875).

The distribution and habitat of *S. spaldingii* are limited. This species is primarily restricted to slopes, flats, or swales (marshy lands) in mesic grasslands or steppe vegetation of the Palouse region in southeastern Washington, northwestern Montana, and adjacent portions of Idaho and Oregon; one plant was located in British Columbia, directly adjoining a Montana population. Large-scale ecological changes in the Palouse region over the past several decades, including agricultural conversion, changes in fire frequency, and alterations of hydrology, have resulted in the decline of numerous sensitive plant species including *S. spaldingii* (Tisdale 1961). More than 98 percent of the original Palouse prairie habitat has been lost or modified by agricultural conversion, grazing, invasion of non-native species, altered fire regimes, and urbanization (Noss et al. 1995).

Silene spaldingii is currently known from approximately 94 occurrences or sites in Idaho, Oregon, Montana, and Washington; only 12 percent of these (11 sites) contain more than 100 individuals (Heidel 1995, Lichthardt 1997, Idaho Conservation Data Center 1998, Montana Natural Heritage Program (MNHP) 1998, Oregon Natural Heritage Program (ONHP)1998, Washington Natural Heritage Program (WNHP) 1998). This species is State listed as endangered in Oregon, and threatened in Washington. In Idaho and Montana, there are no State Endangered Species Acts, but *Silene spaldingii* is listed by the Idaho Conservation Data Center and MNHP as very rare (Lesica and Heidel 1996, Lichthardt 1997, Idaho Conservation Data Center 1998, MNHP 1998, ONHP 1998, WNHP 1998). The estimated total number of individuals for *S. spaldingii* is fewer than 14,000 (Heidel 1995).

Habitat degradation and competition associated with the invasion of exotic plant species continues to threaten this species, including sites on public lands. For example, the population of *S. spaldingii* in the Kramer Palouse Biological Study Area in Washington declined from 147 to 10 individuals during the period from 1981 to 1994,

apparently due to encroachment by the exotic yellow star-thistle (*Centaurea solstitialis*) and woody vegetation (Heidel 1995). Exotic plant species compete for water, nutrients, and light, in addition to competition for pollinators (Lesica and Heidel 1996). Herbicide application to reduce or eliminate the exotics has the potential to kill non-target species such as *S. spaldingii* (BLF et al.1995).

Fire suppression apparently contributes to a decline in suitable habitat conditions for *S. spaldingii* (B. Heidel, MNHP, pers. comm. 1998), facilitating the encroachment of woody vegetation and other plant species. Fire may be necessary for survival of *S. spaldingii* populations; Lesica (1992) found that recruitment of *S. spaldingii* was enhanced following fire.

Silene spaldingii reproduces by seed and requires bumblebees to pollinate the flowers. Competition for pollinators has been noted at a number of *S. spaldingii* sites that have large populations of other flowering plant species. Reduced pollinator activity has the potential to adversely affect fertility and fitness of the species, resulting in inbreeding depression and declines in small populations (Lesica 1993, Lesica and Heidel 1996).

Climatic fluctuations can also adversely affect this species, and contribute to the extirpation of small populations. For example, a *S. spaldingii* population at Wild Horse Island (Montana) declined from approximately 250 to 10 plants, due primarily to drought conditions in the late 1980's (BLF et al. 1995, Heidel 1995, Lesica 1988). Such reductions in population size are often exacerbated by other factors including pollinator competition and poor reproductive success.

We have reviewed the petition, the literature cited in the petition, and other information available in our files. On the basis of the best scientific and commercial information available, we find that the petition presents substantial information that listing of *Silene spaldingii* may be warranted. The available information suggests that the species' restricted range and small population size increase the likelihood of extirpation from random or localized events such as trampling, herbicide application, drought, competition, and reduced pollinator activity. At least 25 *S. spaldingii* populations may have been extirpated; two of these are known to have been extirpated since 1991 (Heidel 1995, Lichthardt 1997, MNHP 1998, WNHP 1998).

We hereby announce the formal review of the species' status pursuant to this 90-day finding. We request any additional data, comments, and suggestions from the public, other concerned governmental agencies, the scientific community, industry, or any other interested parties concerning the status of *S. spaldingii.* Of particular interest, is information regarding the existence and status of additional populations, environmental factors determining distribution, pollinators, and genetic variability in known populations.

References Cited

A complete list of all references cited herein, as well as others, is available upon request from the Snake River Basin Office (see **ADDRESSES** section).

Author

The primary author of this document is Edna Rey-Vizgirdas, Snake River Basin Office (see **ADDRESSES** section).

Authority

The authority for this action is the Endangered Species Act (16 U.S.C. 1531 *et seq.*).

Dated: November 5, 1998.

Jamie Rappaport Clark,

Director, U.S. Fish and Wildlife Service.

[FR Doc. 98–30539 Filed 11–13–98; 8:45 am]

BILLING CODE 4310–55–P

Notices

Federal Register

Vol. 63, No. 220

Monday, November 16, 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 AGRICULTURE

Forest Service

Pretty Tree Bench Prescribed Burn Project, Dixie National Forest, Garfield County, UT

AGENCY: Forest Service, USDA.

ACTION: Notice of Intent to prepare an environmental impact statement.

SUMMARY: Notice is hereby given that the Forest Service, USDA, will prepare an environmental impact statement (EIS) for a Forest Service proposal to implement management prescribed burning and cutting and a travel management plan for the Pretty Tree Bench Project Area of the Escalante Ranger District, Dixie National Forest. The area is located approximately 14 miles northeast of Escalante, Utah and approximately 1 mile west of Boulder, Utah. The project would be implemented in accordance with direction in the Dixie National Forest Land and Resource Management Plan (LRMP).

The agency gives notice that the environmental analysis process is underway. Interested and potentially affected persons, along with local, state, and other federal agencies, are invited to participate and contribute to the environmental analysis. The Dixie National Forest invites written input regarding issues specific to the proposed action.

DATES: Written comments to be considered in the preparation of the Draft Environmental Impact Statement (DEIS) should be submitted by December 14, 1998.

ADDRESSES: Submit written comments to: District Ranger, Escalante Ranger District, 755 West Main, P.O. Box 246, Escalante, Utah 84726.

FOR FURTHER INFORMATION CONTACT: Direct questions about the proposed action and EIS to Kevin R. Schulkoski, District Ranger, 435–826–5400.

SUPPLEMENTARY INFORMATION: The proposed project covers an analysis area of approximately 33,938 acres of National Forest System Lands. There are approximately 2,749 acres of wilderness and an additional 1,459 acres of RARE II Inventoried Roadless Area (IRA) within the project boundary. No treatment activities are planned within the wilderness acres. In the RARE II Inventoried Roadless Area (IRA), there would be management prescribed burning on 83 acres of ponderosa pine, management prescribed cutting and burning on 85 acres of pinyon-juniper, and management prescribed burning on 24 acres of sagebrush. No roads would be constructed or reconstructed in the IRA. Of the several thousand additional acres of unroaded/undeveloped land within the project boundary, approximately 60% were included in unroaded/undeveloped inventory in 1983/1984 and also included in the 1997 update prepared by the Dixie National Forest.

The proposed actions, including travel management and road closures, would occur in Sections 8, 17, 18, 19, 20, 21, 28, 29, 30, 31, 32, and 33, Township 32 South, Range 4 East; Sections 23, 24, 25, 26, 27, 28, 33, 34, 35, and 36, township 32 South, Range 3 East; Sections 1, 2, 3, 4, 9, 10, 11, 12, 15, 25, 35, and 36, Township 33 South, Range 3 East; and Sections 4, 5, 6, 7, 8, 9, 10, 14, 15, 16, 17, 18, 19, 20, 21, 22, 28, 29, 30, 31, 32, 33, and 34, Township 33 South, Range 4 East, Salt Lake Base Meridian, Garfield County, Utah.

The Proposed Action would implement management direction and projects identified in the LRMP. This project EIS will be tiered to the LRMP EIS, which provides goals, objectives, standards and guidelines for the various activities and land allocations on the Forest.

The purpose of the Proposed Action is to provide the appropriate levels of prescribed fire and other management actions to create healthier vegetation conditions, enhance elk and deer winter range, reduce ground and ladder fuels in ponderosa pine and mixed conifer types and reduce density within the pinyon/juniper. In addition, the proposal includes a travel management plan which would close some roads year round and some roads on a seasonal basis. An Off-Highway Vehicle (OHV) loop served by an existing trailhead would be included. Under the proposal, no roads would be constructed or reconstructed and there would be no management activities in the Box-Death Hollow Wilderness Area. The treatments are designed to move the project area closer to proper functioning condition. The proposed actions would be located in Management Areas 7A (Wood Products and Utilization), 6A (Livestock Grazing), 2A (Semi-primitive Recreation), 5A (Big Game Winter Range), 8A2 (Box Death Hollow CO2) and 2B (Rural and Roaded Recreation Opportunities).

Under the Proposed Action, approximately 200–250 acres of sagebrush would be burned and reseeded. Where needed, to ensure that management prescribed fire will carry in the sagebrush component, pinyon-juniper would be cut and scattered. This activity is needed to increase the sagebrush age class variety which is presently mature to over-mature and being succeeded by pinyon and juniper.

Approximately 450–500 acres of oak would be burned with a repeat burn in 3–5 years if necessary. This activity is needed to move about ⅓ of the existing oak vegetation out of a single aged stand structure.

The Proposed Action would cut and burn 3,000–3,500 acres of pinyon-juniper with follow-up reseeding to control erosion. This stand replacement activity is needed because the current stand densities were not identified as desirable biological conditions. Treatment would eliminate the current stand structure and age class resulting in early seral vegetation conditions. The components of early seral conditions are: shrub, grass and forb species. These specieis are our desired biological conditions.

Prescribed fire would be used to underburn approximately 7,000 acres of ponderosa pine and if needed, this treatment would be repeated in 3–5 years. This activity is needed to alleviate the unnatural fuel build up and loading, which has resulted from fire suppression. Treatment would maintain existing ponderosa pine trees while reducing the risk of these pines to a catastrophic wildfire event.

In the mixed conifer, the Proposed Action would underburn approximately 300–350 acres and if needed, the treatment would be repeated in 3–5 years. This activity is needed to

decrease current levels of fuel loading and thus avoid large scale tree mortality from future catastrophic events.

Within the Aspen component, approximately 700 acres would be burned by stand replacing fire. If necessary, understory (encroaching) conifers would be cut to build a sufficient fuel bed to carry the fire. A temporary fence would be constructed to protect regeneration, if deemed necessary. This treatment is necessary to provide age class and structural diversity and strengthen the overall health of the community.

On approximately 1,000 acres of aspen, understory conifers would be removed through non-commercial cutting. This action is needed to promote younger age classes and diverse structure. Succession would be set-back allowing a more pure aspen stand condition.

Approximately 302 acres of aspen would be commercially and non-commercially clear cut in patches up to 40 acres. This action would provide for age and structure diversity and would strengthen the overall health of the aspen community.

The Proposed Action would emphasize the use of native seed in restoring disturbed areas and would also utilize non-native seed, where necessary for erosion control and big game forage. With the Proposed Action, a Travel Management Plan would be implemented. Major roads (arterial) would remain open all year and other roads (collector) would be opened seasonally or closed year round. An OHV loop trail would be developed from existing jeep trails, forest development roads (collector) and the Great Western Trail. The existing trailhead at the north end of Forest Development Road 566 is sufficiently developed to accommodate the additional use from the proposed OHV loop trail.

Preliminary issues that have been identified through scoping to date include concerns about commercial aspen harvest, use of native seed only, reconstructing and realigning certain wet sections of Road Draw road, and year long or seasonal closure of Road Draw road to provide a big game corridor. Other issues include concerns about cutting any trees in any inventoried unroaded/undeveloped areas and the effects of the proposal on roadless area characteristics.

Tentative alternatives to the Proposed Action include: No action (the project will not take place but current management will continue); elimination of any cutting, even for pre-ignition preparation, in unroaded/undeveloped areas; The use of only native seed throughout the project; The reconstruction of Road Draw road; The closure of Road Draw road seasonally, or year long.

As lead agency, the Forest Service will analyze and document direct, indirect, and cumulative environmental effects for a range of alternatives. Each alternative will include mitigation measures and monitoring requirements.

Hugh C. Thompson, Forest Supervisor, Dixie National Forest, is the responsible official.

The Forest Service is seeking comments from individuals, organizations, and local, state, and Federal agencies who may be interested in or affected by the proposed action.

Scoping notices have been sent to the Dixie National Forest NEPA mailing list. Other interested individuals, organizations, or agencies may have their names added to the mailing list for this project at any time by submitting a request to: Kevin R. Schulkoski, District Ranger, Escalante Ranger District, 755 West Main, P.O. box 246, Escalante, Utah 84726.

A public review of the proposed project was held on February 3, 1998 with the Boulder, Utah City Council. In general, the Boulder City Council expresses concurrence with the Proposed Action. The entire project areas lies within National Forest System lands. No federal or local permits, licenses or entitlements would be needed. There are no potential conflicts with the plans and policies of other jurisdictions.

The comment period on the Draft EIS will be 45 days from the date of the EPA's notice of availability appears in the **Federal Register**. It is very important that those interested in the proposed action participate at this time. To be most helpful, comments on the DEIS should be as specified as possible and may discuss the adequacy of the statement or the merits of the alternatives discussed (see CEQ Regulations for implementing the procedural provisions of NEPA at 40 CFR 1503.3).

In addition, Federal court decisions have established that reviewers of the DEIS's must structure their participation in the environmental review of the proposal so that it is meaningful and alerts an agency to the reviewers' position and contentions. Vermont Yankee Nuclear Power Corp. v. NRDC, 435 U.S. 519, 553 (1978). Environmental objections that could have been raised at the draft stage may be waived if not raised until after completion of the FEIS, City of Angoon v. Hodel, (9th Circuit, 1986) and Wisconsin Heritages, Inc. v. Harris, 490 F. Supp.1334. 1338 (E.D. Wis. 1980). This is to ensure that substantive comments and objections are made available to the Forest Service at the time it can meaningfully consider them and respond to them in the final.

The DEIS is expected to be available for review by January 1999. The Record of Decision and Final Environmental Impact Statement is expected to be available by March 1999.

Dated: November 6, 1998.

Hugh C. Thompson,

Forest Supervisor, Dixie National Forest.

[FR Doc. 98–30508 Filed 11–13–98; 8:45 am]

BILLING CODE 3410–11–M

DEPARTMENT OF AGRICULTURE

Forest Service

Aquarius Ecosystem Restoration Project, Dixie National Forest, Garfield County, UT

AGENCY: Forest Service, USDA.

ACTION: Notice of intent to prepare an environmental impact statement.

SUMMARY: Notice is hereby given that the Forest Service, USDA, will prepare an environmental impact statement (EIS) for a Forest Service proposal to implement an ecosystem restoration and associated road construction project on the Escalante Ranger District, Dixie National Forest. The area is located approximately 18 miles northwest of Escalante, Utah. The project would be implemented in accordance with direction in the Land and Resource Management Plan for the Dixie National Forest (LRMP).

The agency gives notice that the environmental analysis process is underway. Interested and potentially affected persons, along with local, state, and other federal agencies, are invited to participate and contribute to the environmental analysis. The Dixie National Forest invites written input regarding issues specific to the proposed action.

DATES: Written comments to be considered in the preparation of the Draft Environmental Impact Statement (DEIS) should be submitted on or before December 13, 1998.

ADDRESSES: Submit written comments to: District Ranger Escalante Ranger District 755 West Main, P.O. Box 246, Escalante, Utah 84726.

FOR FURTHER INFORMATION CONTACT: Direct questions about the proposed action and EIS to Kevin R. Schulkoski, District Ranger, 435–826–5400.

SUPPLEMENTARY INFORMATION: The Aquarius Ecosystem Restoration Project

(AERP) is located within the Dixie National Forest, Escalante and Teasdale Ranger Districts. It is approximately 18 miles northwest of Escalante, Utah. The 81,104 acre project area is comprised of 4 major watersheds; Pleasant Creek, Boulder Creek, Antimony Creek, and Escalante River. The project is located in parts of Township 30 South, Range 2 East; Township 30 South, Range 3 East; Township 31 South, Range 1 West; Township 31 South, Range 1 East; Township 31 South, Range 2 East; Township 31 South, Range 3 East; Township 32 South, Range 1 West; Township 32 South, Range 1 East; Township 32 South, Range 2 East; Township 32 South, Range 3 East; Township 33 South, Range 1 West; Township 33 South, Range 1 East; Township 34 South, Range 1 West; Township 35 South, Range 1 West; and Township 36 South, Range 1 West.

Elevations range from 9,000 to 11,000 feet. The forest type is primarily Englemann spruce/subalpine fir, with a strong component of aspen. Other vegetation types represented include sagebrush, blue spruce, mixed conifer and ponderosa pine.

Dixie Forest LRMP management areas within the analysis area are: 1 General Forest Direction, 10A Research Natural Area, 2A Semi-Primitive Recreation Opportunities, 2B Rural and Roaded Recreation Opportunities, 4B Wildlife Habitat Management, 4D Aspen Management for Wildlife, 6A Livestock Grazing, 7A Timber Management, 9A Riparian Management.

Several actions are proposed within the project area to move existing conditions toward desired future conditions. These activities include commercial timber harvest, aspen regeneration, management ignited prescribed fire and travel management.

Activities proposed within the project area contribute to meeting the goals and objectives, management direction and standards and guidelines found in the Dixie LRMP.

Proposed Actions within 16,215 total acres of aspen forest would include using prescribed fire only, on an estimated 50 acres to regenerate a young healthy stand.

Use mechanical treatments with or without fire on approximately 3,100 acres of aspen forest. This includes both commercial treatments. Patch cuts or clear cut harvest treatments may be used in blocks of 40 acres or less where aspen areas are accessible (within ¼ mile of an existing road) and contain sufficient quality and volume to make it economical to harvest. Fire would be used after cutting treatments to remove residual conifer and stimulate additional aspen suckering. Approximately 50% of the harvest areas will be followed up by fire.

These activities are needed because the desired condition of the area is to maintain a mosaic of aspen and conifer stands with a variety of age classes across the landscape. Currently, many aspen dominated stands have either a growing component of understory conifer trees or lack of an aspen seedling class capable of replacing the maturing aspen. Most of the aspen stands across the landscape are of similar size and age class. The proposed treatments are designed to convert deteriorating aspen stands to young healthy aspen seedlings on approximately 20% of the existing aspen stands. This will enhance the opportunity to sustain aspen forests over the long-term in properly functioning condition and provide forest projects to forest industry.

The aspen acres proposed for prescribed fire are isolated and do not provide economic commercial opportunities.

The objectives of the treatments in the aspen component include: increase species diversity across the landscape to reduce catastrophic losses associated with forest pests and fire; increase the amount of aspen clones in the early to young stage on up to 20% of the existing stands; maintain aspen component within spruce/fir dominated stands; reduce conifer invasion in the aspen type; improve or maintain the visual form, color and textural diversity in the landscape viewed by forest users; improve structural diversity associated with wildlife habitat; and provide opportunity for community based forestry businesses. Proposed Actions within the 31,827 total acres of Englemann spruce/subalpine fir forests would include:

Approximately 200 acres of aspen within the spruce/fir type would be treated with prescribed stand replacement fire only to stimulate aspen regeneration and eliminate existing aspen and conifer trees.

Approximately 12,000 acres would be treated with commercial mechanical harvest. Tree thinning or an intermediate treatment under an individual tree selection system (reducing stand densities while maintaining a variety of tree sizes), would be implemented. An uneven aged structure is desired.

Approximately 1,600 acres of seral aspen within the spruce/fir would be regenerated with commercial harvest treatments with or without fire. Fire would be used after the cutting treatments to remove residual conifer and stimulate additional aspen suckering. Approximately 50% of the harvest areas will be followed up with fire. Treatments in blocks of 40 acres or less would be used.

These activities are needed because the desired conditions for the spruce/fir stands are to maintain land densities at moderate levels with a variety of age classes and to provide for a mix of aspen clones within this type. Forest management can prevent large scale mortality and loss caused by the spruce beetle. Many spruce/fir stands are densely stocked with trees and are declining in tree growth and vigor and lack larger size classes due to past spruce beetle activity. Seral aspen clones are maturing and succeeding to conifer trees.

The seral aspen component is being replaced by spruce/fir forest type. There is a lack of aspen clones in the early to young stage. More aspen is currently being lost than replaced by aspen regeneration. The invading conifer needs to be removed so that aspen regeneration may be initiated to sustain prue stand conditions for aspen.

The purpose of the proposed action in the coniferous forest is to: improve species diversity and forest structure and pattern characteristics; increase the number of mature (old) stage spruce; manage risk of bark beetles infestations and other insects and diseases at endemic levels; increase seral aspen and representation of young aspen clones in the spruce/fir type; and provide opportunity for community based forestry business.

Transportation Management would include the following road closures: 16.3 miles of existing roads would be utilized for harvest and regeneration activities and would be closed with physical barriers upon project completion; 39.6 miles of existing roads would be improved for project activities and would be obliterated and revegetated upon project completion; 13.25 miles of new road construction would be required for project implementation and then would be closed with physical barriers upon project completion; 7.6 miles of new road construction would be required for project implementation and then obliterated and revegetated upon project completion; approximately 15 miles of roads that are not being utilized for harvest activities will be closed and obliterated.

These activities are needed because many travel routes throughout the area were not properly located and constructed with proper drainage devices and have created erosion problems. Road densities are excessive

to the Forest Service ability to maintain roads to agency standards.

The purpose of the proposed travel management plan is to restore watershed values in areas where unacceptable soil and water resource damage is occurring (closing and rehabilitating unneeded roads will reduce the occurring adverse impacts); reduce long-term maintenance costs; provide access to treatment areas, trailheads, dispersed recreation areas, and other areas of high recreation use; provide for safe travel on Forest roads; and reduce road densities to maintain or improve wildlife habitat effectiveness.

Trailhead development is proposed as follows: Construction of a trailhead for the Powell Point trail (#6.0) at the junction of the Powell Point non-motorized trail and the end of FS road (#1516). Construction would include a parking area, signs and information kiosk. Construction of a trailhead for the Gap trail (#1.51) at the end of Forest road (#1370). Construction would include a parking area, signs and information kiosk. Construction of a trailhead at Clayton Guard Station to serve Grass Lakes (#1.61), Pacer Lake (#4.0), Poison Creek (#3.0) and Antimony Lake (#2.0) motorized trails. Construction would include a parking area, signs and an information kiosk. Construction of a trailhead for the North Creek lakes non-motorized trail (#1.5) Construction would include a parking area, signs and an information kiosk. Construct a parking area at the end of the road #0176 at Row Lakes.

The activities are needed because: a comparison of the desired future condition and the existing forest condition indicated that motorized and non-motorized recreation use is increasing. There is a need to provide safe public access for this use. Existing trailheads are essentially rudimentary and undeveloped. There is a need to design and construct trailheads which include information kiosk, parking and signing. Due to the absence of designated trailheads, damage to the soil and water resources has occurred. There is a need to reduce and prevent resource damage.

Preliminary issues that have been identified through scoping to date include road closures, management activities in areas which have unroaded characteristics, prescribed burning versus cutting in aspen stands and managing timber stands to favor aspen over spruce.

Tentative alternatives to the proposed action include: No Action (the project will not take place, but current management will continue); elimination of timber harvest in areas which have unroaded characteristics; and an alternative which regenerates aspen by burning and does not include commercial aspen timber harvest.

As lead agency, the Forest Service will analyze and document direct, indirect, and cumulative environmental effects for a range of alternatives. Each alternative will include mitigation measures and monitoring requirements. Hugh C. Thompson, Forest Supervisor, Dixie National Forest, is the responsible official.

The Forest Service is seeking comments from individuals, organizations, and local, state and Federal agencies who may be interested in or affected by the proposed action.

Scoping notices have been sent to the Dixie National Forest NEPA mailing list. Other interested individuals, organizations, or agencies may have their names added to the mailing list for this project at any time by submitting a request to: Kevin R. Schulkoski, District Ranger, Escalante Ranger District, 755 West Main, PO Box 246, Escalante, Utah 84726.

A public field review of the proposed project was held on September 29, 1998. Twenty one people representing different organizational, business, governmental and individual interests participated in the meeting.

Approximately 120 acres of private land lie within the analysis area. No actions are proposed on private land. The remaining acres lie within National Forest System lands. No federal or local permits, licenses or entitlements would be needed. There are no known conflicts with the plans and policies of other jurisdictions. The comment period for the DEIS will be 45 days from the date the EPA's notice of availability appears in the **Federal Register.**

The Forest Service believes, at this early stage, it is important to give reviewers notice of several court rulings related to public participation in the environmental review process. First, reviewers of the DEIS's must structure their participation in the environmental review of the proposal so that it is meaningful and alerts an agency to the reviewers' position and contentions. Vermont Yankee Nuclear Power Corp. Versus NRDC, 435 U.S. 519, 553 (1978).

Also, environmental objections that could have been raised at the DEIS stage but that are not raised until after completion of the final EIS may be waived or dismissed by the courts. City of Angoon Versus Hodel, (9th Circuit, 1986) and Wisconsin Heritages, Inc versus Harris, 490 F. Supp. 1334. 1338 (E.D. Wis. 1980). Because of these court rulings, it is very important that those interested in this proposed action participate by the close of the 45 day comment period so that substantive comments and objections are made available to the Forest Service at the time it can meaningfully consider them and respond to them in the final EIS.

To assist the Forest Service in identifying and considering issues and concerns on the proposed action, comments on the DEIS should be as specific as possible, it is also helpful if comments refer to specific pages or chapters of the draft statement. Reviewers may wish to refer to the Council on Environmental Quality Regulations for implementing the procedural provisions of the National Environmental Policy Act at 40 CFR 1503.3 in addressing these points.

The DEIS is expected to be available for review by March 1999. The Record of Decision and Final Environmental Impact Statement are expected to be available by May 1999.

Dated: November 4, 1998.

Hugh C. Thompson,

Forester Supervisor, Dixie National Forest.

[FR Doc. 98–30509 Filed 11–13–98; 8:45 am]

BILLING CODE 3410–11–M

DEPARTMENT OF AGRICULTURE

National Agricultural Statistics Service

Notice of Intent To Seek Approval To Conduct an Information Collection

AGENCY: National Agricultural Statistics Service, USDA.

ACTION: Notice and request for comments.

SUMMARY: In accordance with the Paperwork Reduction Act of 1995 (Pub. L. No. 104–13) and Office of Management and Budget (OMB) regulations at 5 CFR Part 1320 (60 FR 44978, August 29, 1995), this notice announces the intent of the National Agricultural Statistics Service (NASS) to request approval for a new information collection, the Fruit and Vegetable Agricultural Practices Survey.

DATES: Comments on this notice must be received by January 20, 1999 to be assured of consideration.

ADDITIONAL INFORMATION OR COMMENTS: Contact Rich Allen, Associate Administrator, National Agricultural Statistics Service, U.S. Department of Agriculture, 1400 Independence Avenue SW, Room 4117 South Building, Washington, D.C. 20250–2000, (202) 720–4333.

SUPPLEMENTARY INFORMATION:

Title: Fruit and Vegetable Agricultural Practices Survey.

Type of Request: Intent to Seek Approval to Conduct an Information Collection.

Abstract: The Fruit and Vegetable Agricultural Practices Survey will be conducted by the National Agricultural Statistics Service. Survey data will be analyzed by the Food and Drug Administration as part of a pilot study on agricultural practices related to microbial food safety. Data on sources of microbial contamination on produce, including water; manure; worker, field and facility sanitation; and crop identification systems will be collected. These data will be used by the Food and Drug Administration to analyze current agricultural practices and to develop a baseline to evaluate changes in farm practices. The survey will be conducted in California and New York. This survey is in compliance with President Clinton's October 1997 directive entitled ''Initiative to Ensure the Safety of Imported and Domestic Fruits and Vegetables.'' These data will be collected under the authority of 7 U.S.C. 2204(a). Individually identifiable data collected under this authority are governed by Section 1770 of the Food Security Act of 1985, 7 U.S.C. 2276, which requires USDA to afford strict confidentiality to non-aggregated data provided by respondents.

Estimate of Burden: Public reporting burden for this collection of information is estimated to average 60 minutes per response.

Respondents: Fruit and vegetable growers and fruit and vegetable packinghouses.

Estimated Number of Respondents: 1,000.

Estimated Total Annual Burden on Respondents: 1,000 hours.

Copies of this information collection and related instructions can be obtained without charge from Larry Gambrell, the Agency OMB Clearance Officer, at (202) 720–5778.

Comments

Comments are invited on: (a) Whether the proposed collection of information is necessary for the proper performance of the functions of the agency, including whether the information will have practical utility; (b) the accuracy of the agency's estimate of the burden of the proposed collection of information including the validity of the methodology and assumptions used; (c) ways to enhance the quality, utility, and clarity of the information to be collected; and (d) ways to 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. Comments may be sent to: Larry Gambrell, Agency OMB Clearance Officer, U.S. Department of Agriculture, 1400 Independence Avenue SW, Room 4162 South Building, Washington, D.C. 20250–2000. All responses to this notice will be summarized and included in the request for OMB approval. All comments will also become a matter of public record.

Signed at Washington, D.C., November 3, 1998.

Donald M. Bay,

Administrator, National Agricultural Statistics Service.

[FR Doc. 98–30562 Filed 11–13–98; 8:45 am]

BILLING CODE 3410–20–M

DEPARTMENT OF AGRICULTURE

Rural Housing Service

Notice of Funding Availability (NOFA) for the section 515 Rural Rental Housing Program

AGENCY: Rural Housing Service (RHS), USDA.

ACTION: Notice.

SUMMARY: This NOFA announces the timeframe to submit applications for section 515 Rural Rental Housing loan funds and section 521 Rental Assistance (RA) for new construction, including applications for the Nonprofit Set-Aside for eligible nonprofit entities, the set-aside for the 100 most Underserved Counties and Colonias (Cranston-Gonzalez Act), and the set-aside for Empowerment Zones and Enterprise Communities (EZ/ECs). This document describes the methodology that will be used to distribute funds, the application process, submission requirements, and areas of special emphasis or consideration.

DATES: The closing deadline for receipt of all applications, including the set-asides, in response to this NOFA is 5:00 p.m., local time for each Rural Development State office on January 15, 1999. The application closing deadline is firm as to date and hour. RHS will not consider any application that is received after the closing deadline. Applicants intending to mail applications must provide sufficient time to permit delivery on or before the closing deadline date and time. Acceptance by a post office or private mailer does not constitute delivery. Facsimile (FAX), COD, and postage due applications will not be accepted.

ADDRESSES: Applicants wishing to apply for assistance must contact the Rural Development State office serving the place in which they desire to submit an application for rural rental housing to receive further information and copies of the application package. Rural Development will date and time stamp incoming applications to evidence timely receipt, and, upon request, will provide the applicant with a written acknowledgment of receipt. A listing of Rural Development State offices, their addresses, telephone numbers, and person to contact follows:

Note: Telephone numbers listed are not toll-free.

Alabama State Office, Suite 601, Sterling Centre, 4121 Carmichael Road, Montgomery, AL 36106–3683, (334) 279–3455, TDD (334) 279–3495, James B. Harris

Alaska State Office, 800 West Evergreen, Suite 201, Palmer, AK 99645, (907) 745–2176, TDD (907) 745–6494, Ron Abbott

Arizona State Office, Phoenix Corporate Center, 3003 N. Central Ave., Suite 900, Phoenix, AZ 85012–2906, (602) 280–8755, TDD (602) 280–8701, Steve Langstaff

Arkansas State Office, 700 W. Capitol Ave., Rm. 3416, Little Rock, AR 72201–3225, (501) 301–3250, TDD (501) 301–3279, Cathy Jones

California State Office, 430 G Street, Agency 4169, Davis, CA 95616–4169, (530) 792–5800, Robert P. Anderson

Colorado State Office, 655 Parfet Street, Room E100, Lakewood, CO 80215, (303) 236–2801 (ext. 122), TDD (303) 236–1590, ''Sam'' Mitchell

Connecticut—Served by Massachusetts State Office

Delaware/Maryland State Office, 5201 South Dupont Highway, PO Box 400, Camden, DE 19934–9998, (302) 697–4314, TDD (302) 697–4303, W. Arthur Greenwood

Florida & Virgin Islands State Office, 4440 N.W. 25th Place, PO Box 147010, Gainesville, FL 32614–7010, (352) 338–3465, TDD (352) 338–3499, Joseph P. Fritz

Georgia State Office, Stephens Federal Building, 355 E. Hancock Avenue, Athens, GA 30601–2768, (706) 546–2164, TDD (706) 546–2034, Wayne Rogers

Guam—Served by Hawaii State Office

Hawaii, Guam, & Western Pacific Territories State Office, Room 311, Federal Building, 154 Waianuenue Avenue, Hilo, HI 96720, (808) 933–3000, TDD (808) 933–6902, Abraham Kubo,

Idaho State Office, Suite A1, 9173 West Barnes Dr., Boise, ID 83709, (208) 378–5627, TDD (208) 378–5644, Roni Atkins

Illinois State Office, Illini Plaza, Suite 103, 1817 South Neil Street, Champaign, IL 61820, (217) 398–5412 (ext. 256), TDD (217) 398–5396, Barry L. Ramsey

Indiana State Office 5975 Lakeside Boulevard, Indianapolis, IN 46278, (317) 290–3117, TDD (317) 290–3343, John Young

Iowa State Office, 873 Federal Building, 210 Walnut Street, Des Moines, IA 50309, (515) 284–4493, TDD (515) 284–4858, Bruce McGuire

Kansas State Office, 1200 SW Executive Drive, PO Box 4653, Topeka, KS 66604,

(785) 271–2721, TDD (785) 271–2767, Gary Shumaker
Kentucky State Office, 771 Corporate Drive, Suite 200, Lexington, KY 40503, (606) 224–7325, TDD (606) 224–7422, Paul Higgins
Louisiana State Office, 3727 Government Street, Alexandria, LA 71302, (318) 473–7962, TDD (318) 473–7655, Yvonne R. Emerson
Maine State Office, 444 Stillwater Ave., Suite 2, PO Box 405, Bangor, ME 04402–0405, (207) 990–9115, TDD (207) 942–7331, Dale D. Holmes
Maryland—Served by Delaware State Office
Massachusetts, Connecticut, & Rhode Island State Office, 451 West Street, Amherst, MA 01002, (413) 253–4333, Donald Colburn
Michigan State Office, 3001 Coolidge Road, Suite 200, East Lansing, MI 48823, (517) 337–6635 (ext. 1609), TDD (517) 337–6795, Philip Wolak
Minnesota State Office, 410 AgriBank Building 375 Jackson Street, St. Paul, MN 55101–1853, (651) 602–7823, TDD (651) 602–3799, Mary Ann Erickson
Mississippi State Office, Federal Building, Suite 831, 100 W. Capitol Street, Jackson, MS 39269, (601) 965–4325, TDD (601) 965–5850, Danny Ivy
Missouri State Office, 601 Business Loop 70 West, Parkade Center, Suite 235, Columbia, MO 65203, (573) 876–0990, TDD (573) 876–9480, Gary Frisch
Montana State Office, Unit 1, Suite B, 900 Technology Blvd., Bozeman, MT 59715, (406) 585–2515, TDD (406) 586–0819, MaryLou Falconer
Nebraska State Office, Federal Building, Room 152, 100 Centennial Mall N, Lincoln, NE 68508, (402) 437–5567, TDD (402) 437–5093, Byron Fischer
Nevada State Office, 1390 South Curry Street, Carson City, NV 89703–9910, (702) 887–1222, TDD (702) 885–0633 (ext. 13), William L. Brewer
New Hampshire—Served by Vermont State Office,
New Jersey State Office, Tarnsfield Plaza, Suite 22, 790 Woodland Road, Mt. Holly, NJ 08060, (609) 265–3630, George Hyatt, Jr.
New Mexico State Office, 6200 Jefferson St., NE, Room 255, Albuquerque, NM 87109, (505) 761–4944, TDD (505) 761–4938, Carmen N. Lopez
New York State Office, The Galleries of Syracuse, 441 S. Salina Street, Suite 357, Syracuse, NY 13202, (315) 477–6419, TDD (315) 477–6447, George N. Von Pless
North Carolina State Office, 4405 Bland Road, Suite 260, Raleigh, NC 27609, (919) 873–2062, TDD (919) 873–2003, Eileen Nowlin
North Dakota State Office, Federal Building, Room 208, 220 East Rosser, PO Box 1737, Bismarck, ND 58502, (701) 250–4771, TDD (701) 250–4794, Kathy Lake
Ohio State Office, Federal Building, Room 507, 200 North High Street, Columbus, OH 43215–2477, (614) 469–5165, TDD (614) 469–5757, Gerald Arnott
Oklahoma State Office, 100 USDA, Suite 108, Stillwater, OK 74074–2654, (405) 742–1070, TDD (405) 742–1007, Patsy Graumann
Oregon State Office, 101 SW Main, Suite 1410, Portland, OR 97204–3222, (503) 414–3350, TDD (503) 414–3387, Jillene Davis
Pennsylvania State Office, One Credit Union Place, Suite 330, Harrisburg, PA 17110–2996, (717) 237–2187, TDD (717) 237–2187, Gary Rothrock
Puerto Rico State Office, New San Juan Office Bldg., Room 501, 159 Carlos E. Chardon Street, Hato Rey, PR 00918–5481, (787) 766–5095 Ext. 254, TDD 1–800–274–1572, Lourdes Colon
Rhode Island—Served by Massachusetts State Office
South Carolina State Office, Strom Thurmond Federal Building, 1835 Assembly Street, Room 1007, Columbia, SC 29201, (803) 765–5690, TDD (803) 765–5697, Larry D. Floyd
South Dakota State Office, Federal Building, Room 210, 200 Fourth Street, SW, Huron, SD 57350, (605) 352–1132, TDD (605) 352–1147, Dwight Wullweber
Tennessee State Office, Suite 300, 3322 West End Avenue, Nashville, TN 37203–1084, (615) 783–1375, G. Benson Lasater
Texas State Office, Federal Building, Suite 102, 101 South Main, Temple, TX 76501, (254) 742–9760, TDD (254) 742–9712, Eugene G. Pavlat
Utah State Office, Wallace F. Bennett Federal Building, 125 S. State Street, Room 4311, Salt Lake City, UT 84147–0350, (801) 524–4323, TDD (801) 524–3309, Robert L. Milianta
Vermont & New Hampshire State Office, City Center, 3rd Floor, 89 Main Street, Montpelier, VT 05602, (802) 828–6020, TDD (802) 223–6365, Russell Higgins,
Virgin Islands—Served by Florida State Office
Virginia State Office, Culpeper Building, Suite 238, 1606 Santa Rosa Road, Richmond, VA 23229, (804) 287–1582, TDD (804) 287–1753, Carlton Jarratt
Washington State Office, 1835 Black Lake Blvd. SW., Suite B, Olympia, WA 98512–5715, (360) 704–7707, TDD (360) 704–7760, Deborah Davis
Western Pacific Territories—Served by Hawaii State Office
West Virginia State Office, Federal Building, 75 High Street, Room 320, Morgantown, WV 26505–7500, (304) 291–4793, TDD (304) 284–5941, Sue Snodgrass
Wisconsin State Office, 4949 Kirschiling Court, Stevens Point, WI 54481, (715) 345–7620, TDD (715) 345–7614, Sherry Engel
Wyoming State Office, 100 East B, Federal Building, Room 1005, P.O. Box 820, Casper, WY 82602, (307) 261–6315, TDD (307) 261–6333, Charles E. Huff

FOR FURTHER INFORMATION CONTACT: Some States may have a loan limit that is lower than the National maximum ($2.5 million) established in this Notice; therefore, applicants must contact the appropriate Rural Development State Office listed elsewhere in this Notice for funding limitations. For general information, applicants may contact Linda Armour, Cynthia L. Reese-Foxworth, or Carl Wagner, Senior Loan Officers, Multi-Family Housing Processing Division, Rural Housing Service, United States Department of Agriculture, Stop 0781, 1400 Independence Avenue, SW, Washington, DC, 20250, telephone (202) 720–1604 (this is not a toll free number).

SUPPLEMENTARY INFORMATION:

Programs Affected

The Rural Rental Housing Program is listed in the Catalog of Federal Domestic Assistance under Number 10.415, Rural Rental Housing Loans. Rental Assistance is listed in the Catalog under Number 10.427, Rural Rental Assistance Payments.

Explanation of 60–Day NOFA Application Deadline

The Agency is using a 60-day application period so that the NOFA process will coincide with the time restraints placed upon our customers by participating lenders and State Housing Finance Agencies (SHFA). Participating lenders such as commercial banks leverage their funds with RHS funds. State organizations can provide Community Development Block Grants (CDBG) and HOME funds as another means of leveraging RHS funds. SHFAs have certain timeframes whereby applicants can apply for tax credits. Therefore, to assist as many of our customers as possible in obtaining leveraged funds and to participate with other funding sources, a 60-day application period is provided.

Discussion of Notice

I. Authority and Distribution Methodology

A. Authority

Section 515 of the Housing Act of 1949 (42 U.S.C. 1485) provides RHS the authority to make loans to any individual, corporation, association, trust, Indian tribe, public and private nonprofit organizations, consumer cooperative, or partnership to provide rental or cooperative housing and related facilities for elderly, handicapped, or disabled persons or families of low or moderate income as well as other persons and families of low income in rural areas. Rental assistance is a tenant subsidy available to very-low and low-income families residing in rural rental housing facilities with RHS financing, and is requested with application for such facilities.

B. Distribution Methodology

The total amount available for FY 1999 for section 515 is $114 million. Of that amount, $79 million is available for new construction as follows:

Set-Aside for Nonprofits	$7,560,000
Set-Aside for Underserved Counties and Colonias	4,200,000
Set-Aside for EZ/EC	7,250,000
General Reserve	5,740,000

State Rental Assistance (RA)	
Designated Reserve	1,500,000
Regular Section 515 Funds ...	52,750,000

The General Reserve will first be used for hardships, emergencies, and cooperative housing requests. If funds remain, the Administrator may consider group home requests. Group home requests must be located in a designated place and must be submitted under this NOFA.

The remaining $35 million will be available for repair and rehabilitation loans and for equity loans.

For fiscal year 1999, the Administrator has determined that it would not be practical to allocate funds to States because of funding constraints; therefore, section 515 new construction funds will be distributed to States based on a National competition, as follows:

1. States will accept, review, score, and rank requests in accordance with 7 CFR part 1944, subpart E.

2. The National office will rank all requests nationwide and distribute funds to States in rank order, within funding and RA limits. If insufficient funds or RA remain for the next ranked proposal, the Agency will select the next ranked proposal that falls within the remaining levels.

C. Eligible Prior Year Applications

The Rural Housing Service published a Final Rule, in the **Federal Register** (62 FR 67216, on December 23, 1997) outlining its application and review process for section 515 Rural Rental Housing new construction program. The implementation proposal for those regulations provided that some applicants who filed acceptable loan requests in prior years could proceed with their loan requests provided they were in compliance with the newly published regulations. The following States have applications on hand from prior years in designated places that will count toward the $2.5 million maximum that a State may receive:

Alabama
Colorado

Applicants are advised to contact those States to ascertain the amount the State is eligible to compete for in the National NOFA.

II. Funding Limits

A. Individual loan requests may not exceed $1 million. This applies to regular Section 515 funds and set-aside funds. The Administrator may make an exception to this limit in cases where a State's average total development costs exceed the National average by 50 percent or more. States may establish a lower limit than $1 million.

B. No State may receive more than $2.5 million from regular section 515 funds. Reserve funds, including set-aside funds, are not included in this cap.

II. Rental Assistance (RA)

New construction RA will be held in the National Office for use with section 515 Rural Rental Housing loans.

III. Application Process

All applications for section 515 new construction funds must be filed with the appropriate Rural Development State office and must meet the requirements of 7 CFR part 1944, subpart E and section IV of this NOFA. Incomplete applications will not be reviewed and will be returned to the applicant. No application will be accepted after 5:00 p.m., local time, on the application deadline previously mentioned unless that date and time is extended by a Notice published in the **Federal Register**.

IV. Application Submission Requirements

A. Each application shall include all of the information, materials, forms and exhibits required by 7 CFR part 1944, subpart E as well as comply with the provisions of this NOFA. Applicants are encouraged, but not required, to include a checklist and to have their applications indexed and tabbed to facilitate the review process. The Rural Development State office will base its determination of completeness of the application and the eligibility of each applicant on the information provided in the application.

B. Applicants are advised to contact the Rural Development State office serving the place in which they desire to submit an application for the following:

1. Application information;

2. Any restrictions on funding availability (applications that do not conform to or exceed the State's limit on size of project or dollar amount will be returned to the applicant); and

3. List of designated places for funding new section 515 facilities.

V. Areas of Special Emphasis or Consideration

A. The selection criteria contained in 7 CFR part 1944, subpart E includes two optional criteria, one set by the National office and one by the State office. This fiscal year, the National office initiative will be used in the selection criteria as follows: In states where RHS has an on-going formal working relationship, agreement, or Memorandum of Understanding (MOU) with the State to provide State Resources (State funds, State RA, HOME funds, CDBG funds, or LIHTC) for RHS proposals; or where the State provides preference or points to RHS proposals in awarding these State Resources, 20 points will be provided to loan requests that include such State Resources. No State selection criteria will be used this fiscal year.

B. $7.56 million is available nationwide in a set-aside for eligible Nonprofit organizations as defined in 42 U.S.C. 1485(w).

C. $4.2 million is available nationwide in a set-aside for the 100 most Underserved Counties and Colonias.

D. $7.25 million is available nationwide in a set-aside for EZ/ECs.

E. $1.5 million is available nationwide in a set-aside for the State Rental Assistance Program. These funds are available for States with viable State Rental Assistance Programs. In order to participate, States are to submit specific written information about the State RA program, i.e., a memorandum of understanding, documentation from the provider, etc., to the National office.

Dated: November 10, 1998.

Jan E. Shadburn,

Administrator, Rural Housing Service.

[FR Doc. 98–30665 Filed 11–13–98; 8:45 am]

BILLING CODE 3410–XV–U

COMMITTEE FOR PURCHASE FROM PEOPLE WHO ARE BLIND OR SEVERELY DISABLED

Procurement List; Proposed Additions and Deletion

AGENCY: Committee for Purchase From People Who Are Blind or Severely Disabled.

ACTION: Proposed additions to and deletion from Procurement List.

SUMMARY: The Committee has received proposals to add to the Procurement List commodities and a service to be furnished by nonprofit agencies employing persons who are blind or have other severe disabilities, and to delete a service previously furnished by such agencies.

COMMENTS MUST BE RECEIVED ON OR BEFORE: December 15, 1998.

ADDRESSES: Committee for Purchase From People Who Are Blind or Severely Disabled, Crystal Gateway 3, Suite 310, 1215 Jefferson Davis Highway, Arlington, Virginia 22202–4302.

FOR FURTHER INFORMATION CONTACT: Beverly Milkman, (703) 603–7740

SUPPLEMENTARY INFORMATION: This notice is published pursuant to 41 U.S.C. 47(a) (2) and 41 CFR 51–2.3. Its purpose is to provide interested persons an opportunity to submit comments on the possible impact of the proposed actions.

Additions

If the Committee approves the proposed addition, all entities of the Federal Government (except as otherwise indicated) will be required to procure the commodities and service listed below from nonprofit agencies employing persons who are blind or have other severe disabilities. I certify that the following action will not have a significant impact on a substantial number of small entities. The major factors considered for this certification were:

1. The action will not result in any additional reporting, recordkeeping or other compliance requirements for small entities other than the small organizations that will furnish the commodities and service to the Government.

2. The action will result in authorizing small entities to furnish the commodities and service to the Government.

3. There are no known regulatory alternatives which would accomplish the objectives of the Javits-Wagner-O'Day Act (41U.S.C. 46–48c) in connection with the commodities and service proposed for addition to the Procurement List. Comments on this certification are invited. Commenters should identify the statement(s) underlying the certification on which they are providing additional information.

The following commodities and service have been proposed for addition to Procurement List for production by the nonprofit agencies listed:

Commodities

Jack, Scissors, Hand
5120–00–106–7598
NPA: Knox County ARC, Knoxville, Tennessee.
Odor Barrier Waste Storage Container
7240–00–NIB–0001
7240–00–NIB–0002
NPA: East Texas Lighthouse for the Blind, Tyler, Texas.
Skirt, Female Service, Dress Blue,
CG 8410–01–452–3387
8410–01–452–3388
8410–01–452–3389
8410–01–452–3390
8410–01–452–3391
8410–01–452–3393
8410–01–452–3394
8410–01–452–3395
8410–01–452–3396
8410–01–452–3397
8410–01–452–3398
8410–01–452–3399
8410–01–452–3400
8410–01–452–3402
8410–01–452–3404
8410–01–452–3653
8410–01–452–3654
8410–01–452–3655
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8410–01–452–3680
8410–01–452–3681
8410–01–452–3682
8410–01–452–6191
8410–01–452–6195
8410–01–452–6197
NPA: Vocational Guidance Services, Cleveland, Ohio

Service

Food Service Attendant, U.S. Coast Guard, 259 High Street, South Portland, Maine
NPA: Goodwill Industries of Northern New England, Portland, Maine

Deletion

I certify that the following action will not have a significant impact on a substantial number of small entities. The major factors considered for this certification were:

1. The action will not result in any additional reporting, recordkeeping or other compliance requirements for small entities.

2. The action will result in authorizing small entities to furnish the service to the Government.

3. There are no known regulatory alternatives which would accomplish the objectives of the Javits-Wagner-O'Day Act (41 U.S.C. 46–48c) in connection with the service proposed for deletion from the Procurement List.

The following service has been proposed for deletion from the Procurement List:

Laundry Service,
Naval Undersea Warfare Center, Keyport, Washington

Beverly L. Milkman,

Executive Director.

[FR Doc. 98–30573 Filed 11–13–98; 8:45 am]

BILLING CODE 6353–01–P

COMMITTEE FOR PURCHASE FROM PEOPLE WHO ARE BLIND OR SEVERELY DISABLED

Procurement List; Additions

AGENCY: Committee for Purchase From People Who Are Blind or Severely Disabled.

ACTION: Additions to the Procurement List.

SUMMARY: This action adds to the Procurement List commodities to be furnished by nonprofit agencies employing persons who are blind or have other severe disabilities.

EFFECTIVE DATE: December 15, 1998.

ADDRESSES: Committee for Purchase From People Who Are Blind or Severely Disabled, Crystal Gateway 3, Suite 310, 1215 Jefferson Davis Highway, Arlington, Virginia 22202–4302.

FOR FURTHER INFORMATION CONTACT: Beverly Milkman, (703) 603–7740.

SUPPLEMENTARY INFORMATION: On July 2, 1998, the Committee for Purchase From People Who Are Blind or Severely Disabled published a notice (63 F.R. 36211) of proposed addition to the Procurement List.

After consideration of the material presented to it concerning capability of qualified nonprofit agencies to provide the commodities and impact of the addition on the current or most recent contractors, the Committee has determined that the commodities listed below are suitable for procurement by the Federal Government under 41 U.S.C. 46–48c and 41 CFR 51–2.4.

I certify that the following action will not have a significant impact on a substantial number of small entities. The major factors considered for this certification were:

1. The action will not result in any additional reporting, recordkeeping or other compliance requirements for small entities other than the small organizations that will furnish the commodities to the Government.

2. The action will not have a severe economic impact on current contractors for the commodities.

3. The action will result in authorizing small entities to furnish the commodities to the Government.

4. There are no known regulatory alternatives which would accomplish

the objectives of the Javits-Wagner-O'Day Act (41 U.S.C. 46–48c) in connection with the commodities proposed for addition to the Procurement List.

Accordingly, the following commodities are hereby added to the Procurement List.

Meals Operations Rations Commercial (MORC) Kits

Morc Kits

8790–01-E59–0239A
8790–01-E59–0240A
8790–01-E59–0241A
8790–01-E59–0242A
8790–01-E59–0243A
8790–01-E59–0244A

Infantry Kits

8790–01-E59–0239B
8790–01-E59–0240B
8790–01-E59–0241B
8790–01-E59–0242B
8790–01-E59–0243B
8790–01-E59–0244B

Supplemental Kits For Sandwiches

8790–01-E59–0239C
8790–01-E59–0240C
8790–01-E59–0241C
8790–01-E59–0242C

Variety Pack

8790–01-E59–0239D

(100% of the requirement of the Kansas National Guard)

This action does not affect current contracts awarded prior to the effective date of this addition or options that may be exercised under those contracts.

Beverly L. Milkman,

Executive Director.

[FR Doc. 98–30574 Filed 11–13–98; 8:45 am]

BILLING CODE 6353–01–P

CENSUS MONITORING BOARD

U.S. Census Monitoring Board; Public Meeting

AGENCY: U.S. Census Monitoring Board.

ACTION: Notice of public hearing.

SUMMARY: This notice, in compliance with Pub. L. 105–119, sets forth the meeting date, time and place for a public meeting of the U.S. Census Monitoring Board. The meeting agenda will include a review of the U.S. Census Bureau's planning and preparation for the 2000 Census.

DATES: Monday, November 23, 1998.

TIME: 12 P.M. to 4 P.M.

LOCATION: Federal Building #3, Suitland Federal Center Suitland, Maryland.

FOR FURTHER INFORMATION CONTACT: Contact Estela B. Mendoza, Communications Director (Presidential Members), U.S. Census Monitoring Board, Phone (301) 457–9903, or Michael Miguel, Communications Director (Congressionally Appointed Members), U.S. Census Monitoring Board, Phone (301) 457–5080.

Mark R. Johnson,

Executive Director.

[FR Doc. 98–30606 Filed 11–13–98; 8:45 am]

BILLING CODE 1179–00–M

DEPARTMENT OF COMMERCE

Foreign-Trade Zones Board

[Order No. 1003]

Grant of Authority; Establishment of a Foreign-Trade Zone, Gregg County, Texas

Pursuant to its authority under the Foreign-Trade Zones Act of June 18, 1934, as amended (19 U.S.C. 81a–81u), the Foreign-Trade Zones Board (the Board) adopts the following Order:

Whereas, the Foreign-Trade Zones Act provides for ''. . . the establishment . . . of foreign-trade zones in ports of entry of the United States, to expedite and encourage foreign commerce, and for other purposes,'' and authorizes the Foreign-Trade Zones Board to grant to qualified corporations the privilege of establishing foreign-trade zones in or adjacent to U.S. Customs ports of entry;

Whereas, Gregg County, Texas (the Grantee), has made application to the Board (FTZ Docket 75–97) requesting the establishment of a foreign-trade zone at the Gregg County Airport, Gregg County, Texas, adjacent to the Shreveport-Bossier City, Louisiana, Customs port of entry;

Whereas, notice inviting public comment has been given in the **Federal Register** (62 FR 54821, 10/22/97); and,

Whereas, the Board adopts the findings and recommendations of the examiner's report and finds that the requirements of the Act and the Board's regulations are satisfied, and that approval of the application is in the public interest;

Now, therefore, the Board hereby grants to the Grantee the privilege of establishing a foreign-trade zone, designated on the records of the Board as Foreign-Trade Zone No. 234, at the site described in the application, subject to the Act and the Board's regulations, including § 400.28.

Signed at Washington, DC, this 4th day of November 1998.

Foreign-Trade Zones Board.

William M. Daley,

Secretary of Commerce, Chairman and Executive Officer.

ATTEST:

Dennis Puccinelli,

Acting Executive Secretary.

[FR Doc. 98–30567 Filed 11–13–98; 8:45 am]

BILLING CODE 3510–DS–P

DEPARTMENT OF COMMERCE

International Trade Administration

[A–588–028]

Roller Chain, Other Than Bicycle From Japan: Final Results and Partial Recission of Antidumping Duty Administrative Review

AGENCY: Import Administration, International Trade Administration, Department of Commerce

ACTION: Notice of Final Results and Partial Recission of Antidumping Duty Administrative Review

SUMMARY: On May 8, 1998, the Department of Commerce (the Department) published the preliminary results and partial recission of the administrative review of the antidumping duty order on roller chain, other than bicycle, from Japan. This review covers fourteen manufacturers/exporters/resellers of roller chain from Japan during the period April 1, 1996, through March 31, 1997.

Based on our analysis of the comments received and the correction of certain clerical errors, we have changed our results from those presented in our preliminary results as described below in the ''*Changes From the Preliminary Results*'' section of this notice. The final results are listed below in the section ''*Final Results of Review*.''

EFFECTIVE DATE: November 16, 1998.

FOR FURTHER INFORMATION CONTACT: Ron Trentham or Cameron Werker, AD/CVD Enforcement, Group II, Office Four, Import Administration, International Trade Administration, U.S. Department of Commerce, 14th Street and Constitution Avenue, N.W., Washington, D.C. 20230; telephone: (202) 482–6320 and (202) 482–3874, respectively.

SUPPLEMENTARY INFORMATION:

The Applicable Statute and Regulations

Unless otherwise indicated, all citations to the statute are references to the provisions effective January 1, 1995, the effective date of the amendments made to the Tariff Act of 1930 (the Act)

by the Uruguay Round Agreements Act (URAA). In addition, unless otherwise indicated, all citations to the Department's regulations are to the provisions codified at 19 CFR Part 353 (April 1997). Although the Department's new regulations, codified at 19 CFR 351 (62 FR 27926 (May 19, 1997)) (''Final Regulations''), do not govern this administrative review, citations to these regulations are provided, where appropriate, as a statement of current Departmental practice.

Background

On May 8, 1998, the Department published its preliminary results of review, Notice of Preliminary Results and Partial Rescission of Antidumping Duty Administrative Review: Roller Chain, Other than Bicycle, from Japan, 63 FR 25450 (RC 96–97 Preliminary Results), of the antidumping finding on roller chain, other than bicycle, from Japan (38 FR 9926, April 12, 1973).

We gave interested parties an opportunity to comment on the preliminary results. We received comments from: (1) Daido Kogyo Company Ltd. (DK); (2) Izumi Chain Mfg. Company Ltd., (Izumi); (3) Pulton Chain Company Inc. (Pulton); (4) R.K. Excel Company Ltd. (RK);

(5) Kaga Chain Manufacturer (Kaga); (6) Oriental Chain Company (OCM); (7) Sugiyama Chain Company, Ltd. (Sugiyama); and (8) Tsubakimoto Chain Co./U.S.-Tsubaki (Tsubakimoto), (collectively, the respondents), and the petitioner (the American Chain Association (ACA)), on July 2, 1998.

On July 13, 1998, the same parties submitted rebuttal comments. We received additional comments and rebuttal comments on September 1, 1998, and September 9, 1998, respectively, from Izumi, Sugiyama, Tsubakimoto, the petitioner, and from an interested party, Jeffrey Chain Company (Jeffrey Chain). We held a hearing on September 24, 1998, to give interested parties the opportunity to express their views directly to the Department. A segment of this hearing was closed to the public in order to protect certain proprietary information. Based on our analysis of the comments received and the correction of certain clerical and computer programming errors, we have made changes from the preliminary results, as described below in ''Changes From the Preliminary Results'' and ''Interested Party Comments'' section of this notice. The final results are listed below in the section ''Final Results of Review.'' The Department has now completed this administrative review in accordance with Section 751(a) of the Act.

Scope of the Review

The merchandise subject to this review is roller chain, other than bicycle, from Japan. The term ''roller chain, other than bicycle,'' as used in this review, includes chain, with or without attachments, whether or not plated or coated, and whether or not manufactured to American or British standards, which is used for power transmissions and/or conveyance. This chain consists of a series of alternately-assembled roller links and pin links in which the pins articulate inside from the bushings and the rollers are free to turn on the bushings. Pins and bushings are press fit in their respective link plates. Chain may be single strand, having one row of roller links, or multiple strand, having more than one row of roller links. The center plates are located between the strands of roller links. Such chain may be either single or double pitch and may be used as power transmission or conveyor chain. This review also covers leaf chain, which consists of a series of link plates alternately assembled with pins in such a way that the joint is free to articulate between adjoining pitches. This review further covers chain model numbers 25 and 35. Roller chain is currently classified under the Harmonized Tariff Schedule of the United States (HTSUS) subheading 7315.11.00 through 7619.90.00. Although the HTSUS subheadings are provided for convenience and Customs purposes, the written description remains dispositive.

On March 24, 1998, the Department determined that certain models of silent timing chain produced and exported by Kaga for use in automobiles are outside the scope of the antidumping finding. (See Final Scope Ruling: Kaga's Request for Scope Ruling on Automotive Silent Timing Chain, March 24, 1998 on file in room B–099 of the Main Commerce Building).

Verification

As provided in section 782(i) of the Act, on July 6, 1998, the Department conducted a partial verification, at the Department in Washington, D.C., of the differences in merchandise (DIFMER) information provided by Sugiyama. We used standard verification procedures, including examination of relevant accounting, sales, and other financial records containing relevant information. Our verification results are outlined in the verification report on file in the Central Records Unit (CRU) in room B–099 of the main Commerce building, (see Memorandum to Holly Kuga from the Team, Regarding the ''Verification of the Cost of Manufacture and Variable Cost of Manufacture Questionnaire Responses of Roller Chain, Other than Bicycle, from Japan—Sugiyama Chain Co., Ltd.,—Administrative Review, 1996–1997,'' dated August 13, 1998 (Sugiyama Verification Report)).

Partial Rescission of Review

In our preliminary results, we determined that during the period of review (POR), Peer Chain Co., (Peer) made no shipments of subject merchandise to the United States. We confirmed with the United States Customs Service (Customs) that Peer did not have entries of subject roller chain during the POR. Therefore, we rescinded this review with respect to Peer.

Hitachi Metals Techno, Ltd. (HMTL) is affiliated with a roller chain producer subject to this annual review. During this POR, HMTL and HMTL/Hitachi Maxco, Ltd., made no shipments of roller chain to the United States. We confirmed with Customs that HMTL and HMTL/Hitachi Maxco, Ltd., did not have entries of subject roller chain during the POR. Consequently the issue of a separate review rate for HMTL and HMTL/Hitachi Maxco, Ltd., is moot and we rescinded the review for this reason with respect to these parties.

In addition, we determined in our preliminary results that we did not have a basis to consider Daido Tsusho (DT), Nissho Iwai Corporation (NIC) and Alloy Tool Steel Inc. (ATSI) for separate rates in this review and rescinded the reviews for these entities. See RC 96–97 Preliminary Results at 25451.

Changes From the Preliminary Results

We calculated export price (EP), constructed export price (CEP), and normal value (NV) based on the same methodology used in the preliminary results with the exceptions discussed below. Where applicable, we have cited to the relevant interested party comment; otherwise, we address these changes further in the company-specific final analysis memoranda on file in the CRU.

1. We modified the model match methodology with regard to matching similar merchandise. See the Department Position to Model Match Comment 1, below.

2. With respect to DK, we have made a CEP-offset adjustment to NV in our calculations and have corrected one clerical error. See the Department Position to DK Comments 1 and 2 below.

3. We have corrected for a programming error for RK which overstated the quantity and understated

the price of RK's chain sold in kits in the United States.

4. We have determined that the use of facts otherwise available is warranted for Sugiyama and Kaga.

Facts Available (FA)

In accordance with section 776(a) of the Act, we have determined that the use of adverse facts available is warranted for Izumi, Kaga, OCM, Pulton, and Sugiyama for these final results of review.

1. Application of FA

Section 776(a) of the Act provides that, if an interested party withholds information that has been requested by the Department, fails to provide such information in a timely manner or in the form or manner requested, significantly impedes a proceeding under the antidumping statute, or provides information which cannot be verified, the Department shall use, subject to sections 782(d) and (e), facts otherwise available in reaching the applicable determination. In this review, as described in detail below, the above-referenced companies failed to provide the necessary information in the form and manner requested, and, in some instances, the submitted information could not be verified. Thus, pursuant to section 776(a) of the Act, the Department is required to apply, subject to section 782(d), facts otherwise available.

Section 782(d) of the Act provides that, if the Department determines that a response to a request for information does not comply with the request, the Department will inform the person submitting the response of the nature of the deficiency and shall, to the extent practicable, provide that person the opportunity to remedy or explain the deficiency. If that person submits further information that continues to be unsatisfactory, or this information is not submitted within the applicable time limits, the Department may, subject to section 782(e), disregard all or part of the original and subsequent responses, as appropriate.

Pursuant to section 782(e) of the Act, notwithstanding the Department's determination that the submitted information is ''deficient'' under section 782(d) of the Act, the Department shall not decline to consider such information if all of the following requirements are satisfied: (1) the information is submitted by the established deadline; (2) the information can be verified; (3) the information is not so incomplete that it cannot serve as a reliable basis for reaching the applicable determination; (4) the interested party has demonstrated that it acted to the best of its ability; and (5) the information can be used without undue difficulties.

2. Selection of Facts Available

In selecting from among the facts otherwise available, section 776(b) of the Act authorizes the Department to use an adverse inference if the Department finds that an interested party failed to cooperate by not acting to the best of its ability to comply with the request for information. See, e.g., Certain Welded Carbon Steel Pipes and Tubes From Thailand: Final Results of Antidumping Duty Administrative Review, 62 FR 53808, 53819–20 (Oct. 16, 1997) (Pipe and Tubes From Thailand).

A. Total FA

Sugiyama

1. Application of FA

In accordance with section 782(d) of the Act, on August 15, 1997, December 30, 1997, and January 19, 1998, the Department issued supplemental questionnaires to Sugiyama, addressing multiple deficiencies in its questionnaire responses. In addition, Department officials met with Sugiyama's counsel to discuss these deficiencies and how they could be cured. See Memorandum to the File from Cameron Werker (February 6, 1998) on file in the CRU. However, as we discuss below, the information submitted by Sugiyama in its supplemental questionnaire responses continued to be inadequate and/or inappropriate for use in our margin analysis.

In the preliminary results, the Department excluded from its margin calculations home market sales submitted by Sugiyama after the deadline for submission of factual information, and determined to apply adverse FA to those U.S. transactions where the NV relied in whole or in part on the untimely submitted sales. At that point, we explained that we would address the appropriateness of including these untimely sales in our margin analysis in the final results. See RC 96–97 Preliminary Results at 25456. We further found that Sugiyama had failed to cooperate to the best of its ability, and determined that, in selecting among the FA to apply to the sales in question, an adverse inference was warranted. We consequently assigned, as adverse FA, the rate of 42.48 percent that was calculated for Kaga in the preliminary results. Id.

Following the preliminary determination, on June 8, 1998, we met with Sugiyama's counsel, who informed us of additional deficiencies in the company's questionnaire responses. Specifically, Sugiyama's counsel informed the Department that: (1) the company failed to report key information regarding certain affiliated reseller relationships; (2) the company failed to report any home market sales of chain purchased from other manufacturers subject to this review, and resold in the home market; (3) the company does not maintain and, therefore, was unable to report standard or product costs; and (4) Sugiyama reported estimated model-specific overhead, material usage, and labor cost allocations based on the company's ''experience,'' rather than supporting documentation. For a detailed discussion of these deficiencies, see Memorandum to the File from Jack K. Dulberger Regarding ''Meeting with Representatives of Sugiyama Chain Company, Ltd., Regarding the 1996–97 Administrative Review of Roller Chain, Other Than Bicycle, from Japan'' (June 17, 1998) on file in the CRU.

Given the potentially significant impact of these data deficiencies on our margin analysis, we decided to conduct a limited verification of Sugiyama's reported DIFMER information (variable and fixed cost of manufacturing data). The purpose of this partial verification was to ascertain the reliability of the DIFMER response, so that the Department would be able to decide whether to proceed with regular verification of Sugiyama's facilities in Japan. We conducted this verification on July 6, 1998, in Washington, D.C., and concluded that Sugiyama was unable to demonstrate the reliability and completeness of its cost data. Taking into account the fact that the unreliable DIFMER data affected a significant portion of total U.S. sales, we were unable to ascertain what portion of U.S. sales would be affected by the unreported affiliations and unreported home market sales, and other known deficiencies in the response, we determined to cancel the scheduled verification of Sugiyama in Japan. For a more detailed discussion of our verification findings, *see* the Sugiyama Verification Report.

We further determined that Sugiyama failed to satisfy the five requirements enunciated by section 782(e) of the Act. First, a significant portion of the company's home market sales was untimely submitted. Second, because Sugiyama lacked necessary documentation to support its reported costs (*see* Summary of Results of the Partial-Verification section in the Memorandum to Maria Harris Tildon from Holy Kuga Regarding ''Determination of FA Based on Unreliable and/or Deficient Data for

Sugiyama'' (August 14, 1998) (Sugiyama FA Memorandum) on file in the CRU), a substantial portion of its response data could not be verified. Third, because over 40 percent of the company's home market sales were untimely submitted, additional home market sales were not reported at all, and Sugiyama failed to disclose in its questionnaire responses relevant information regarding certain corporate affiliations, the information is so incomplete that it cannot serve as a reliable basis for reaching the applicable determination. Fourth, Sugiyama did not demonstrate that it acted to the best of its ability in providing the necessary information. As explained above, and as detailed in the Sugiyama FA Memorandum, after the November 17 deadline established for submission of new factual information in this review, Sugiyama continued to submit partial corrections to its timely submitted data and to the untimely submitted home market affiliated sales information that it provided to the Department for the first time on January 27, 1998. Finally, even if Sugiyama's submissions contained complete and accurate information, the Department would not be able to use it without undue difficulty in light of the magnitude of the submitted corrections and clarifications.

For the reasons stated above, the application of section 782(e) of the Act does not overcome section 776(a)'s direction to use facts otherwise available for Sugiyama's submissions. We have thus concluded that a determination predicated upon total FA is warranted in this case.

2. Selection of FA. As discussed above, we found significant problems with Sugiyama's submissions. Although we addressed the company's deficiencies with respect to the home market sales database in several supplemental questionnaires, Sugiyama failed to report a significant portion of its home market sales. Specifically, Sugiyama originally reported that one of its affiliated home market resellers had sales to two customers in the home market during the POR. However, in its revised database submitted in January 1998, Sugiyama included previously unreported sales by that reseller to multiple additional customers. After careful review of this submission, we discovered that Sugiyama had increased its home market sales database by more than 40 percent. *See RC 1996–1997 Preliminary Results* at 25456. Moreover, following the preliminary results, Sugiyama disclosed additional reporting problems, including its failure to report key information regarding company affiliations, which precluded the Department from conducting an arms-length test, or from determining what percentage of U.S. sales was affected by this omission without admitting new information from Sugiyama. As described in detail in the Sugiyama FA Memorandum, during the partial-verification in Washington, D.C., we found that much of Sugiyama's cost data was not verifiable. The company's cost allocations were estimates based on Sugiyama's ''experience,'' rather than supporting documentation, and were not representative of POR costs. Accordingly, because Sugiyama did not act to the best of its ability to comply with the request for information, under section 776(b) an adverse inference is warranted. However, because the company substantially cooperated throughout the course of this review, we are resorting to FA that are less adverse to the interests of Sugiyama. *See, e.g., Fresh Cut Flowers from Colombia; Final Results and Partial Rescission of Antidumping Duty Administrative Review*, 62 FR 53287, 53291–53292 (Oct. 14, 1997) (*Fresh Cut Flowers—Colombia 1997*). As FA, we have applied the rate of 12.68 percent, the margin calculated for another respondent in the 1990–1991 administrative review of this proceeding. This rate is a significant increase from the company's current cash deposit rate and thus is sufficiently adverse to induce cooperation by Sugiyama in future reviews of this proceeding.

Kaga

1. Application of FA. In accordance with section 782(d) of the Act, the Department provided Kaga with the opportunity to explain its deficiencies in our supplemental questionnaires of October 31, 1997, and March 25, 1998. Although Kaga responded to our supplemental requests for information, the information provided was deficient. On April 1, 1998, we received a call from counsel for Kaga, who stated that in responding to our March 25, 1998, request for information regarding missing values, other errors had been discovered. We instructed Kaga to submit revised sales tapes for the U.S. and home market by April 6, 1998, and cautioned Kaga that we would not grant any other extensions to correct for data errors. At the same time, we informed Kaga that if we found errors or had difficulty in using the data on the revised tapes, we may proceed with our determination based on FA. However, in letters submitted on April 28, and April 29, 1998, Kaga admitted that its sales tapes submitted on April 6, 1998, in response to our March 25, 1998, request for information were rife with incorrect price and expense data. Moreover, following the preliminary results, in its letter of June 30, 1998, and in its July 2, 1998, case brief, Kaga disclosed programming errors affecting all CEP sales and an undetermined number of EP sales, and reported conversion and coding errors affecting an undetermined number of U.S. and home market sales. As stated above, the Department issued multiple information requests providing Kaga ample opportunities to cure its deficiencies. Given that Kaga failed to provide the necessary information in the form and manner requested, even after being provided several opportunities to cure these deficiencies, the Department is required, under section 782(d), to apply, subject to section 782(e), facts otherwise available.

We further determine that Kaga failed to satisfy several of the requirements enunciated by section 782(e) of the Act. First, a significant portion of the company's U.S. and home market sales data was untimely submitted. Second, Kaga's information is so incomplete that it cannot serve as a reliable basis for reaching the applicable determination pursuant to subsection (e)(3), since the reported programming errors affect all CEP sales and an undetermined number of EP sales. Further, no information exists on the record regarding the number of U.S. and home market gross unit prices which are incorrect due to Kaga's miscalculations in converting gross unit prices from a per-link to a per-foot basis. In addition, no information exists on the record regarding the number of models of conveyor chain which were incorrectly coded as industrial chain by Kaga. Third, Kaga did not demonstrate that it acted to the best of its ability in providing the necessary information under subsection (e)(4). As noted above, Kaga failed to provide the necessary information even after the Department issued multiple supplemental questionnaires providing Kaga ample opportunity to cure its deficiencies. Fourth, to attempt to correct all of the errors in Kaga's responses would be unduly burdensome on the Department. Thus, even if the Department attempted to correct the responses, given the numerous errors in Kaga's information on the record, the information could be used without undue difficulties, as required by subsection (e)(5).

For the reasons stated above, the application of section 782(e) of the Act does not overcome section 776(a)'s direction to use facts otherwise available for Kaga's submissions. Thus, the use of facts available is warranted in this case.

2. Selection of FA

As discussed above, we found significant problems with Kaga's submissions. Although the Department provided Kaga with the opportunity to explain its deficiencies in our supplemental questionnaires of October 31, 1997, and March 25, 1998, the information provided was deficient. In a submission dated April 28, 1998, Kaga stated that it had discovered inadvertent and previously undisclosed errors. Kaga reported that, as a result of a programming error, home market packing and indirect selling expenses were not calculated properly. For U.S. sales, Kaga stated that the price for two chain models were reported incorrectly. Further, Kaga reported that, as a result of programming errors, the reported U.S. packing and commission values were incorrect. It also noted that the reported indirect selling expenses for both EP customers were incorrect. For the CEP customer, Kaga stated that brokerage, date of sale, sales invoice date, date of shipment, and date of receipt of payment were not reported as requested in the Department's questionnaire. On April 29, 1998, Kaga submitted a letter stating that it had found an additional error in the U.S. sales data base. Kaga stated that due to this programming error, the amount reported for U.S. inland freight from warehouse to one EP customer was incorrect.

In its July 2, 1998, case brief, Kaga reiterated that it had discovered two programming errors in the data processing. According to Kaga, the first error was that only a single character was allowed to the left of the decimal for U.S. gross unit price, resulting in an understatement of Kaga's U.S. sales prices. This, Kaga noted, affected sales to one EP customer and all CEP sales. The second error, affecting only CEP sales, according to Kaga, occurred in its computer submission of January 22, 1998 when in the data processing the prices from Kaga's affiliated importer to its unaffiliated U.S. customers were mistakenly deleted and, instead, used the transfer prices from Kaga to its affiliated importer were used.

In addition, Kaga stated that it found three other errors by the company itself. First, it reported that it miscalculated the per-foot gross unit prices for ''several of its chains'' when converting from a per-link basis for the Department. Second, Kaga noted that it ''mistakenly coded several models of conveyor chain . . . as industrial chain.'' Third, Kaga stated that it included an invoice in the home market sales data which represents an adjustment in price to a pre-existing sale, and that any observation associated with this invoice should be deleted from the home market data base.

As the record evidence demonstrates, despite numerous opportunities, Kaga continued to provide erroneous data, the magnitude of which prevented the Department from using Kaga's information in the margin calculations. We thus find that Kaga did not act to the best of its ability to comply with the request for information under section 776(b) and that, under section 776(b), an adverse inference is warranted. However, because Kaga made an effort to comply throughout the course of this review, we are resorting to facts available that are less adverse to the interests of Kaga. See, e.g., Notice of Final Determination of Sales at Less Than Fair Value: Steel Wire Rod From Germany, 63 FR 8953, 8955 (February 23, 1998); and Fresh Cut Flowers-Colombia 1997. Therefore, we have assigned Kaga an adverse FA rate of 12.68 percent (the rate calculated for another respondent in the 1990–1991 review of this proceeding). This rate is a significant increase from the company's current cash deposit rate and is thus sufficiently adverse to induce cooperation by Kaga in future reviews of this proceeding. For a detailed discussion of this issue see the Memorandum From Tom Futtner, Acting Director, AD/CVD Enforcement, Group II, Office 4, to Holly A. Kuga, Acting Deputy Assistant Secretary, Import Administration regarding ''Antidumping Duty Administrative Review: Roller Chain, Other than Bicycle, from Japan (1996–1997)—Determination of Facts Available for Kaga Industries, Co., Ltd.'' (November 4, 1998), on file in the CRU.

OCM. For purposes of the preliminary results, the Department concluded that OCM failed verification and that the determination based on the total adverse FA was warranted for this company. We, accordingly, assigned OCM an adverse FA rate of 17.57 percent and articulated detailed reasons for our decision in the RC 96–97 Preliminary Results and the Memorandum from the Senior Director, AD/CVD Enforcement, Group II, Office 4, to the Acting Deputy Assistant Secretary, Import Administration, regarding ''Antidumping Duty Administrative Review: Roller Chain, Other Than Bicycle from Japan (1996–1997): Determination of Facts Available Based on Results of Verification of Oriental Chain Manufacturing Co., Ltd.'' (April 30, 1998) (OCM FA Memorandum), on file in the CRU. For the final results, we have reexamined our verification results and considered the interested party comments (see the Department Position to OCM Comments 1 through 13). We continue to find that OCM did not act to the best of its ability in responding to the Department's questionnaire, however, as we explained in the preliminary results, because OCM made substantial efforts to cooperate throughout the course of this review, we are resorting to FA that are less adverse to the interests of the company. Therefore, we are assigning OCM an adverse FA rate of 12.68 percent, which constitutes a rate calculated for another respondent in a previous review and is a significant increase from OCM's current cash deposit rate and is thus sufficiently adverse to induce cooperation in future segments of this proceeding.

Pulton. For purposes of the preliminary results, the Department concluded that, because Pulton refused to permit verification, a determination based on the total adverse FA was warranted for this company. We, accordingly, assigned an adverse FA rate and articulated detailed reasons for our decision in RC 96–97 Preliminary Results and the Memorandum from the Senior Director, AD/CVD Enforcement, Group II, Office 4, to the Acting Deputy Assistant Secretary, Import Administration, regarding ''Application of Total Facts Available to Pulton Chain Company, Ltd., (Pulton) in the Administrative Review of Roller Chain, Other than Bicycle from Japan (Roller Chain) Covering the POR: April 1, 1996 through March 31, 1997'' (April 30, 1998), on file in the CRU. For the final results, we have considered the interested party comments (see the Department Position to Pulton Comments 1 and 2), and continue to find that Pulton's refusal to permit the Department to verify the information in this review demonstrates that it failed to cooperate by not acting to the best of its ability. Thus, consistent with the Department's practice in cases where a respondent withdraws its participation in a proceeding, in selecting FA for Pulton in this review, an adverse inference is warranted. Therefore, we are assigning Pulton an adverse FA rate of 17.57 percent, which constitutes a rate calculated for another respondent in a previous review.

Izumi. For purposes of the preliminary results, the Department concluded that Izumi failed verification and that a determination based on the total adverse FA was warranted for this company.

We, accordingly, assigned Izumi an adverse FA rate of 17.57 percent and articulated detailed reasons for our decision in the RC 96–97 Preliminary Results and the Memorandum from the Senior Director, AD/CVD Enforcement, Group II, Office 4, to the Acting Deputy Assistant Secretary, Import Administration, regarding ''Antidumping Duty Administrative Review: Roller Chain, Other Than Bicycle from Japan (1996–1997): Determination of Facts Available Based on Results of Verification of Izumi Chain Manufacturing Co., Ltd.''(April 30, 1998) (Izumi FA Memorandum), on file in the CRU. For the final results, we have reexamined our verification results and considered the interested party comments (see the Department Position to Izumi Comment 1). However, as we explained in the preliminary results, because Izumi made substantial efforts to cooperate throughout the course of this review, we are resorting to FA that are less adverse to the interests of the company. Therefore, we are assigning Izumi an adverse FA rate of 12.68 percent, which constitutes a rate calculated for another respondent in a previous review.

B. Partial FA for DK and Enuma Chain Manufacturing Company (Enuma)

For purposes of the preliminary results, the Department concluded that because DK and Enuma failed to report DIFMER and/or constructed value (CV) data, an adverse FA was warranted for all unmatched DK and Enuma sales. We, accordingly, assigned DK and Enuma an FA rate of 42.48 percent for any unmatched sales and articulated detailed reasons for our decision in the *RC 96–97 Preliminary Results* and the Memorandum from the Senior Director, AD/CVD Enforcement, Group II, Office 4, to the Acting Deputy Assistant Secretary, Import Administration, regarding ''Application of Partial Facts Available for Certain U.S. Sales of Roller Chain Manufactured by Daido Kogyo Co., Ltd., and Enuma Chain Manufacturing Co., Ltd., and Kaga Industries Co., Ltd.'' (April 30, 1998), on file in the CRU. For the final results, we find that the 42.48 percent calculated rate for Kaga in the preliminary results is not valid. *See* the discussion on FA for Kaga, above. However, since these two respondents refused to provide this information, we are continuing to assign DK and Enuma an adverse FA rate based on the highest rate from the proceeding which has not been invalidated. For purposes of the final results, that rate changed from 42.48 percent to 17.57 percent.

3. Corroboration of Information Used as Facts Available

Section 776(b) of the Act authorizes the Department to use as adverse FA information derived from the petition, the final determination from the less than fair value (LTFV) investigation, a previous administrative review, or any other information placed on the record.

Section 776(c) of the Act requires the Department to corroborate, to the extent practicable, secondary information used as FA. Secondary information is described in the Statement of Administrative Action (SAA) (at 870) as ''[i]nformation derived from the petition that gave rise to the investigation or review, the final determination concerning the subject merchandise, or any previous review under section 751 concerning the subject merchandise.''

The SAA further provides that ''corroborate'' means simply that the Department will satisfy itself that the secondary information to be used has probative value (*see* SAA at 870). Thus, to corroborate secondary information, the Department will, to the extent practicable, examine the reliability and relevance of the information used. However, unlike other types of information, such as input costs or selling expenses, there are no independent sources for calculated dumping margins. The only source for margins is an administrative determination. Thus, in an administrative review, if the Department chooses as total adverse FA a calculated dumping margin from a prior segment of the proceeding, it is not necessary to question the reliability of the margin from that time period (*i.e.*, the Department can normally be satisfied that the information has probative value and that it has complied with the corroboration requirements of section 776(c) of the Act). *See, e.g., Elemental Sulphur from Canada: Preliminary Results of Antidumping Duty Administrative Review,* 62 FR at 971 (January 7, 1997) and *Antifriction Bearings (Other than Tapered Roller Bearings) and Parts Thereof from France, Germany, Italy, Japan, Singapore, and the United Kingdom* 62 FR 2801 (January 15, 1997) (*AFBs 1997*).

As to the relevance of the margin used for adverse FA, the Department stated in *Tapered Roller Bearings from Japan; Final Results of Antidumping Duty Administrative Review* 62 FR 47454 (September 9, 1997) that it will consider information reasonably at its disposal as to whether there are circumstances that would render a margin irrelevant. Where circumstances indicate that the selected margin is not appropriate as adverse [FA], the Department will disregard the margin and determine an appropriate margin. *See also Fresh Cut Flowers from Mexico; Preliminary Results of Antidumping Duty Administrative Review,* 60 FR 49567 (September 26, 1995). We have determined that there is no evidence on the record of the 1987–1988 or 1990–1991 administrative reviews, where we calculated the 17.57 and 12.68 percent rates, respectively, which would indicate that the 17.57 or 12.68 percent rates are irrelevant or inappropriate as adverse FA rates for certain respondents in the instant review. Therefore, we have applied, as FA, the 17.57 and 12.68 percent margins from prior administrative reviews of this finding.

Interested Party Comments

We gave interested parties an opportunity to comment on the preliminary results. As noted above, we received comments and rebuttal comments from the petitioner and nine of the respondents and rebuttal comments from one other domestic interested party.

General Issues

Model Match

Comment 1: Sugiyama argues that the Department should modify its model match methodology to take account of the fundamentally different physical characteristics, uses, and manufacturing processes between plated and unplated chain. According to Sugiyama, these differences are reflected in significant cost and price disparities. Sugiyama claims that the Department's preliminary model match methodology ignores these differences, and by matching expensive plated chain to unplated chain, significantly distorts the dumping margin.

RK states that, in the preliminary results, the Department erred in matching U.S. sales of a certain model of chain with home market sales of several different models of chain. RK notes that section 771(16)(B) and (C) of the Act authorize the Department to match U.S. sales of subject merchandise with sales in the comparison market of ''similar merchandise,'' namely, merchandise that is either ''like that merchandise [sold in the United States] in component material or materials and in the purpose for which used, and approximately equal in commercial value to that merchandise,'' or merchandise that is of the ''same general class or kind'' as the subject merchandise, used for a like purpose, and which can ''reasonably be

compared'' with the product sold in the United States. According to RK, in creating an effective model match methodology to identify ''similar'' products, the Department must consider the specific facts and circumstances regarding the product(s) under review and must base the model match system on commercially significant physical characteristics of the subject merchandise (*i.e.,* physical characteristics that affect the commercial value and sales price of the product(s) under review).

Further, RK argues that the Department has a statutory duty to compare products that are the most similar so that the resulting dumping calculations will be as accurate and reliable as possible. RK concludes that both the statute and the Department's model matching decisions in other cases establish the principle that it is inappropriate and unreasonable for the Department to make comparisons between products with important physical differences that directly affect commercial value. Thus, RK contends that it would be unreasonable for the Department to match sales of certain chain models where the models differ fundamentally in terms of their components and materials, their purposes and uses, and their respective commercial values. Accordingly, RK recommends that the Department adjust its model match methodology (1) to account for different types of seals (*e.g,* O-ring versus XW-ring), (2) to account for different types of materials, and (3) to ensure that the model match system does not permit matches across chain type or material.

RK further recommends that the Department adjust its model match methodology to prevent matches across pitch length because almost all parties, including the petitioner, have stated on the record that it is inappropriate to match chains across pitch length. In addition, RK requests that the Department adjust its model match methodology to reflect the consensus of all parties to this review, including the petitioner, that models of chain that differ in terms of certain key characteristics, such as material, finish, and number of strands, should never be considered ''identical'' or ''similar'' merchandise for purposes of model-match in this proceeding.

Kaga contends that the Department's preliminary model match methodology does not result in identical or reasonably similar home market matches based on physical characteristics, commercial value, purposes for which used and other factors which the Department is required by statute to analyze. Kaga argues that by potentially allowing one model match characteristic to determine foreign like product, the Department's methodology essentially relies on the DIFMER test (*i.e.,* the test to determine if the difference in variable costs of manufacturing is greater than 20 percent of the total cost of manufacturing of the U.S. product) to eliminate inappropriate matches.

Kaga maintains that the DIFMER test should be used in conjunction with a model match methodology, which first attempts to eliminate the matching of models which are dissimilar in components, commercial value and the purposes for which they are used. Kaga states that, once merchandise has been determined to be sufficiently similar, the DIFMER test should be applied to eliminate matches that may appear similar based only on an analysis of physical characteristics, commercial value and purpose for which the products are used, as required by the statute. Kaga argues that, because different types of chain (*i.e.*, industrial, motorcycle, leaf, silent timing, and conveyor chain) have very different characteristics, components, uses and commercial value, they should not be matched to each other. Kaga states that pitch is one of the most basic measures of roller chain, noting that virtually all parties, including the petitioner, have agreed that the Department should not cross pitch for model match purposes. Kaga further argues that the Department should not match chain that differ in terms of number of strands and number of attachments. Kaga asserts that chain with different numbers of strands differ in both physical characteristics and uses, and that the presence of attachments distinguishes attachment chain from non-attachment chain in terms of components, purpose for which it is used and commercial value. In addition, Kaga urges that, for the final results, the Department not match sidebow (sidebar) chain to standard roller chain for the final results. Kaga explains that standard roller chain cannot be used in an application which requires sidebow chain because it does not have the necessary flexibility.

More specifically, Kaga contends that the Department matched two models of chain that have two critical distinctions, which render them significantly different from each other. Kaga maintains that one chain is a coupling specifically designed for use with a sprocket, which has additional parts not found on the other chain. According to Kaga, these special features are not captured in the reported VCOM of the product, but do result in increased cost and thus increased price. Moreover, Kaga argues that it sold such a small amount of the chain coupling that it cannot reasonably be considered to have been sold ''in the ordinary course of trade.''

Finally, Kaga asserts that the Department's model match criteria do not meet the statutory definition of identical merchandise because there are certain physical characteristics which are not accounted for in the Department's matching criteria. Kaga cites ''F'' series chain as an example, and claims that although ''F'' series chain is identical to standard chain with the exception of a straight contour side plate, this is a significant physical difference. Thus, Kaga recommends that, in the final results, the Department use the CONNUMs developed by Kaga that take into account these differences. Kaga concludes that in cases where all 18 physical characteristics match, the Department should apply the DIFMER test and make a DIFMER adjustment if the VCOM of the home market and U.S. model are not the same.

The petitioner also urges the Department to consider refining its model match methodology. However, the petitioner recommends that this modification should closely parallel the three-tier approach set out in the antidumping statute. According to the petitioner, the Department should first seek to determine whether a particular U.S. sale can be matched with a contemporaneous sale of an identical product (based on the Department's 18 characteristics) in the comparison market. The petitioner believes that the Department's approach with regard to matching identical merchandise satisfies the statutory criteria set out in section 771(16)(A) of the Act and should be retained.

If such identical matches do not exist, the petitioner next recommends that the Department make a ''similar merchandise'' match under section 771(16)(B) of the Act. Under this test, the merchandise must be identical with respect to the first five elements (type, number of strands, material, finish, and pitch) of the Department's model match criteria in order to be considered similar merchandise. According to petitioner, if these five criteria match, the program should then select the most similar model through examination of the remaining 13 product characteristics. If such a match cannot be made, the petitioner notes that the Department should then seek to make a match under the general ''class or kind'' standard set out in section 771(16)(C) of the Act.

Under this rung of comparison, the petitioner maintains that the

Department should institute a test for ''class or kind'' of merchandise under section 771(16)(C) of the Act to determine which models share the greatest number of the first five of the model match characteristics. The petitioner states that, where two or more home market models share the same number of characteristics (out of the first five), the program should select the most similar product through examination of the remaining 13 criteria, and then calculate an average VCOM if multiple models share the same overall number of characteristics. The petitioner argues that this is in accordance with section 771(16)(C) of the Act, which provides that if the Department is satisfied that a particular home market model is (i) ''produced in the same country and by the same person and of the same general class or kind'' as the model sold in the United States, and (ii) ''like'' that model ''in the purposes for which used,'' then it may be used as a comparison model provided the Department determines that the chain products ''may be reasonably compared.''

In response to Sugiyama's request that the Department match plated chain only to other plated chain and unplated chain only to other unplated chain, the petitioner states that it would not object to the proposed refinement of the Department's model match methodology, provided that (1) it can be accomplished by resort to verifiable information that is already on the record in this review; and (2) it is applied to all respondents. The petitioner believes that the five elements listed above are the most important for determining matches and does not agree with RK that seal type should be added to the five basic model matching criteria or used to create unique chain types. According to the petitioner, under its recommended refinements to the model match methodology, the models that RK is concerned about would not be matched to each other because they differ in one or more of the first five elements.

Further, the petitioner disagrees with Kaga's claim that there are certain physical characteristics that are not accounted for in the Department's model match criteria. According to the petitioner, Kaga's one example is not so significant as to justify an abandonment of the Department's model match criteria. Moreover, the petitioner notes that minor physical differences can easily be taken into account by comparing the VCOMs of the home market and U.S. models and making a DIFMER adjustment, where warranted.

The petitioner notes that section 771(16)(C) of the Act requires that the foreign like product need only be ''of the same general class or kind as the subject merchandise.'' Moreover, the petitioner points out that it need not share similar ''component material or materials'' with the U.S. model nor does the comparison model need to be ''approximately equal in commercial value'' to the U.S. model. In short, the petitioner concludes that section 771(16)(C) of the Act imposes a reasonableness test. Namely, the Department must be accorded some degree of flexibility when determining whether two roller chain models ''may reasonably be compared.'' Thus, the petitioner does not agree with Kaga and RK that chain which differ with respect to one or more of the first five model match criteria can never be used for comparison purposes.

The petitioner asserts that there appears to be no dispute that all of the comparison models questioned by RK and Kaga satisfy the third criterion of the definition, namely, that they were produced in Japan by the same companies that manufactured the U.S. models and are clearly all part of the same general class or kind of merchandise. Moreover, the petitioner contends that, contrary to RK and Kaga's arguments, the comparison chain models are clearly put to uses which are ''like'' those of the U.S. models, and emphasizes that the uses in question need only be similar in nature and not identical.

Department Position: We agree in part with RK, Kaga, Sugiyama and the petitioner. Based on our analysis of the written comments submitted to the Department since the preliminary results in this proceeding, we find that the model match methodology used in our preliminary results should be modified with regard to identifying similar merchandise. To continue to rely on the model match methodology used in our preliminary results would, in some cases, yield inappropriate results; namely, it would group physically diverse chain that has vastly different uses and different commercial values together as similar merchandise.

For purposes of calculating NV, section 771(16) of the Act defines ''foreign like product'' as merchandise which is either (1) identical or (2) similar to the merchandise sold in the United States. *See* section 771(16) (A) (B) and (C); *see* also 19 CFR 351.411(a). Where there are no identical products sold in the home or other foreign markets, the Department will identify, by employing an appropriate product matching methodology, the product sold in the foreign market that is most similar to the product sold in the United States. Because the antidumping statute does not detail the methodology that must be used in determining what constitutes ''similar'' merchandise, the Department has broad discretion, implicitly delegated to it by Congress, to apply an appropriate model match methodology to determine which home market models are properly comparable with U.S. models under the statute. *See, e.g., Koyo Seiko Co., Ltd, et al.* v. *United States,* 66 F.3d 1204 (Fed. Cir. 1995). The Courts will uphold the Department's model match methodology as long as it is reasonable. *See, e.g., AK Steel Corporation, et al.* v. *United States,* Slip Op. 97–152, Court No. 96–05–01312 (CIT 1997) (*AK Steel*); *NTN Bearing Corp. of America, et al.* v. *United States,* 924 F. Supp. 200 (CIT 1996); *SKF USA Inc., et al.* v. *United States,* 876 F. Supp. 275 (CIT 1995).

In this case, in identifying which physical characteristics should be given the most weight in our determination of appropriate product comparisons, we considered comments from all parties, based upon which we then developed a product matching methodology predicated upon 18 physical characteristics, as outlined in our supplemental questionnaire of December 19, 1997. According to our revised methodology, we attempted to match U.S. sales to contemporaneous sales of identical products in the home market using these 18 product characteristics. Where all 18 product characteristics matched, we considered U.S. and home market models to be identical. Where we found no sales of identical merchandise in the home market to compare to U.S. sales, we compared U.S. sales to the next most similar foreign like product (models which shared the greatest number of physical characteristics with the models sold in the United States). Further, we made a DIFMER adjustment to the home market sales price to account for the actual physical differences between the products sold in the United States and the home market. In those instances, where there were no sales of identical or similar merchandise in the home market to compare to U.S. sales, we compared U.S. sales to the CV of the product sold in the U.S. market during the comparison period. *See RC 96–97 Preliminary Results* at 25457.

For the final results of this review, we conclude, based on the interested parties' comments, that our model match methodology should be further modified. As explained by Sugiyama, RK and Kaga, relying on the above model match methodology would match

chain so physically diverse that they could not be used in similar functions and have different commercial values.

Accordingly, we have amended our matching methodology as follows: roller chain models will be considered ''identical'' if they match with regard to all 18 characteristics; roller chain models will be considered ''similar'' for purposes of model matching only if they share all of the first six characteristics, as outlined in our supplemental questionnaire of December 19, 1997. Based on the comments of respondents and petitioner in this and previous reviews, we have concluded that the following six criteria must be identical for merchandise to be considered similar: (1) type of chain; (2) number of strands; (3) material; (4) finish; (5) pitch; and (6) type of seal. We will then select the most ''similar'' model through a hierarchical ranking of the remaining 12 product characteristics based on the order in which they are incorporated into the CONNUM. We find that this modification to our model matching methodology will yield more accurate results and minimize the effects of potential distortions to our calculations. *See AK Steel* at 42 (the CIT upheld the Department's departure from the original model match methodology, where the facts relied upon by the Department were clearly articulated and were rationally connected to its choice). Although the petitioner does not agree that type of seal should be one of the six criteria, we have concluded based on the comments of respondents (RK, DK, and Enuma) that type of seal is a distinguishing characteristic and an important differentiating feature between types of motorcycle chain.

With respect to RK's comment that the Department should not match specific models of chain, we note that under our modified model match methodology, these chains would no longer be considered similar for model match purposes. Further, with respect to the company-specific model match comments made by Kaga and Sugiyama, we note that the Department's decision to apply total FA to these parties renders their comments moot. *See* the Facts Available Section above.

Comment 2: Sugiyama states that where more than one home market product is considered ''equally similar'' to the U.S. product being analyzed, the Department's computer program randomly selected a single home market match. According to Sugiyama, the Department should correct the programming language to include all equally similar home market products in the product comparison.

Responding to Sugiyama's error allegation, the petitioner points out that Sugiyama was the only respondent to raise this issue. The petitioner states that it was unable to determine whether this alleged error actually occurred. The petitioner takes the position that, if the Department determines that such an error in fact occurred, it agrees that the Department should revise its program for the final results. However, the petitioner insists that any program correction be written by the Department itself.

Department Position: We disagree with Sugiyama's allegation that the Department's preliminary model match program randomly selected a home market match where more than one home market product was considered ''equally similar'' to the U.S. product being analyzed. On the contrary, an analysis of the Department's model match program shows that where there was more than one possible home market match, the program selected the ''most similar'' contemporaneous home market match.

Company-Specific Issues

DK

Comment 1: DK asserts that the Department erred in finding no difference in the LOT between DK's home market and U.S. sales and asserts that it is entitled to a CEP offset. First, DK claims that the Department incorrectly identified the stage of marketing of CEP sales. Second, DK argues that even conceding this stage of marketing definition, the Department was incorrect in finding that sales to DK's unaffiliated home market customers and sales to Daido Corporation (Daido Corp.) (DK's affiliated U.S. sales subsidiary) were at the same stage in the marketing process. Third, DK asserts that the Department's quantitative and qualitative analysis of selling activities in the home and U.S. markets is in error.

With regard to the first issue, DK argues that the term CEP is defined in section 772(b) of the Act to mean the price after all costs have been deducted back to the factory door. Citing *Sorenson* v. *Secretary of the Treasury*, 475 U.S. 851, 860, 106 S.Ct. 1600, 1606, 80 L.Ed. 2d 855 (1986), DK argues that in designating the CEP LOT to be the sale between the exporter and the U.S. importer, the Department disregarded ''[t]he normal rule of statutory construction [which] assumes that 'identical words used in different parts of the same Act are intended to have the same meaning.'''

DK argues that based on this statutory definition, the Department should not have designated the CEP LOT as the level of the constructed sale from the exporter to the importer. Nevertheless, assuming that the CEP LOT is at the level of the constructed sale from the exporter to the importer, DK argues that the CEP sales and home market sales to unaffiliated customers are still not at the same stage in the marketing process.

Citing *Dynamic Random Access Memory Semiconductors of one Megabit or Above From the Republic of Korea; Preliminary Results of Antidumping Duty Administrative Review and Notice of Intent not to Revoke Order*, 63 FR 11411, 11415 (March 9, 1998)/(*DRAMs Preliminary 96–97)* and Dynamic Random Access Memory Semiconductors of one Megabit or Above From the Republic of Korea; Preliminary Results of Antidumping Duty Administrative Review and Notice of Intent not to Revoke Order, 62 FR 12794, 12798 (March 18, 1997) (*DRAMs Preliminary 95–96*), DK contends that sales to unaffiliated home market customers and to affiliated U.S. importers are at different stages in the marketing process because there is a significant difference in the ''nature'' of the commercial activities associated with home market sales and with CEP sales. In addition, DK argues, the home market sales occur in a ''competitive environment,'' while the affiliated U.S. importer sales are made in a ''non-competitive environment'' with a corresponding lower level of commercial activity. DK further asserts that Daido Corp., a national distributor in the United States, and DK, a national distributor in Japan, ''play exactly the same roles'' in their respective markets such that sales to Daido Corp. cannot be at the same stage of marketing as sales to unaffiliated home market customers. DK concludes that not only is the Department's finding here in error, but that the marketing stage for sales to Daido Corp. is less advanced than that for sales to home market customers.

As to a comparison between the selling functions, DK claims that the Department incorrectly disregarded significant quantitative and qualitative differences between the selling functions performed in Japan for home market sales and those performed in Japan for CEP sales. Quantitatively, DK argues that only three of the selling functions overlap between home market sales and sales to Daido Corp. DK does not specify the three it is alluding to.

In addition, DK refutes the Department's assertion that advertising and technical services are negligible items since DK did not claim them as

selling expenses. DK notes that it did not claim either item as a direct selling expense, however it did claim advertising expenses as one of the categories in indirect selling expenses. With regard to technical services, DK contends that although there is no accounting categorization for technical services, they nevertheless occur and are accounted for in the costs of salaries for local sales office personnel and engineers.

DK further argues that the Department incorrectly ignored significant qualitative differences between home market sales and sales to Daido Corp. in three areas: developing and maintaining a customer base, maintaining inventory, and maintaining local sales offices. DK argues that these areas demonstrate qualitatively different selling functions for home market sales and CEP sales.

In particular, DK argues that since it, DT, and Daido Corp. are all affiliated with one another, deal in large quantities, and employ electronic ordering, DK need make only a limited effort in maintaining a customer base. Moreover, its records maintenance and collections activities are negligible. DK contends that this differs with the records maintenance and collections activities it carries out for its more numerous home market customers. DK further argues that while it maintains significant inventories for servicing the needs of home market customers, such as the need to rapidly ship a model to a customer, neither DK nor DT (DK's affiliated Japanese trading company) maintain such inventory for sales to Daido Corp., rather they sell only on a made-to-order basis. DK asserts that neither it nor DT maintain inventory for CEP sales. Moreover, DT does not act as an independent distributor by buying chain for its own account, holding inventory, and selling therefrom. Since DT does not own a warehouse, it arranges for freight forwarders to merely hold merchandise at the port while waiting for DK to complete manufacturing of an entire order. Finally, DK asserts that developing and maintaining home market customers and maintaining local offices ''are at the heart of'' doing business in the home market. DK argues that, by contrast, it and DT make ''almost no effort'' in these activities with respect to Daido Corp. because of the latter's ''captive customer'' status.

DK concludes that it has demonstrated a difference in LOT in the two markets and that the LOT of CEP sales is at a less advanced stage than the LOT of home market sales. However, since data is unavailable to show a consistent level of price differences in the home market at different levels of trade, it is entitled to a CEP offset in lieu of a LOT adjustment.

The petitioner agrees with the Department's preliminary results finding that DK is not entitled to a LOT adjustment or a CEP offset. First, the petitioner disagrees with DK's argument that its CEP and home market transaction are at different levels of trade. Specifically, the petitioner states that once U.S. selling expenses and U.S. profit are deducted from the CEP, the sale is at the same LOT as DT's EP price sales.

Moreover, citing prior roller chain reviews, the petitioner asserts that DK's proposed definition of the starting point for comparing CEP and home market transactions as at the ''factory door'' was previously rejected by the Department. (*See Final Results of Antidumping Administrative Review, and Determination not to Revoke in Part: Roller Chain, other than Bicycle, from Japan*, 62 FR 60472, 60479–80 (November 10, 1997) (*Roller Chain 95–96); and Notice of Final Results of Antidumping Administrative Review, and Determination not to Revoke in Part: Roller Chain, other than Bicycle, from Japan*, 62 FR 64322, 64325–26 (December 4, 1996) (*Roller Chain 94–95*). Furthermore, the petitioner cites *Borden Inc.* v. *United States*, (Consolidated Court No. 96–08–01970, Slip. Op. 98–36, 1998 Ct. Intl. Trade, at 66 (March 26, 1998) (*Borden*), to demonstrate that this position has been upheld by the CIT. Specifically, the petitioner points out that regarding the Department's antidumping regulations, the court found that a CEP offset adjustment based on a ''factory door'' approach would be ''distortive'' because it would lead to an ''automatic CEP offset.''

The petitioner also disagrees with DK's argument that the commercial environment for its CEP sales was significantly different than the one for home market sales, necessarily resulting in differing selling activities associated with each type of sale. Further, the petitioner notes that DK did not specifically challenge the Department's finding that no substantive differences appeared between the selling activities performed by DK and DT for EP and CEP sales. In support of the Department's conclusions, the petitioner notes that in the home market, Daido Corp. sells directly to OEMs and through various distributors while for U.S. sales, DT sells directly to OEMs and through DK's U.S. distributor, thus the sales seem to be made at parallel levels of trade.

The petitioner also contends that there is a possibility that the inventory maintained by DK in Japan for its home market customers could easily be used to fill orders for Daido Corp., although the petitioner offers no specific evidence regarding its concern. In addition, the petitioner disagrees with DK that significant differences existed between the selling activities it performed for sales in the two markets.

Finally, the petitioner points out that the Department found that three of the selling activities performed for home market sales were nominal in nature. With respect to four of the six remaining selling activities discussed by Department (inventory/warehousing, preparing chain for shipment, bill collection, and record maintenance), the petitioner contests DK's distinction between the activities performed for home market and those performed for U.S. sales as ''merely differences in degree and not in kind.'' As far as maintaining a customer base in Japan, the petitioner notes that DK did expend additional resources for this activity. Nevertheless, notwithstanding the differences in the latter category, the petitioner concludes that the Department's analysis that sales in the two markets were not made at different LOTs is clearly substantiated by the evidence on the record of this review, and is consistent with the Department's finding for this respondent in the two most recent prior segments of this proceeding.

Department Position: Based on our analysis of the record information, for these final results, we find that a LOT difference exists between DK's U.S. CEP sales and its home market sales.

In accordance with section 773(a)(1)(B) of the Act, to the extent practicable, we determine NV based on sales in the comparison market at the same LOT as the EP or the CEP transaction. The NV LOT is that of the starting-price sales in the comparison market or, when NV is based on constructed value, that of the sales from which we derive selling, general and administrative expenses and profit. For EP sales, the U.S. LOT is also the level of the starting-price sale, which is usually from exporter to importer. For CEP, it is the level of the constructed sale from the exporter to the importer. *See Notice of Final Determination of Sales at Less Than Fair Value: Certain Cut-to-Length Carbon Steel Plate from South Africa*, 62 FR 61731 (November 19, 1997) (*Carbon Steel Plate*). The statute and the SAA clearly support analyzing the LOT of CEP sales at the level of the constructed sale to the U.S. importer—that is, the level after

expenses associated with economic activities in the United States have been deducted pursuant to section 772(d) of the Act. The Department has clearly adopted this interpretation in previous cases. *See e.g., Dynamic Random Access Memory Semiconductors of One Megabit or Above From the Republic of Korea; Final Results of Antidumping Duty Administrative Review, Partial Rescission of Administrative Review and Notice of Determination Not to Revoke Order*, 63 FR 50867, 50872 (September 23, 1998) (*DRAMs Final Results 96–97); see also Notice of Final Determination of Sales at Less Than Fair Value; Static Random Access Memory Semiconductors From the Republic of Korea*, 63 FR 8945 (February 23, 1998) (*SRAMs 1996*). We note that DK, in the hearing, conceded the correctness of the Department's designation of CEP LOT as at the level of the constructed sale from the exporter to the importer. *See* Hearing Transcript, (October 2, 1998) at 49.

To determine whether NV sales are at a different LOT than EP or CEP sales, we examine stages in the marketing process and selling functions along the chain of distribution between the producer and the unaffiliated customer.

Customer categories such as distributors, retailers, or end-users are commonly used by petitioners or respondents to describe different LOTs, but, without substantiation, they are insufficient to establish that a claimed LOT is valid. An analysis of the chain of distribution and of the selling functions substantiates or invalidates the claimed LOTs.

Our analysis of the marketing process in both the home market and United States begins with goods being sold by the producer and extends to the sale to the final user. The chain of distribution between the producer and the final user may have many or few links, and each respondent's sales occur somewhere along this chain. In the United States, the respondent's sales are generally to an importer, whether independent or affiliated. We review and compare the distribution systems in the home market and the United States, including selling functions, class of customer, and the extent and level of selling expenses for each claimed LOT.

Unless we find that there are different selling functions for sales to the U.S. and home market sales, we will not determine that there are separate LOTs. Different LOTs necessarily involve differences in selling functions, but differences in selling functions, even substantial ones, are not alone sufficient to establish a difference in the LOTs. Differences in LOTs are characterized by purchasers at different stages in the chain of distribution and sellers performing qualitatively or quantitatively different functions in selling to them.

If the comparison-market sale is at a different LOT, and the difference affects price comparability, as manifested in a pattern of consistent price differences between the sales on which NV is based and comparison-market sales at the LOT of the export transaction, we make a LOT adjustment under section 773(a)(7)(A) of the Act. Finally, for CEP sales, if the NV level is more remote from the factory than the CEP level and there is no basis for determining whether the difference in the levels between NV and CEP affects price comparability, we adjust NV under section 773(a)(7)(B) of the Act (the CEP offset provision). *See e.g., Carbon Steel Plate* at 61732.

In the questionnaire the Department issued to DK and the other respondents, we requested that they provide information about their channels of distribution in the home and U.S. markets, including selling activities performed and classes of customer. Specifically, we requested information about the following nine types of selling activities: (1) developing and maintaining customers; (2) maintaining inventory; (3) preparing chain for shipment; (4) maintaining customer records; (5) collecting bills; (6) maintaining local offices; (7) technical assistance; (8) advertising; and (9) ''other activities'' (to which DK responded with information regarding liability insurance).

DK sells to two types of customers in the home market (*i.e.*, OEMs and distributors). We found that there was one LOT in the home market—direct sales of roller chain from DK to the unaffiliated home market customers.

DK sales in the U.S. market are made exclusively through its affiliated trading company, DT, who either sells directly to two types of unaffiliated U.S. customers (*i.e.*, OEMs and distributors), or to Daido Corp., DK's U.S. subsidiary. We have designated the former as EP sales because the subject merchandise was sold directly to the first unaffiliated purchaser in the United States prior to importation and CEP methodology was not otherwise warranted based on the facts of the record. We have designated the sales through Daido Corp. as CEP sales because the first sale to an unaffiliated purchaser in the United States was made by Daido Corp. after importation.

We first compared the home market sales to the EP sales, including the selling functions performed for each. We initially note that the structure of the two distribution systems appears very similar in that both DK and DT sell directly to OEMs and distributors. Moreover, we note that there are not substantial differences in selling activities. For home market sales, DK performs the following nine types of selling activities: developing and maintaining customers; maintaining inventory; preparing chain for shipment; maintaining customer records; collecting bills; maintaining local offices; technical assistance; advertising; and providing liability insurance. Based on a careful review of the record evidence, we found that DK/DT performed the following five selling activities for EP sales: developing and maintaining customers, preparing chain for shipment, maintaining customer records, collecting bills, and advertising. Although more selling activities were performed in the home market, we concluded from the overlap that there were not significant differences in selling activities performed in the home and EP markets. Consequently, based on all of the above, we consider home market sales and EP sales to be at the same LOT.

We then compared the U.S. EP sales to the CEP sales. As noted above, EP sales are to two classes of customers while DK makes all of its CEP sales through DT, an affiliated trading company. DT, in turn, resells the merchandise to Daido Corp., its affiliated U.S. sales subsidiary. Daido Corp. then makes CEP sales to unaffiliated customers in the United States (*i.e.*, OEMs and distributors). These differ from EP sales, where DT sells directly to unaffiliated customers, in that DT makes all of its CEP sales through Daido Corp., an affiliated U.S. subsidiary. Thus, because the EP sales are made directly to the OEMs and distributors, while the CEP sales are to Daido Corp. who then sells to OEMs and distributors, we find that the EP and CEP sales appear to be made at different points in the chain of distribution.

Since we have determined that EP and CEP are at different LOTs, we next examined whether the CEP and home market sales were at the same LOT. For purposes of our analysis, we examined information regarding the distribution systems for CEP and home markets sales, including the quantitative and qualitative aspects of the selling functions, the classes of customer, and the selling expenses for each of the companies described above.

Based on our analysis of the record evidence, we have found that DK's CEP and home market transactions are at different stages in the marketing process

and thus at different LOTs. As we noted above, on the home market side, DK sells directly to OEMs and distributors. However, CEP sales go through Daido Corp. to OEMs and distributors in the United States. Therefore, sales to Daido Corp. appear to be at an earlier point in the chain of distribution than DK home market sales to OEMs and distributors.

We then compared the selling functions performed for home market sales and for CEP sales and we found that at the level of the constructed sale from the exporter (DT) to the importer (Daido Corp.), only three selling activities overlap between home market and CEP sales: preparing chain for shipment; maintaining customer records; and collecting bills.

Further, we found that DK performs several selling activities for home market sales not performed by DK/DT for CEP sales. Chief among these are maintaining inventory; maintaining local offices; and developing and maintaining customers. With regard to the first of these items, we note that DK maintains an inventory of finished chain at its home market warehouse which enables it to ship a model to a home market customer within one or two days from receipt of order. In contrast, DT does not maintain a warehouse in Japan for purposes of maintaining an inventory for U.S. sales. Rather, Daido Corp. in the United States maintains an inventory for such sales. Since DT ships to Daido Corp. from the port only when a complete shipment is available, it arranges for freight forwarders to hold the merchandise (DT does not own a warehouse) at the port while waiting for DK to complete manufacturing of an entire order. This is clearly different from maintaining inventory for servicing the needs of home market customers. This distinction is similar to and consistent with prior treatment of such activity. *See Notice of Final Results and Partial Rescission of Antidumping Duty Administrative Review: Certain Welded Carbon Steel Pipe and Tube From Turkey*, 63 FR 35190, 35192–93 (June 29, 1998) (*Steel Pipe and Tube 1998*), where we found two levels of trade in the home market based, in significant part, on the differences in the area inventory maintenance and inventory-related selling activities. In *Steel Pipe and Tube 1998*, one group of affiliated resellers did not take merchandise into inventory prior to sale (merchandise was stocked at the production mill prior to direct shipment to the resellers' customers), while another group of affiliated resellers made sales to customers from inventory that the resellers maintained at their locations. The Department found that the latter group had ''the responsibility of storing merchandise before purchasers have been found.'' *Steel Pipe and Tube 1998* at 35193. The Department further noted that inventory maintenance gave rise to additional selling functions performed by resellers in this LOT (*i.e.*, forecasting, planning, ordering, incurring inventory carrying costs, and delivery-related functions) which were not performed by the resellers who did not maintain inventory. The Department further found that ''inventory maintenance is a principal selling function that distinguishes these levels [of trade].'' *Id.*

In summary, DK has clearly described its process in the CEP market as temporarily stockpiling or staging roller chain at its freight forwarders' facilities at the port, which we find to be different from maintaining inventory for servicing the needs of home market customers, in that in maintaining a warehouse inventory, orders can be filled immediately. However, U.S. sales cannot be filled immediately from the port of export. Rather, the U.S. customer must wait until full shiploads are accumulated and transported to the United States.

Although the petitioner argues that inventory maintained by DK in Japan for home market customers could be used to fill CEP sales, we note that DK's questionnaire responses consistently describe how for CEP sales, DK and DT operate as previously described. We note that DK has clearly explained how it stages merchandise from DK's factory at the port until the full order is available, and then consolidates all merchandise consolidated into a single shipment for Daido Corp. We find nothing in the record contradicting this description.

With respect to the remaining activities for home market sales, developing and maintaining home market customers and maintaining local offices, we note that DK/DT do not perform any such activities for CEP sales.

Finally, as to the two home market selling activities we discussed as negligible in our preliminary results, DK clarified the extent to which these selling activities—advertising and technical services—were performed for home market customers. DK pointed out that its engineering and sales office personnel provide technical assistance, including design services, to home market customers. In addition, DK claimed advertising expenses as one of the categories of its indirect selling expenses. In comparison, we find that these selling activities were performed for home market but not for CEP sales.

Based on our analysis of the record evidence, we conclude that there are significant differences between the selling functions performed in Japan for home market sales and those performed in Japan for CEP sales.

The Department considers the totality of the circumstances in evaluating whether qualitatively and quantitatively different selling functions are performed for purchasers at different places in the chain of distribution. *See Notice of Final Determination of Sales at Less Than Fair Value: Steel Wire Rod From Canada*, 63 FR 9182, 9193 (February 24, 1998). The record evidence in this review indicates that there are significant quantitative and qualitative differences in the selling activities performed by DK and DT/DK for sales in the home market and CEP sales to the United States. This finding supports our conclusion that the home market and CEP sales occur at different stages of marketing and thus at different LOTs.

In addition, based on the above analysis, we determined that DK sold the subject merchandise during the POR at a LOT in the home market which was more advanced than the LOT of the CEP sales of subject merchandise in the United States. Since we found that DK has a single LOT in the home market, we cannot quantify the difference in prices at two (or more) home market LOTs. Consequently, we do not have the data necessary to make a LOT adjustment for DK. Therefore, we have made a CEP-offset adjustment to NV in our calculations for DK pursuant to section 773(a)(7)(B) of the Act. We have made no adjustment for purposes of comparisons to EP sales since we have determined home market and EP sales to be at the same LOT.

Comment 2: The petitioner states that the Department failed to deduct international freight and packing expenses for DK's CEP sales. Specifically, DK reported international freight expenses and U.S. packing expenses under the variable names ''INFRTDKY'' and ''DKPACKU,'' respectively. According to the petitioner, the Department, however, used different variable names in calculating CEP. The petitioner requests that the Department revise its program for the final results. We received no comment on this issue from DK.

Department Position: We agree with the petitioner and have corrected these adjustments in our calculations for the final results.

Sugiyama

Comment 1: Sugiyama argues that, for the final results, the Department should calculate a margin for Sugiyama based

on all verifiable data, including the sales information submitted to the Department after the questionnaire responses were due. Sugiyama claims that this untimely submitted information was nonetheless verifiable and, thus, it provides the Department with a reasonable basis for actual margin analysis. Sugiyama explains that the information was untimely submitted because the company was dependent on receiving certain sales data from its shareholder, over whom Sugiyama had no control. Therefore, according to the company, the untimeliness factor is not an indication of Sugiyama's failure to cooperate. Sugiyama concludes that the Department should accept this information instead of applying adverse FA.

Notwithstanding Sugiyama's assertion that the Department should use its information, Sugiyama further argues that, if the Department determines to use FA in this situation, the Department must be guided by the standard articulated by the CIT in *Borden*, where the Court rejected the Department's use of adverse FA, despite the fact that the respondent in that case provided less than ideal information to the Department. Thus, according to the company, applying adverse FA to Sugiyama in this review would be inappropriate in light of the *Borden* decision.

The petitioner notes that the Department conducted a partial verification of Sugiyama in Washington, D.C. on July 6, 1998, and conditioned its undertaking a full verification in Japan on Sugiyama's successful partial verification. The petitioner takes the position that Sugiyama's responses, unless successfully verified, should be rejected by the Department.

Department Position: We disagree with Sugiyama. As we explained in detail in the ''Application of Facts Available'' section of this notice, as well as in the Sugiyama Verification and FA Memoranda, the record amply demonstrates that the information provided by Sugiyama during the course of this proceeding was deficient, untimely and unverifiable. Thus, sections 776(a)(2) (A), (B), and (D) of the Act mandate that the Department reject Sugiyama's responses and apply total FA. Moreover, Sugiyama has no basis to complain about a lack of opportunities to cure its deficiencies under section 782(d) of the Act. As the record demonstrates, the Department issued several supplemental questionnaires, held numerous meetings with the counsel, and even conducted an atypical ''mini-verification'' procedure to provide Sugiyama with the final opportunity to prove that its information was complete and reliable.

Furthermore, Sugiyama misinterprets the CIT's *Borden* decision. Decided on a specific set of facts, the Court in *Borden* held that the Department did not abuse its discretion by applying total FA to the respondent who submitted untimely and deficient data. The Court was concerned, however, that the Department prematurely concluded that adverse inference was warranted in applying FA, where the Department did not make an additional finding that the respondent had failed to act to the best of its ability. *See Borden,* Slip Op. at 74–76. Thus, in light of the Department's findings with respect to Sugiyama's submissions (*see* the Sugiyama Verification Report and the Sugiyama FA Memoranda), the decision to apply total FA is entirely consistent with *Borden*. The issue of drawing an adverse inference in applying FA to Sugiyama, the proper focus of the *Borden* decision, is addressed in the Facts Available section, above.

Comment 2: With respect to the Department's decision to cancel the verification in Japan, Sugiyama claims that it devoted much time and many resources to prepare for the verification, and was fully organized to host the Department's verifiers. Sugiyama asserts that it brought to the Department's attention DIFMER issues in advance of the verification, as soon as the company discovered these errors during the preparation for verification. Although Sugiyama acknowledges that certain aspects of its DIFMER methodology were problematic, and that the Department has discretion to decide upon its appropriateness, the company disagrees that these issues justified the cancellation of the entire verification.

Elaborating on the DIFMER problems contained in Sugiyama's responses, the company disagrees that 43 percent of its U.S. sales are affected by the rejected DIFMER data. Rather, Sugiyama points out, assuming that certain alleged programming errors and home market sales omissions are corrected by the Department, only 11 percent, by quantity, of U.S. sales are affected. Sugiyama maintains that the Department's action in declining to verify Sugiyama was unnecessary and urges the Department to accept as verified all information it submitted and to use that information in calculating a dumping margin for Sugiyama.

Sugiyama next proposes the following alternatives that the Department should consider in dealing with the company's DIFMER deficiencies: (1) calculate a margin for all sales with identical matches, and apply the resulting margin to the similar match sales as a ''surrogate'' for DIFMER; (2) calculate a margin for all sales with identical matches, and simply omit the DIFMER adjustment in calculating the margin for U.S. sales with similar matches; (3) calculate a margin for all sales with identical matches, but apply the DIFMER only where it would increase the NV; (4) calculate a margin for all sales, applying the maximum DIFMER of 20 percent to all sales with similar matches, in accordance with *Gray Portland Cement from Mexico,* 63 FR 12764, 12779 (March 16, 1998); or (5) apply only a partial FA rate to all U.S. sales with similar matches. Sugiyama points out that the last option would be consistent with the Department's decision in this review to apply partial FA for non-identical merchandise to two respondents (DK and Enuma), who refused to provide the DIFMER information as requested by the Department. If the Department selects this last option, Sugiyama proposes that the Department apply a less adverse rate of 17.57 percent from the preliminary results.

Department Position: We disagree with Sugiyama's argument that our cancellation of a full verification was unnecessary. As the petitioner noted (*see* comment 1, above), the Department conditioned its undertaking a full verification of Sugiyama in Japan on the success of the partial verification conducted in Washington. For the reasons discussed in the ''*Facts Available*'' section above, Sugiyama's partial verification was not successful. Therefore, it was appropriate for the Department not to conduct the full verification in Japan.

Furthermore, as discussed in the ''*Facts Available*'' section, above, the Department has determined that the information provided by Sugiyama is unreliable and inadequate for the purpose of calculating a margin for the final determination. Because we concluded that Sugiyama failed to provide its responses to the Department's questionnaire in the form and manner requested, and some of these responses were untimely, section 776(a) requires the Department to use facts otherwise available with respect to Sugiyama.

Comment 3: Assuming that the Department maintains its decision enunciated in the August 14, 1998, FA Memorandum, to apply total FA to Sugiyama, the company argues that, consistent with *Fresh Cut Flowers—Colombia 1997,* the Department should select a non-adverse FA rate normally applied to ''cooperative'' respondents. Sugiyama claims that an adverse rate is

designed to provide an incentive for unwilling or unmotivated respondents to cooperate with the Department's request for information, rather than to punish for methodological errors made by actively participating respondents, such as Sugiyama.

Sugiyama further explains that its efforts to respond to the Department's requests, although ''imperfect,'' demonstrate that the company acted to the best of its ability and that it did not knowingly withhold information. Sugiyama claims that it undertook major efforts to prepare responses, including thousands of hours of data collection and preparation, even though the company had not been involved in antidumping proceedings in recent years, and thus did not have in place systems designed to readily collect the information requested by the Department.

Sugiyama asserts that the application of the 42.48 percent adverse FA rate from the preliminary results would force the company to shut down and end its participation entirely. Sugiyama contends that the cooperative FA rate that was used in the preliminary results for other companies who, like Sugiyama, acted to the best of their ability to cooperate, would adequately serve to carry out the FA policy without forcing the company into insolvency.

Jeffrey Chain, a U.S. producer and importer of roller chain, joins Sugiyama in its efforts to persuade the Department to apply a less adverse FA rate that would recognize Sugiyama's participatory efforts in this proceeding. Jeffrey Chain argues that the Department's decision should take into account the fact that Sugiyama substantially cooperated in this review. Thus, according to Jeffrey Chain, the rate selected by the Department should be consistent with the rates applied to other cooperative respondents in this review, and one which encourages cooperative behavior from future respondents in the proceeding. Jeffrey Chain notes that, under section 776 of the Act, the Department must distinguish between respondents who comply with the Department's requests for information, and those who refuse to comply, to generally encourage respondents' participation and cooperation.

Jeffrey Chain reminds the Department that Sugiyama prepared numerous questionnaire responses and was prepared for the Department's verification, thereby manifesting ''substantial compliance'' with the Department's requests for information. Moreover, Jeffrey Chain contends that the record does not demonstrate that Sugiyama did not cooperate fully with, or refused to provide information to, the Department. Jeffrey Chain concludes that, in light of Sugiyama's relatively low margins in past segments of the proceeding, a less adverse FA rate used for other cooperative respondents in the preliminary results would be sufficiently adverse to ensure Sugiyama's future participation and prevent it from benefitting from its failure to submit certain information in the current segment.

The petitioner supports the Department's decision expressed in the August 14, 1998, Memorandum to apply total FA to Sugiyama. However, the petitioner acknowledges that Sugiyama substantially cooperated with the Department in this review. The petitioner suggests that the Department is in a ''unique position'' to evaluate whether Sugiyama acted to the best of its ability, a decision which the petitioner defers to the Department. Were the Department to determine for the final results that Sugiyama, in fact, substantially cooperated in the review, the petitioner claims it would support a less adverse FA rate of 17.57 percent.

Department Position: We disagree, for the reasons discussed in the Facts Available section above, with Sugiyama's arguments that it acted to the best of its ability, and find that an adverse inference is warranted for Sugiyama for these final results of review. Because we have determined that the 42.48 percent rate calculated for Kaga for the preliminary results of this review is no longer valid (*see* the Department Position to Pulton Comment 2, below), it is not necessary to address the company's arguments regarding the merits of this rate. However, we have considered Sugiyama's efforts, throughout the course of this review, to comply with the Department's requests for information and, accordingly, assigned to Sugiyama a less adverse FA rate of 12.68 percent. As noted previously, this rate is a significant increase from the company's current cash deposit rate and thus is sufficiently adverse to induce cooperation by Sugiyama in future reviews of this proceeding.

Comment 4: Sugiyama made several comments regarding LOT, calculation of DIFMER, its related resellers' cutting cost, discounts, and FA for one particular sale with a date of sale prior to the POR.

Department Position: We note that the Department's decision to apply total FA for Sugiyama for the final results renders these comments moot.

RK

Comment 1: RK states that in the preliminary results, the Department made a programming error that substantially overstated the quantity and substantially understated the price of RK's motorcycle chain sold in kits in the United States. RK argues that for the final results, the Department should make minor adjustments in programming language so that the amount and price of chain sold in the United States in kits are calculated accurately.

The petitioner agrees with RK that the Department made a clerical error with respect to the treatment of RK's U.S. kit sales and does not object to the correction proposed by RK.

Department Position: We agree with RK and the petitioner and have made the appropriate changes to RK's margin calculation program.

Pulton

Comment 1: Citing the Department's *Antidumping Duties; Countervailing Duties; Final Rule* 19 CFR Part 351 et al., 62 Fed. Reg. 27296, 27340 (1998), Pulton claims that, in determining whether a company has acted to the best of its ability, the Department considers, on a case-specific basis, whether the failure to respond was caused by practical difficulties that made the company ''unable to respond.'' Pulton contends that it withdrew from verification due to such practical difficulties.

Pulton argues that, given its lack of personnel resources, it would have been commercially impossible and overly burdensome to submit to verification. In support of this argument, Pulton states that it is a small company that employs only two people in its Foreign Trade Division and that most employees speak only a minimal amount of English. Pulton asserts that submitting to verification would have served to shut down its Foreign Trade Division for two weeks, resulting in substantial lost sales.

Pulton claims however, that because it responded in a timely manner to the main questionnaire and all of the Department's supplemental questionnaires, it has clearly acted to the best of its ability to comply with the Department's requests. Pulton asserts that, because most of its records are manually created and maintained, it would have been difficult to produce documents at verification at a reasonable speed. Pulton, in fact, questions whether any company, such as itself, which lacks significant computer capability, could pass a verification in the present day.

Citing *Borden* at 76, Pulton argues that, since there is no evidence on the record that it could have responded fully to the Department's verification requests, an adverse inference is unwarranted.

Pulton claims that the circumstances in this case are similar to those of *Allied-Signal Aerospace Co.* v. *United States,* 996 F.2d 1185, 1192 (Fed. Cir. 1993) (*Allied-Signal*), where the Court of Appeals for the Federal Circuit (CAFC) found that the Department's decision to characterize a respondent as uncooperative was unreasonable. Pulton argues that, as in *Allied-Signal,* the Department's conclusion that Pulton failed to cooperate to the best of its ability was unreasonable.

The petitioner argues that relevant cases and the Department's decisions clearly indicate that the agency should not choose a more favorable margin for Pulton simply because it made a business judgement that participating in verification was not cost-effective. The petitioner argues that there is no evidentiary support (*i.e.,* an affidavit or other certified submission) in the record for Pulton's assertion that verification would have shut down Pulton's Foreign Trade Division for two weeks, or that it would have cost the company a substantial amount in lost sales.

The petitioner further claims that Pulton has not cited any cases where the Department did not impose an adverse FA margin simply because it would have been costly and difficult for a respondent to comply with verification, or where the Department's decision to apply an adverse FA margin under such circumstances has been overturned. The petitioner differentiates this case from *Borden,* by arguing that the respondent in *Borden* clearly had attempted to comply with the Department's requests by making a number of attempts to generate the requested cost data. In contrast, Pulton provided the Department with a speculative rationale that the verification would have been impossible simply because Pulton had predetermined that participation would be too expensive.

The petitioner also refutes the relevance of *Allied-Signal* by arguing that, in *Allied-Signal,* the respondent had alerted the agency of its difficulty in responding to the Department's questionnaire, and had indicated its willingness to participate in a simplified review process. Pulton, on the other hand, merely submitted a short, unsubstantiated letter asserting that it would ''not be cost-effective to participate in verification'' because of the expense of submitting to verification, Pulton's insufficient staff support and the small value of its roller chain sales to the United States. The petitioner further argues that there is no indication that Pulton ever sought to work out an accommodation with the Department.

According to the petitioner, Pulton's situation is analogous to *Empressa Nacional Siderurgica, S.A.* v. *United States,* 880 F. Supp. 876, 880 (CIT 1995) (*Empressa Nacional*). In that case, the respondent argued on the basis of *Allied-Signal* that, as a result of its cooperation, the Department should not have chosen as BIA the highest rate calculated in the preliminary determination. The Court disagreed, noting that the respondent, ENSIDESA, ''did not request an extension of time until the last day before the information was due,'' and that despite receiving the extension, it informed the Department on the due date that it was not submitting any of the data requested.

Department Position: We disagree with Pulton and continue to use an adverse inference in applying total FA. The facts on the record have not changed since the preliminary determination, where we applied total adverse FA to Pulton. The reasons for this decision were articulated in detail in the Memorandum to Maria Harris Tildon from Holly A. Kuga Regarding the ''Application of Total Facts Available to Pulton (April 30, 1998) (Pulton FA Memorandum). We disagree with Pulton that it acted to the best of its ability simply because it submitted its responses to all sections of the Department's questionnaire in a timely manner. As the Department explained in the Pulton FA Memorandum, Pulton's timely responses were meaningless, because the Department was unable to check the completeness and accuracy of this information in light of Pulton's sudden refusal to undergo verification. *See Notice of Final Determination of Sales at Less Than Fair Value: Steel Wire Rod From Venezuela,* 63 FR 8946, 8947 (Febr. 23, 1998) (*Steel Wire Rod From Venezuela*); and *Notice of Final Determination of Sales at Less Than Fair Value: Circular Welded Non-Alloy Steel Pipe From Romania,* 61 FR 24274, 24275 (May 14, 1996).

Moreover, Pulton made no attempt to seek guidance from the Department prior to the scheduled verification so that reasonable accommodations could be made to help the company overcome its practical difficulties without undermining the integrity of the verification process. Instead, Pulton made a calculated business decision that it was not ''cost effective'' to participate in verification. In light of the above, we reiterate our position from the preliminary results that Pulton did not act to the best of its ability.

Pulton's reliance on the *Borden* decision is misplaced. In *Borden,* unlike in this case, the respondent was fully prepared to undergo the verification process, making several attempts to comply with the Department's requests for certain cost data, which were eventually rejected for untimeliness and incompleteness prior to verification. The Court generally agreed that the application of total FA in that case was appropriate, but disagreed that adverse inference was warranted in the selection of FA, where the Department made no finding that the respondent did not act to the best of its ability. *See Borden* at 74–76. In this case, unlike in *Borden,* we made a finding that Pulton did not act to the best of its ability, and articulated, in detail, the reasons for our decision in the Pulton FA Memorandum and *RC 1996–1997 Preliminary Results.*

Pulton's reliance on *Allied-Signal* is similarly inappropriate. In *Allied Signal,* the CAFC found that the Department's decision to characterize a respondent as ''uncooperative'' was unreasonable, where the respondent ''alerted the ITA to its difficulty in responding to the questionnaire and indicated its willingness to participate in a simplified review process.'' *Allied-Signal* at 1192. Unlike in *Allied-Signal,* Pulton made no such effort to approach the Department to seek accommodations, but simply informed us shortly before the verification was to commence that it was not willing to participate. Thus, consistent with the Department's practice in cases where the respondent withdraws its participation in a proceeding, in selecting FA for Pulton in this review, an adverse inference is warranted.

Comment 2: Pulton notes that the 42.48 percent margin used by the Department as FA for Pulton was calculated for Kaga in the preliminary results and it is the second highest calculated rate ever applied to any respondent in the history of this proceeding. Pulton states that, when the Department relies on secondary information as FA, it is required, to the extent practicable, to corroborate this information from independent sources. Pulton argues that Kaga's preliminary results margin has not been corroborated because the Department did not examine its reliability or relevance. Pulton argues that, while the Department assumed that this margin was properly calculated, Kaga's May 18, 1998, letter disclosed that ''the data processing firm which produced Kaga's U.S. sales diskette made a programming

error in transferring U.S. selling price data from Kaga's diskette into the ITA's required format.'' Pulton claims that this indicates that the data used was rife with error and, therefore, unreliable.

Pulton next takes issue with the relevance of the 42.48 percent rate, noting that it reached a settlement with the Department in the 1993–1994 review for a 17.57 percent rate, following the CIT's invalidation of the 43.29 percent rate because it was ''extremely outdated'' and ''no other calculated rate in this investigation has ever come close to this level.'' *See Pulton Chain* v. *U.S.*, Slip Op. 97–162 at 8 (CIT 1997) (*Pulton*). Pulton argues that the 42.48 percent rate, which is remarkably close to the invalidated 43.29 percent rate, is ''arbitrary and capricious and has no basis in law or fact.'' Pulton concludes that there is nothing in this proceeding to indicate that 43.29 percent is in any way relevant to its own situation. Pulton suggests that the Department use the information Pulton submitted to calculate a margin in this review, or at least abstain from using an adverse inference in selecting FA.

The petitioner argues that the 42.48 percent rate calculated for Kaga should be imposed on Pulton, and if that rate is recalculated due to errors in Kaga's submission, Pulton should receive the highest calculated rate or 17.57 percent, whichever is higher. The petitioner notes that the Department was not required to corroborate the 42.48 percent rate because the statute only requires corroboration if the agency ''relies on secondary information rather than on information obtained in the course of an investigation or review.''

Citing *Fresh Cut Flowers—Columbia 1997* at 62 FR 53291, the petitioner states that, as a matter of policy, a respondent like Pulton, who has not cooperated in the review and has refused to undergo verification, should not receive a margin lower than the one applied to Kaga, who participated fully.

Addressing Pulton's argument with respect to the 42.48 percent rate that was invalidated by the CIT in *Pulton*, the petitioner contends that the rate was rejected in part because it was ''never used as an assessment rate and was apparently considered likely to be inaccurate when promulgated.'' In this case, unlike in *Pulton*, the petitioner claims that the 42.48 percent rate was a calculated rate for Kaga in the preliminary results of this proceeding.

Citing the *Steel Wire Rod from Venezuela*, the petitioner argues that the Department should not rely on Pulton's information to perform margin calculations because, absent verification, it is not possible to check whether Pulton has submitted accurate data and, consequently, there is no assurance that the resulting margins will be sufficient. Petitioner states that the statute, under section 776(a) of the Act, expressly provides that the Department shall use FA if the respondent fails to provide the necessary information, or if the information is unverifiable, the situation that Pulton has created in this review.

Department Position: Because the 42.48 percent rate calculated for Kaga for the preliminary results of this review has been changed for these final results and is no longer under consideration (*see* discussion on FA for Kaga in *''Facts Available'' (FA)* section, above), it is not necessary to address the arguments regarding the merits of this rate. As explained in detail in the Pulton FA Memorandum, we are continuing to assign Pulton an adverse FA rate, only now that rate has been changed from 42.48 to 17.57 percent, the highest rate from previous segments of this proceeding, excluding the invalidated 43.29 percent rate.

Kaga

Comment 1: Kaga states that, subsequent to the Department's preliminary determination, it discovered two programming errors made in assembling its data in the proper computer format. The first error, according to Kaga, occurred when only a single character was allowed to the left of the decimal for U.S. gross unit price (GRSUPRU), resulting in an understatement of Kaga's U.S. sales prices. According to Kaga, this affected both EP and CEP sales. The second error (which affects only CEP sales) occurred in its computer data submission of January 22, 1998, when the prices from Kaga's affiliated importer to its unaffiliated U.S. customers were mistakenly deleted and, instead, used the transfer prices from Kaga to its affiliated importer were used. Kaga states that it submitted the correct prices in its first computer data submission filed on September 12, 1997.

In addition, Kaga states that it found three other errors which it made. First, according to Kaga, it miscalculated the per-foot gross unit prices for several of its chains sold in the home market when converting from a per-link basis in its books to a per-foot basis for the Department. Second, Kaga states that it mistakenly coded several models of conveyor chain as industrial chain. Kaga argues that the information showing that those models are conveyor chain is already on the record as part of Kaga's product catalog. Third, Kaga claims that it included an invoice in the sales data, which represents an adjustment in price to a pre-existing sale rather than a sale, and requests that any observations associated with the invoice be deleted from its home market data base.

Kaga requests that it be allowed to submit the correct price information as well as any invoices which the Department deems necessary, and that the Department correct Kaga's programming and clerical errors for purposes of the final results.

Kaga contends that the Department's regulations allow for the correction of errors in addition, subtraction, or other arithmetic function, clerical errors resulting from inaccurate copying, duplication, or the like, and any other type of unintentional errors. Furthermore, Kaga contends that the CIT in *Koyo Seiko Co., Ltd.*, v. *United States*, 746 F.Supp. 1108, 1110 (CIT 1990) (*Koyo Seiko*), and the CAFC in *NTN Bearing Corporation* v. *United States 74f.3d 1204,1208* (CAFC (1995) (*NTN 1995*), ruled that the Department should not only correct its own errors but those made by the respondents, so that the Department may fulfill its obligation to determine dumping margins as accurately as possible.

Kaga states that the purpose of the preliminary results is to give parties an opportunity for comment and request that the Department correct these errors in order to calculate accurate dumping margins. Further, Kaga contends that the Department must correct errors when they are obvious on their face or when correct evidence is already on the record. Further, Kaga states that in the interest of calculating the most accurate dumping margins, the Department must not knowingly use incorrect information. According to Kaga, these principles require that the Department correct the errors generated by the data processing firm because they are obvious and apparent on the record and the errors made by Kaga itself because these errors are simply clerical in nature.

The petitioner claims that the proposed corrections and new data submitted with Kaga's case brief reflect significant errors that the Department should not accept at this late stage of the proceeding. Moreover, the petitioner notes that the new data is untimely under 19 CFR 353.31(a)(1)(ii) (1997). The petitioner acknowledges that the Department has some discretion in determining whether to accept late filed evidence. However, the petitioner contends that the CIT in *Usinor Sacilor* v. *United States*, 872 F. Supp 1000,1008 (CIT 1994) (*Usinor*), *Sugiyama Chain Co.*, v. *United States*, 797 F. Supp 989,

995 (CIT 1992) (*Sugiyama*), and *NSK Ltd.* v. *United States*, 798 F. Supp. 721, 725 (CIT 1992) (*NSK*), have affirmed the Department's decisions to reject proposed corrections submitted after the deadlines. Moreover, with respect to at least one correction proposed by Kaga, the petitioner argues that Kaga has not cited to any evidence on the record, nor has it now provided information to support its claim. The petitioner argues that the extensive changes requested by Kaga do not meet at least four of the Department's six conditions for correction of clerical errors because: (i) the alleged errors are more substantial than the kinds the Department previously has labeled clerical; (ii) much of the information needed to corroborate the proposed changes either is not on the record or could only be reconciled by the Department through extensive manual review and, moreover, the reliability of any such corrected information would be questionable; (iii) although Kaga alerted the Department prior to the preliminary determination to submissions errors, Kaga has failed to offer a credible reason why it was so slow in discovering these errors; (iv) Kaga waited to supplement the record and still has not provided fully corrected information; and (v) the proposed corrections would affect several portions of the response and entail ''substantial revision,'' under the Department's six-pronged test for determining whether it will accept corrections of clerical errors. *See Certain Fresh Cut Flowers From Colombia; Final Results of Antidumping Duty Administrative Reviews*, 61 FR 42833, 42834 (August 19, 1996) (*Fresh Cut Flowers—Colombia 1996*)). Furthermore, according to petitioner, the new submission Kaga wants to make cannot be used unless the agency determines that it is ''reliable.'' The petitioner argues that, given the nature and extent of the proposed changes, this standard can only be satisfied through a full scale verification of Kaga.

According to the petitioner, although Kaga focuses on how its facts are analogous to the *Koyo Seiko* and *NTN* decisions, both cases are factually distinct from Kaga's situation. First, the petitioner argues that, unlike *Koyo Seiko*, where the Department did not dispute that ''the errors were purely clerical and would not require further examination of the facts,'' the resolution of the issues raised by Kaga in this review would require ''extensive additional examination,'' and the petitioner would require verification of the materials that Kaga submitted with its case brief. Further, the petitioner states that, although several of Kaga's alleged errors involve manipulation of data, the necessary corrective steps are much more complicated than most purely clerical errors. Second, the petitioner points out that the *Koyo Seiko* court noted that the respondent in that case ''notified Commerce of the errors promptly upon their discovery.'' The petitioner claims that, although Kaga may have notified the Department of its errors soon after discovery, the errors should have been uncovered at an earlier date. Moreover, the petitioner asserts that, although in *Koyo Seiko* the Department was already in possession of an accurate hard copy of U.S. sales figures in the administrative record, this is not the case here. Third, the petitioner notes that, unlike *Koyo Seiko*, the Department did not previously possess accurate pricing information for affected EP transactions. In addition, the petitioner maintains that the accuracy of several other proposed corrections cannot be determined without undertaking an extensive, manual review of the computerized data in Kaga's September 12, 1997, submissions and that there is no evidence on the record to support some of the proposed changes. Fourth, the petitioner contends that, whereas in *NTN* the clerical errors were limited to coding errors and an error involving the listing of sales, the correction of Kaga's errors is a significantly more involved exercise. Finally, the petitioner notes that in other cases (*e.g.*, *Sugiyama* and *RHP Bearings* v. *United States*, 19 CIT 1389, 1390 (1995)), the Department and the courts have been more reluctant to label a respondent's error clerical.

In response to the petitioner's comments, Kaga states that it is not seeking to submit new information. It emphasizes that it is simply asking the Department to correct certain ministerial errors contained in its sales data submission of January 22, 1998. Kaga contends that the correction of the programming errors will not require submission of new information.

Kaga claims that none of the court cases cited by the petitioner supports its argument. According to Kaga, each case is different from Kaga's situation. Kaga contends that, contrary to the petitioner's interpretation of *Usinor*, the court in that case held that the Department abused its discretion in rejecting the plaintiff's corrections. According to Kaga, *Sugiyama* involves corrections of ministerial errors in the final results of the administrative review, not the preliminary result which is exactly Kaga's situation. Finally, Kaga argues that the ACA is wrong in characterizing the decision in *NSK* as standing for the proposition that ''the submission of detailed factual information at the prehearing state of an administrative review is clearly untimely under any circumstances.'' Kaga maintains that the petitioner fails to note that the *NSK* decision involved the submission of detailed new information. Kaga notes that it does not seek to submit ''detailed new information.''

Further, Kaga claims that the ministerial errors which it has discovered fully meet the Department's six requirements for accepting clerical errors because: (i) the company has demonstrated that its errors are clerical in nature; (ii) its corrective documentation is reliable and Kaga invites the Department to conduct a verification of its records; (iii) ample record evidence exists to demonstrate Kaga's willingness, cooperation, and expedience in reporting its errors; (iv) Kaga informed the Department of all its clerical errors by July 2, 1998, the due date for submission of the case brief ; (v) Kaga's clerical errors do not constitute substantial revision; and (vi) Kaga has not been verified, thus the corrections do not contradict verified information.

Department Position: We agree with the petitioner that Kaga has not satisfied the Department's standard for clerical error corrections and, thus, the requested corrections have not been made. As a result of the *NTN* decision, we have reevaluated our policy for accepting clerical errors of respondents. *See* Preamble to Antidumping Duties, 62 FR 27296 (May 17, 1997). We may now accept corrections of such errors if all of the following conditions are satisfied: (1) the error in question must be demonstrated to be a clerical error, not a methodological error, an error in judgement, or a substantive error; (2) we must be satisfied that the corrective documentation provided in support of the clerical error allegation is reliable; (3) the respondent must have availed itself of the earliest reasonable opportunity to correct the error; (4) the clerical error allegation, and any corrective documentation, must be submitted to the Department no later than the due date for the respondent's administrative case brief; (5) the clerical error must not entail a substantial revision of the response; and (6) the respondent's corrective documentation must not contradict information previously determined to be accurate at verification. *See Fresh Cut Flowers—Colombia 1996.*

As noted above, in its case brief of July 2, 1998, Kaga claimed to have discovered two programming errors made in assembling its data in the

proper computer format. The first programming error, according to Kaga, occurred when a single character was allowed to the left of the decimal for U.S. gross unit price (GRSUPRU) resulting in an understatement of Kaga's U.S. sales prices. This error, Kaga claimed, affected sales to one EP customer and all CEP sales. We have applied the six criteria set forth in *Fresh Cut Flowers—Colombia 1996* and have found that Kaga did not meet the second criterion for accepting corrections of errors; namely, that the corrective documentation provided in support of the clerical error is reliable. An examination of the arguments and supporting documents provided in Kaga's case brief and the record of the proceeding demonstrates that, contrary to Kaga's claim, the decimal programming error affects EP sales only. Further, the price list submitted by Kaga for its EP customer does not reconcile with a number of invoices from Kaga to the EP customer. In order to reconcile the prices on the list with the invoices necessitates a conversion from a per-link basis for each model of chain, and we discovered that in several instances it would appear that Kaga failed to perform the conversion correctly. Thus, we are not satisfied that the corrective documentation provided by Kaga in support of its error allegation is reliable.

The next programming error, affecting only CEP sales, according to Kaga, occurred in its computer submission of January 22, 1998, when the prices from Kaga's affiliated importer to its unaffiliated U.S. customers were mistakenly deleted and, instead, used the transfer prices from Kaga to its affiliated importer were used. Kaga claims that the correct prices for CEP sales were submitted on the record in Kaga's September 12, 1997, submission). To support this claim Kaga submitted the invoices issued during the POR by Kaga's affiliated reseller to its unaffiliated customers. We find that the CEP prices provided in Kaga's September 12, 1997 submission do not reconcile in most instances with the invoices issued by Kaga's affiliated reseller to its unaffiliated customer. Therefore, because we are not satisfied that the corrective documentation provided by Kaga in support of its second error allegation is reliable, we conclude that Kaga did not satisfy the second condition from *Fresh Cut Flowers—Columbia 1996* that the corrective documentation provided in support of the error allegation be reliable.

In addition to the alleged programming errors discussed above, Kaga, in its July 2, 1998, case brief also claimed that it found three other errors made by Kaga itself. First, Kaga reported that it miscalculated the per-foot gross unit prices for ''several of its chains'' when converting from a per-link basis for the Department. According to Kaga, in order to determine the per-foot price of models of chain, the per-foot gross unit price is derived by dividing the total sales price of the piece by the total length in feet. In reviewing the conditions set forth in *Fresh Cut Flowers—Colombia 1996,* we find that Kaga failed to meet the fourth condition: although Kaga alleged its own errors no later than July 2, 1998, the due date for its case brief, Kaga did not provide the information needed to correct the alleged errors, nor the number of home market gross unit prices (GRSUPRH) and U.S. GRSUPRUs, which are incorrect due to Kaga's miscalculations in converting gross unit prices from a per-link to a per foot basis. Thus, Kaga failed to provide corrective documentation under the fourth condition set forth in *Fresh Cut Flowers—Colombia 1996.*

Second, Kaga noted that it ''mistakenly coded several models of conveyor chain * * * as industrial chain'' and argued that the information showing that those models are conveyor chain is already on the record as part of Kaga's product catalog. Kaga represented that corrections need to be made to several fields in Kaga's U.S. and home market databases to reflect the accurate physical characteristics of the incorrectly coded chain. In this instance, we find that in its July 2, 1998, case brief, Kaga failed to provide any information regarding the specific models of conveyor chain which were incorrectly coded, nor did it provide the number of U.S. and home market transactions affected by its coding error. Thus, we are not satisfied that Kaga provided corrective documentation required by the fourth condition in *Fresh Cut Flowers—Colombia 1996.*

Third, Kaga claimed that it included an invoice in the home market sales data which represents an adjustment in price to a pre-existing sale, and that any observation associated with this invoice should be deleted from the home market sales data base. As above, Kaga did not attach any evidence to its case brief to corroborate its claim. Therefore, Kaga failed to provide corrective documentation required by the fourth condition in *Fresh Cut Flowers—Colombia 1996.*

Comment 2: Kaga states that on March 24, 1998, the Department issued *Final Scope Ruling— Antidumping Finding on Roller Chain, Other Than Bicycle from Japan—Request by Kaga Industries Co., Ltd., for a Ruling on Automotive Silent Timing Chain.* Kaga maintains that the sole factor excluding Kaga's automotive timing chain from the scope of the antidumping finding is the fact that the chain models do not have rollers. According to Kaga, based on the Department's scope ruling, with the stated exceptions of models 25 and 35 and leaf chain, all chain manufactured by Kaga without rollers should be excluded from the scope of the antidumping finding.

Kaga claims that several models of Kaga chain lack rollers, but were not listed among the excluded silent timing chain in the Department's March 24, 1998 final scope ruling. Therefore, Kaga requests that the Department remove all C163, C168, and 05T chain from the database used to calculate Kaga's antidumping duty margin.

The petitioner states that the Department has adopted formal procedures for addressing scope questions affecting antidumping orders. Further, the petitioner maintains that these procedures were followed when the Department considered Kaga's request that certain silent timing chain be excluded from the scope of the antidumping finding. According to the petitioner, Kaga seeks through its case brief to circumvent these established procedures and obtain additional exclusion from the roller chain finding without subjecting its request to full consideration by the parties and the Department. The petitioner states that it strongly objects to this ''back door'' approach to scope questions and urges the Department to deny Kaga's request. The petitioner points out that Kaga has the option of submitting a formal ruling request in the 1997–98 roller chain review.

Department Position: We agree with the petitioner that the Department has a formal and established procedure for addressing scope questions. Kaga's instant request for exclusion of the above noted models is untimely as part of the administrative review proceeding and was not in accordance with the regulations governing scope procedures. Therefore, we are not excluding the requested models from the 1996–97 review of roller chain. Kaga may file a scope request regarding the models of chain in question in accordance with 19 CFR 351.225(1998) at any time in the future.

Comment 3: Kaga argues that the Department in its computer program erroneously made an adjustment for commission on CEP sales and an adjustment for CEP profit on EP sales.

According to the petitioner, based on a review of Department's computer

program, there is no evidence that the Department made such programming errors.

Kaga next argues that the Department should not have applied FA to certain U.S. sales of leaf chain which did not indicate the number of strands. According to Kaga, by virtue of its physical construction, leaf chain cannot be multi-strand. Kaga argues that this contention is supported by information contained in its product catalog which is on the record of this proceeding. Therefore, Kaga requests that the Department treat these models as single strand chain for purposes of the final results and that the Department not resort to FA.

The petitioner responds that some, *but not all,* of the sales to which the Department applied FA were leaf chain. However, the petitioner agrees that, given the unique characteristics of leaf chain, it should not be considered to be multi-strand. Further, the petitioner states that, if the Department can confirm from the evidence already on the record that a particular sale to which the Department applied FA is a leaf chain sale, the petitioner would not object to a programming change to treat these sales as single strand chain.

Finally, Kaga claims the Department based the calculation of CEP profit on an exchange rate of 100 yen/dollar. For purposes of the final results, Kaga requests that the Department use the actual average exchange rate for the period which Kaga calculated and appended to its case brief. Kaga argues that this would be in accordance with the Department's preference to use actual exchange rates data.

According to the petitioner, Kaga does not identify the source of the exchange rates appended to its case brief, nor does it disclose how the individual monthly averages were calculated. The petitioner argues that, given these uncertainties, and given the fact that the new information is untimely, it should be rejected by the Department.

Department Position: The Department has determined that total FA is warranted for Kaga in this review. Therefore, Kaga's arguments, discussed above, regarding (1) programming errors, (2) the application of FA to certain U.S. sales, and (3) the Department's calculation of CEP profit, are moot.

OCM

Comment 1: Verification—Home Market Sales Reporting Methodology. Reiterating the reasons, described in its November 17, 1997 supplemental response, that OCM could not report all home market sales of the foreign like product within the time provided for submitting the questionnaire response, the company claims that it, in fact, reported home market sales of models which were identical to models sold to the United States, as well as all home market sales of standard roller chain models which were similar to U.S. attachment or special chain models. OCM based its similar model decision on type of chain (all chain sold in the United States during the POR was industrial chain), number of strands, material, finish, and pitch length. OCM asserts that, when a standard chain and attachment or special chain are identical in these characteristics, the chain will usually differ in terms of only two product characteristics. For attachment chain, the difference would lie in the type and spacing of the attachment. For special chain, the difference would lie in the special feature plus a dimension, such as pitch length.

OCM disagrees with the Department's statement in the *Memorandum from Cameron Werker and Frank Thomson to Holly Kuga Re: Verification of Responses of Oriental Manufacturing Co., Ltd. in the Antidumping Duty Administrative Review of Roller Chain, other than Bicycle, from Japan,* at 8, (April 30, 1998) (OCM Verification Report) that, despite the Department's request in the verification agenda that OCM provide a list of all home market models of roller chain, OCM failed to provide an adequate list. OCM claims that, contrary to this statement, the company presented a list that contained all home market models of the same type and pitch length as those models sold in the United States during the POR (Verification Exhibit 4 (VE 4-list)). OCM argues that the Department never indicated that the verification list of home market models was inadequate and that, consequently, it should now be assumed that the list was in fact considered by the Department to be adequate. OCM asserts that the fact that it only presented a list of home market models with the same type and pitch length as those models sold in the United States does not in any way support the OCM Verification Report's summary of findings that ''OCM's stated methodology for reporting home market sales clearly excludes certain similar models [the Department] would have used in model matching.''

Next, OCM states that it would be factually incorrect to link the finding in the OCM Verification Report that ''there could be cases in which the pitch length is different between products, but the products could still be characterized as similar for the purposes of product matching'' to the Department's finding that ''OCM's stated methodology for reporting home market sales clearly excludes certain similar models we would have used in model matching.'' OCM maintains that home market models with different pitch lengths than the U.S. model will ordinarily not be most similar because they will have less than 16 product characteristics in common. OCM states that, in general, five other product characteristics change with the pitch length. Meanwhile, according to OCM, when pitch lengths are identical, the U.S. model and the most similar home market model will have 16 product characteristics in common. OCM maintains that there is only one instance in this review whereby a home market model with a different pitch length from a U.S. model is the most similar match.

Department Position: We disagree with OCM's statement that it reported all appropriate identical and similar home market models of roller chain. First, we disagree with OCM's assertion that the list provided at verification should be assumed adequate because, according to OCM, the Department never indicated that the list was inadequate. A review of the OCM Verification Report clearly demonstrates that the list provided at verification was not consistent with the requirements of the Department's January 16, 1998, verification agenda, and that the Department made multiple attempts to obtain more complete information regarding home market sales at verification. Specifically, upon receiving OCM's list at verification, the Department informed OCM that the list was not complete as required by the Department's verification agenda. In response to the Department's questions regarding whether a complete list could be provided, company officials explained that, because there were thousands of home market roller chain models, it would not have been practical or useful to list all of these models (*see* OCM Verification Report at 8). Also at verification, OCM conceded that its list was not complete given that ''while they consider pitch length to be the defining characteristic of roller chain, there could be cases in which the pitch length is different between products, but the products could still be characterized as similar for the purposes of product matching.'' *See* OCM Verification Report at 8. We also note OCM's statement that when a standard chain and attachment or special chain are identical in terms of type of chain, number of strands, material, finish, and pitch length, then for special chain, the different characteristics would lie in the

special feature plus a dimension such as pitch length, is inherently contradictory.

Furthermore, the Department was aware of OCM's statements in its questionnaire response that it did not report all home market sales, given the limited time and large number of models which OCM sold in the home market. As articulated in the OCM FA Memorandum, it has been the Department's practice in previous segments of this proceeding to allow respondents (*e.g.*, Pulton and Izumi) to report only a limited number of home market sales, contingent upon a determination by the Department that the reported home market sales constitute all appropriate home market comparison sales. We afforded OCM the same latitude in this review. However, unlike other cases, we have determined that OCM's reported home market sales do not constitute all appropriate home market comparison sales. The request for a complete list of all home market sales was a means by which to determine whether OCM had reported all appropriate home market comparison sales. Namely, by reviewing which models had been sold, but not reported, we could determine whether, in fact, OCM had reported all models of the same type and pitch as those sold in the United States, and whether more similar models had been sold in the home market than had been reported for comparison purposes. We note that OCM, during verification, provided us with a second (much shorter) list of models that it suggested should have been reported to the Department but, in fact, had not been.

Despite the failure of OCM to provide a complete list of home market sales at verification, the Department nevertheless attempted to use the information available to ascertain the appropriateness of the home market sales which were reported. However, we were unsuccessful in this attempt. OCM's suggestion that the Department should now accept OCM's home market reporting methodology is inappropriate given the fact that, at verification, OCM did not provide the necessary documentation to support its claim that it had reported the most appropriate home market comparison models.

Finally, OCM incorrectly links the Verification Report summary of findings statement that OCM's reporting of home market sales ''clearly excludes certain models [the Department] would have used in model matching'' solely with the above discussion. In fact, this finding was based partly on the above issue, but also on other factual discoveries made at verification. Please see the Department's position to comments 3, 4, 9, 10 and 13, below.

Comment 2: Verification—Pitch Length of Specific Models. OCM contests the OCM Verification Report statements on page 9 that

> The Department found models in the brochure with slightly different pitch lengths than those reported in verification exhibit 4 that were similar in regard to the other roller chain characteristics (see OCM Extra Heavy Duty Chain models on page 7 of Verification Exhibit 4). Company officials stated that, given their adopted methodology, even though these other characteristics were similar, because the pitch length was not identical to the U.S. model, these products would not have been placed on the list in Verification Exhibit 4.

OCM argues that the fact that it omitted certain models from the VE–4 list does not necessarily mean it excluded models from the reported home market sales database that the Department might have used as comparisons for U.S. sales. Since the models referenced from the product brochure are groups of models with the same pitch length but other different dimensions, OCM notes that models with different pitch lengths almost never have any other physical dimensions in common and, therefore, would be less similar than models with the same pitch and few other characteristics that differed.

Department Position: Based on the Department's determination in these final results of review that products that are not identical with respect to six specific characteristics, including pitch, should not be considered similar merchandise for purposes of our calculations, this point is moot. We note however, that at the time we issued our questionnaire, and even in the preliminary results, we were considering the possibility that matching across pitch and the other five characteristics was appropriate. Had we not amended our matching methodology for these final results, OCM's reporting methodology would not necessarily have resulted in identification of the most appropriate home market matches for all U.S. sales.

Comment 3: Verification—Models Included in the Home Market Sales Database. OCM disputes the OCM Verification Report statement on page 13 that

> Contrary to OCM's assertion that its home market database was constructed exclusive of roller chain models containing non-standard links or chain that was endless, we found that nine of the ten sales reviewed from June 1996 in OCM's home market data base contained either an offset link, joint link, connecting link, or was endless as evidenced from the June 1996 home market sales ledger. Verification Exhibit 12 contains supporting documentation.

OCM claims that 8 of the 9 home market sales referenced above are of a standard chain model sold with a loose connecting link provided for use by the customer in assembling the chain. OCM claims that the Japanese symbol for ''loose'' appears on the sales ledger lines for these sales and that this distinction was explained to the verifiers. OCM also claims that the ninth home market sale referenced above was a special chain and, therefore, the connecting, or joint link discussion does not apply.

OCM suggests, therefore, that the Department's OCM Verification Report summary of findings statements that (1) OCM reported sales in the home market of models it specifically stated that it intended to exclude and did not report certain models of home market sales which were identical to U.S. sales, and (2) Company officials were unable to fully explain all the discrepancies, with a minor exception, are invalid. According to OCM, the minor exception consists of seven U.S. sales of special configuration chain. OCM notes that, although it sold identical merchandise in the home market, while preparing its U.S. sales database, it did not recognize these seven sales as special chain and so did not include the identical merchandise in its reported home market sales. OCM further contests the Department's conclusion that the Department was unable to determine what percentage of reported sales was affected by OCM's failure to report costs for endless chain or chain with offset, joint, or connecting links. OCM suggests that this conclusion by the Department implies that the failure to report such costs was an error. OCM maintains that the Department's statement that ''OCM's reported variable cost of manufacture for home market models covers different models than those identified in the sales listing'' is, thus, no longer relevant. According to OCM, it only reported home market sales of standard chain as it intended and, therefore, properly reported costs for only standard chain.

With regard to this issue, OCM claims that, at verification, the verifiers did not identify the nine sales they believed to contain a connecting link, joint link, attached offset link, or endless chain. OCM claims that it was not able to correct the Department's error until now because it did not become aware of the error until after the OCM Verification Report was filed and, therefore, the case brief is the earliest opportunity it had to discuss this error.

Department Position: We disagree with OCM. We maintain that our

Verification Report is accurate in all respects. Notwithstanding OCM's claim that its home market database was constructed without roller chain models containing non-standard links or chain that was endless, we found that nine out of ten sales reviewed at verification contained some type of non-standard link (*see* OCM Verification Report at 13 and Verification Exhibit 12). Moreover, when asked by the Department at verification why those specific sales appeared in the home market sales database, given that OCM officials had just informed the verification team that the home market sales listing excluded such models, company officials repeatedly stated that the sales were mistakenly entered onto the home market sales listing (*see* OCM Verification Report at 13). Contrary to OCM's statements in its case brief, these comments by OCM officials, directly confronted with these specific sales at verification, demonstrate that the Department did, in fact, identify the nine sales it believed to contain non-standard links, and that the Department verifiers asked company officials to explain the discrepancy. Therefore, OCM's contention that the OCM Verification Report was the first time OCM was made aware of the nine sales is clearly incorrect. Furthermore, given the discussions on this exact point between the verification team and company officials, OCM's assertion that it would have explained that these sales were of standard chain with loose connecting links provided for use by the customer in assembling the chain, is at best self-serving. Because of the importance of this finding at verification, we discussed this issue at great length with company officials, and, in fact, pointed out these specific sales from the home market sales ledger in requesting an explanation of the nature of these sales and models. Company officials repeatedly asserted that these sales should not have been reported because they contained joint or connecting links, and stated that ''temporary work staff with no knowledge of roller chain was hired to construct the home market data base.'' Therefore, OCM's claim that this finding is ''incorrect'' and that the ''ITA made a mistake'' represents a post-hoc attempt to correct one of its numerous verification failures to accurately present and explain information requested by the verifiers that is crucial to complete a successful verification.

Notwithstanding these facts, OCM does not dispute that the nine sales identified by the Department comprised special chain and that at least eight of those identified contained a connecting link. Whether or not the links were connected to the chain or not, as belatedly argued by OCM, the fact that the non-standard links were included with the chain is not disputed. Company officials were clearly unaware whether such sales were reported in the home market sales listing, or to what extent such sales were reported. Furthermore, OCM obviously failed to report the costs of these extra non-standard links, which appeared in nine of ten sales reviewed, since OCM maintains it did not account for the ''loose'' non-standard links in its cost reporting. Moreover, OCM's inability to accurately identify the sales it intended to report (*see* OCM Verification Report at 13) demonstrates that not only could the Department not determine the magnitude of this discrepancy, but neither could OCM. Therefore, we are likewise unable to determine the extent of products for which OCM did not report cost.

Comment 4: Verification—Unreported Home Market Sales. OCM next points to the OCM FA Memorandum, in which the Department makes the following statement:

> OCM also provided a list of standard chain models sold in the home market that it believed should have been included in its home market sales data base. OCM noted that this list was not necessarily inclusive.

OCM contests the Department's conclusion that six of the eleven models presented by OCM in this list (VE–4) should have been reported in OCM's home market database. OCM claims that page 14 of the OCM Verification Report confirms that six of the models in question were either not sold in Japan, were sold ''outside the 90–60 day rule period,'' or were ''home market sales of special configuration chain'' and, therefore, were correctly omitted from the home market sales database.

OCM further disputes the OCM Verification Report conclusion that the Department was ''unable to determine the magnitude of the unreported home market sales of these models.'' OCM asserts that VE–4, in fact, lists the number of home market sales for each model and the date of each sale. OCM further states that the discussion at verification regarding these models occurred prior to the discussion regarding special configuration chain, and that this is probably the reason that the Department did not realize that the five models were actually special chain. OCM asserts that the possibility that the sales of these five models might be special configuration chain was never raised by anyone, and now that OCM has identified these sales as being properly excluded from the home market data base, the statements in the OCM FA Memorandum and OCM Verification Report are ''no longer correct.'' OCM also notes that it has no recollection of stating that ''this list was not necessarily all inclusive.''

OCM claims that the above argument proves that the OCM Verification Report summary of findings is invalid and, in fact, lends support to the OCM assertion that it acted consistently in not reporting sales of special configuration chain in the home market sales database.

Department Position: We disagree with OCM. First, OCM's above assertion that the Verification Report confirms that six of the models in question were not sold in Japan is incorrect. Page 14 of the OCM Verification Report clearly states that

> Examination of the ''sales by model'' book confirmed that there were sales of six of the 11 models identified in verification exhibit 4 which had not been reported in the home market sales database but should have been reported.

Further, regarding the list provided at the start of verification, which is contained in verification exhibit 4, we do not understand OCM's statement it has no recollection of stating that, ''this list was not necessarily all inclusive.'' Even before introductory comments could be made by the Department at the start of verification, OCM officials were in the process of hand-writing a list of roller chain models sold in the United States, which potentially were also sold in the home market and, therefore, should have been reported in OCM's home market database (*see* OCM Verification Report at 2). As stated by OCM officials themselves, the list was constructed at the very last minute, and only after noticing that the home market database did not contain some major standard models (*e.g.* models 100–3R and 100–4R). Therefore, OCM officials noted 11 of these types of roller chain models on a piece of paper (*see* Verification Exhibit 4), and submitted this hand-written note to the Department verifiers, stating that it was a cursory list and that, given the ''last minute nature'' of its preparation, it may or may not include models sold in both the U.S. and home markets that may not have been reported in the home market database (*see* OCM Verification Report at 2).

Furthermore, we continue to conclude that we are unable to determine the magnitude of the unreported home market sales of these models (*i.e.*, the models contained in VE–4, which were

described at the beginning of verification as models that may have been improperly excluded from the home market database). We disagree with OCM that the spreadsheet presented at verification as supporting documentation for the above-referenced list of models is a comprehensive list of all home market sales, reporting the date of each sale related to the models contained in the above-referenced list. While we do not dispute that the spreadsheet was reconciled to the ''sales by models'' book to ascertain the completeness of the worksheet, we note that it was not possible to completely review OCM's records, given the structure and nature of the records, to establish that these were the only sales of these models made in the home market and that, in fact, these were the only unreported models. Therefore, we were, in fact, unable to determine the magnitude of the unreported home market sales of these models.

Additionally, OCM did not at any time prior to, or during, verification state that sales of these models were properly excluded from its home market database because they constituted special chain. Specifically, OCM stated that it hired temporary employees who were not knowledgeable about roller chain to assist with the compilation of the sales databases. OCM officials further stated that, rather than select all appropriate sales from its records, the temporary employees were instructed not to include any models containing a non-standard link or attachment on the databases, and even given the instructions, there were still discrepancies in the databases that OCM officials were unaware of prior to their discovery by the Department at verification. OCM could not explain many of the discrepancies, and simply attributed them to the inexperience of the temporary work staff. *See* OCM Verification Report at 12 and 13. OCM's post-hoc argument that these sales were properly excluded from the home market sales database, thereby rendering the Department's statements regarding this issue in the OCM FA Memorandum and the OCM Verification Report inaccurate, is without merit and contrary to facts on the record. Therefore, our conclusions in the OCM Verification Report regarding these sales have not changed.

Comment 5: Verification—Price Discrepancy for One Sale. OCM refutes the OCM Verification Report statement that ''OCM incorrectly over-reported the price for observation 691 (invoice number DF–1384) by 6.4 percent.'' OCM claims that the price reported for U.S. observation 691 was, in fact, the same price as on the invoice for DF–1384. OCM claims that the page of the invoice that contains this price was not included in Verification Exhibit 17.

Department Position: We agree with OCM that the price it reported for U.S. observation 691 is the same price as recorded on the invoice. The OCM Verification Report contained a typographical error in that it was not U.S. observation 691 that was incorrect, but rather U.S. observation 693. The price for U.S. observation 693 was incorrectly over-reported by 6.4 percent.

Comment 6: Verification—Home Market Inland Freight. OCM disputes the Department's findings regarding inland freight in the OCM verification report. Specifically, OCM refutes the conclusion that

> The freight rates in the August 15 response did not include all home market destinations as identified on the freight rate contracts. For example, company officials confirmed that OCM shipped goods to customers in Yokohama, Sakata, Sapporo, Shintome (sic—Shintone), and Awazu, for which there are rates in the above-mentioned contracts, but were not included in Attachment B22 of the August 15 response. * * * We were unable to determine which sales in the home market sales listing were shipped to these destinations because, although OCM provided a complete list of customer names in its questionnaire responses, it did not provide a key code to the location of each home market customer is (sic—in) response to the Department's request for (''Destination'') in the original questionnaire.

OCM claims that it did provide a key code to the location of each home market customer in the form of area code listings and that it included, at Attachment B–22 of its questionnaire response, an inland freight cost chart linking the area codes in the home market customer list to destination names (*i.e.*, prefectures and cities). OCM notes, however, that it failed to list certain cities in the above-discussed chart; thus, ''identifying the shipments which went to Yokohama, Sakata, Sapporo, Shintone and Awazu requires some knowledge of Japanese geography.'' (Brief at 21) Notwithstanding this statement, OCM claims that, by using the customer list and the inland freight cost chart, the Department should have been able to identify sales to Yokohama, Sakata, and Awazu.

OCM states that since Yokohama is located in the Kanto area and the freight rate reported in the verification report for Kanto ''is approximately the same as that reported by OCM * * * for the Kanto area * * * the ITA should have had no problem here.'' (Brief at 22) OCM makes a similar claim with regard to the Tohoku region, and for Awazu in the Hokuriku area.

Regarding shipments to Sapporo, OCM states that, while its transportation carrier in Hokkaido has one freight rate for Sapporo and one rate for all other locations in Hokkaido, it applied only the Sapporo rate to all Hokkaido shipments, in order to simplify the inland freight cost calculation. Furthermore, OCM acknowledges that it ''provided less than complete information'' for Sapporo and Shintone. Finally, OCM also acknowledges that its area code designation for shipments to another region was incorrectly reported.

Department Position: We disagree with OCM regarding the findings at verification with respect to OCM's reported home market inland freight. In its case brief, OCM states that for three of the destinations in question, there should have been no problem determining the freight rate because all that is needed to determine which inland freight rate to use is a ''knowledge of Japanese geography.'' It is not reasonable for a respondent to expect that the Department should have such a level of detailed knowledge at its finger-tips in the course of conducting administrative reviews. It is incumbent upon the respondent to provide all the necessary information and detail for the Department to be able to ascertain if certain expenses were properly reported. As it is the respondent's burden to explain its methodology and what it has reported to the Department, we requested at verification that OCM explain under which area code these locations should be characterized. We established rates from OCM's source documentation, but at no time did OCM inform the Department that the areas of Yokohama, Sakata, and Awazu fit into any area codes already listed in OCM's inland freight cost chart. Therefore, as stated in the OCM Verification Report, ''we were unable to determine which sales in the home market sales listing were shipped to these destinations.'' We further disagree with OCM's claim that, since the freight rates in the source documents are ''approximately'' the same as the reported freight costs, we should have accepted its reported freight costs. The point of verification is to determine the accuracy of the reported values by tying them to those in the source documents, not to accept ''approximate'' values at verification for data that was never provided in response to the Department's antidumping questionnaire.

Regarding the latter two locations, OCM has acknowledged that it provided ''less than complete information'' (Brief at 22), which left the Department unable

to determine which sales in the home market sales listing were shipped to these destinations.

Comment 7: Verification—Weights Used to Calculate Home Market Freight and Brokerage. OCM argues that, notwithstanding the problems regarding the product-specific weights it used for its freight calculations, the Department should accept its reported home market freight and brokerage costs. OCM states that, while it would have been easy to merely use the weights listed in its catalog, it attempted to refine the chain weights. Therefore, in some cases, it used weights from the catalog; in other cases, it used weights from a ''master list'' of the refined chain weights, or a third weight which incorporated the packing material weight. OCM argues that the discrepancies between these weights are minor and do not justify disregarding its reported inland freight and brokerage and handling charges. For example, OCM states that the maximum difference between the catalog weight and the weight used to calculate the inland freight and brokerage and handling charges was 3.81 percent. OCM recommends that the Department utilize weights listed in its catalog, which are accurate weights and used by OCM in the ordinary course of business, to calculate revised inland freight and brokerage and handling charges for the final results of review. In those cases where a model's weight is not listed in its catalog, OCM recommends using the ''master list'' weights.

Department Position: We disagree with OCM that the Department should accept its reported home market freight and brokerage costs. As OCM notes in its argument, it attempted to ''refine'' its chain weights, although OCM never explained what it meant by ''refine.'' OCM further notes that, in certain instances, it utilized the catalog weights; in other instances it used weights from a ''master list of the refined chain weights, and in still other instances, it used a third weight which incorporated the packing material weight.'' While the Department applauds OCM's efforts to ''refine'' its chain weights for purposes of reporting its inland freight and brokerage expenses, OCM was unable to explain or substantiate the weight reported for the models selected at verification. Furthermore, OCM could not substantiate the weights reported on the ''master list'' when asked to do so at verification. Moreover, after OCM was unable to reconcile the weights for the models selected using one or more of the above-referenced methodologies, OCM officials explained that they were mistaken regarding the methodology, and that the product catalog was used to determine the reported weights. We were still unable to reconcile all the freight expenses in the sales listing using the catalog weights (*see* OCM Verification Report at 20). In short, the Department was unable to reconcile the reviewed model-specific freight charges to the reported company freight rates by using either the product weights listed in the catalog or the weights provided by the ''master list'' (*see* OCM FA Memorandum).

Moreover, we disagree with OCM's recommendation that the Department simply use the weights listed in its catalog or the ''master list,'' in instances where the catalog does not report the weight, as a surrogate for weight. First, it is OCM's responsibility to report the accurate weight of each product. OCM's suggestion that the Department go through its home market sales database and match each product to the catalog in order to assign a ''correct'' weight would be burdensome and overly time-consuming. Moreover, OCM's suggestion that we use the ''master list'' weights when the catalog does not report a weight, and catalog weights where they exist, would constitute the use of unsubstantiated information, given that we were unable to reconcile either the ''master list'' or the catalog weights to any source documents. Therefore, we do not agree with this assertion.

Comment 8: Verification—Material Costs. OCM notes that only one reference exists in the Verification Report's summary of findings regarding the Department's testing of its methodology for updating material costs. The reference notes that OCM used the material costs for the four largest selling chain models to update its standard material costs to the POR, which OCM agrees with. OCM then notes that the Department conducted an extensive exercise to arrive at a 1996 material cost for model 40 chain. This exercise resulted in a cost significantly lower than the standard cost figure from 1993. OCM states that this is consistent with everything OCM explained to the Department regarding material cost changes between the standard cost system and the POR costs.

Department Position: As noted by OCM, the summary of findings section of the OCM Verification Report does contain a reference to the materials cost adjustment calculated by OCM. The OCM Verification Report also contains a detailed description of the procedures and results of each test conducted by the Department on this issue, and although the Department found that the 1996 reported cost of model 40 chain was lower than the standard cost figure from 1993 as stated by OCM, the OCM verification report contains substantially more relevant information regarding OCM's methodology. Specifically, we found that although OCM's standard costs for raw material inputs were developed using the standard cost survey covering the period April 1993 through September 1993, OCM calculated its raw materials cost variance for purposes of the dumping calculation as the difference between the prices paid for raw materials during December 1993 and December 1996. We note that OCM failed to disclose in its questionnaire response that for purposes of calculating a raw material cost variance it substituted December 1993 costs for the standard costs (reflective of the period April 1993 through September 1993) and compared this substitute to raw material costs incurred in only December 1996 rather than for the POR.

At verification, we compared the December 1993 prices paid for raw material inputs to the standard raw material costs for models 40, 50, 60 and 80, to determine if the reported December 1993 data was reflective of the standard costs. We found that the December 1993 material costs were not reflective of the April through September 1993 standard costs, thus indicating that the reported variance (between December 1993 and December 1996 costs) was not reflective of what the raw material price variance would be between the standard costs and the 1996 material costs. Moreover, we found an additional discrepancy in the reported December 1993 cost of the roller contained in model 80–1R. This discrepancy was due to the fact that OCM sourced this roller from two vendors in December 1993, but calculated the cost based on purchases from only one vendor, thus further bringing into question the validity of the data.

We selected the next three highest selling models and tested the difference between the April through September 1993 standard costs and December 1996 actual costs. We found that the average reduction in material costs for these three models was significantly different from the average reduction in materials costs for the four models discussed above (*see* OCM Verification Report at 22 through 24).

Further, we note that in attempting to calculate a material cost variance, OCM did not account for differences in material usage between the period used to derive the standard costs, or even December 1993, and the POR. Therefore, although OCM is correct in stating that the models the Department tested at

verification showed material costs which were lower in 1996 than 1993, this result was based on incomplete and inappropriate cost data provided by OCM and, therefore, is unreliable for purposes of calculating a dumping margin.

Thus, OCM, in its comment, fails to address the results of all the tests conducted by the Department at verification, which identify discrepancies in OCM's calculations as well as evidence that OCM's material cost adjustment based on four models is not representative of the subject merchandise as a whole. For a more extensive analysis of our findings at verification on this issue, see the OCM FA Memorandum, which details the differences between the cost methodology OCM reportedly utilized in its questionnaire response and that which OCM described at verification, as well as our verification findings.

Lastly, OCM seems to discuss only the Summary of Findings section of the OCM Verification Report regarding any discrepancies and conclusions resulting from verification. First, the OCM Verification Report, like any other Verification Report, draws no conclusions. It is simply designed to report the findings from verification. Second, the Summary of Findings section is just that, a summary. The full text of the verification report contains detailed accounts of all procedures and results of the verification, and must be read in its entirety in order to fully understand the full scope of the verification.

Comment 9: Verification—Whether to Compare Standard Chain to Special Chain. OCM refers to a worksheet in the OCM Verification Report (exhibit 24–C) in support of its argument that special configuration chain should not be compared to standard configuration chain. OCM notes that this exhibit illustrates that, for model 40–1R, various special chains are significantly higher in cost than the standard chain model. OCM's purpose of including these figures was to illustrate that special chain has a substantially higher production cost than standard chain and, thus, the two types of chain should not be compared. OCM claims that the OCM Verification Report states that the verifiers confirmed the accuracy of the figures on the worksheet, but disagreed with OCM's methodology for making the comparison between special and standard chain. The verifiers determined that the special models cost more (but significantly less than that which OCM calculated) than the standard chain because the verifiers multiplied the special configurations' manufacturing costs by three due to a differential in the number of links in the special and standard chains. OCM argues that, regardless of the cost differential disagreement between its methodology and the verifiers methodology, the fact remains that special chain is significantly more expensive to produce than standard chain.

Department Position: As stated by OCM, the purpose of the worksheets contained in exhibit 24–C of the OCM verification report was to illustrate the cost differences between a standard model chain (*i.e.,* model 40–1R) and the same model chain with non-standard links (*i.e.,* connecting link, offset link, both connecting and offset links, and endless connection). After reviewing the worksheets provided by OCM at verification and receiving explanations from company officials of the calculations contained therein, we found that the cost differences were not as OCM portrayed them. In fact, after recalculating the costs of the chain with non-standard links, which was necessary because the 40–1R model used by OCM as the base model contained 240 links while all the other comparison models with special links contained 70 or 71 links, we found that the cost differences between the base model and the comparison models were dramatically less than calculated by OCM (assuming the cost data used for these tests had been reliable) (*see* OCM Verification Report at 24 and 25). Again, if the cost data had been reliable, based on the recalculation at verification, the standard model chain and the same model with a non-standard link were comparable according to the Department's matching criteria and DIFMER test.

Comment 10: FA—Whether OCM Provided the Necessary Information in the Form and Manner Requested. OCM asserts that it provided the necessary information in the form and manner requested. OCM addresses, in turn, the Department's findings that (1) ''OCM * * * did not report all appropriate home market sales and cost information,'' and (2) the Department was ''unable to verify the accuracy and completeness of OCM's costs.''

Regarding the Department's finding that ''OCM * * * did not report all appropriate home market sales and cost information,'' OCM first addresses sales issues. OCM argues that it reported all home market sales of models which were identical to those models sold in the United States, but due to the extraordinary burden, it did not report all home market sales of the foreign like product. OCM refers to its explanation in the November 17 supplemental response for its failure to report all home market sales of the foreign like product in the time permitted. Specifically, OCM reiterates that (1) since its electronically stored data base is purged after 100 days, OCM would have had to manually input the data, which would be an impossible task given that its sales ledger contained approximately 148,000 line items; and (2) the research time to locate the data relevant to the requested product characteristics for every home market special chain model and attachment chain model sold during the relevant period could have taken months. OCM states the Department never objected to its response statements, and that this non-response suggests implicit agreement that OCM would not have to report all home market sales. In fact, OCM cites the OCM FA Memorandum, which states that it would allow OCM to report limited home market sales contingent upon a determination that it had reported all appropriate home market comparison sales.

OCM notes that, for U.S. sales of attachment chain or special chain models, where no identical merchandise was sold in the home market, it selected as similar the standard chain models identical to the U.S. models in terms of the following characteristics: type of chain; material; finish; number of strands; and pitch length. OCM states that the similar model issue is not overly significant (*i.e.,* 49 out of 117 U.S. models, and 246 out of 696 U.S. sales lacked an identical match). OCM believes that the Department's concern with its home market sales reporting focused on the ''extent of unreported home market sales of merchandise identical or similar to merchandise sold in the United States.'' OCM refers to the OCM FA Memorandum, in which we stated that

> In its most recent supplemental response, OCM did not revise its model match selections in accordance with the Department's instruction re: revised model match methodology (*i.e.,* it continued to identify identical and similar product matches based on the four product characteristics discussed above, rather than the 18 characteristics the Department deemed appropriate for model match) * * * and
>
> OCM's stated matching methodology clearly excludes certain home market sales of identical and similar merchandise we would have used in model matching since the Department's matching methodology is based on 18 product characteristics, not just the four product characteristics used by OCM.

OCM claims that, in fact, there is no evidence that OCM's model match methodology excluded certain home market sales of merchandise the

Department would have used. Moreover, the Department's OCM FA Memorandum and OCM Verification Report do not specifically identify models excluded by OCM that the Department would have used in model matching.

OCM further states that it is unclear if the summary of findings in the OCM Verification Report are based on the notion that OCM used just five, rather than 18, product characteristics to select similar home market models. If so, OCM contends, the above explanation demonstrates that there is no supporting evidence for this finding.

OCM next addresses the OCM Verification Report statement, in which we stated that

> Company officials acknowledged, however, that while they consider pitch length to be the defining characteristic of roller chain, there could be cases in which the pitch length is different between products, but the products could still be characterized as similar for purposes of product matching.

OCM acknowledges that this statement is true, but insists that it does not in any way undercut its sales reporting methodology because only in very rare cases would a model with a different pitch length be most similar to a U.S. model. OCM reiterates that models with different pitch lengths will differ in at least six product characteristics, whereas models with the same pitch length (*i.e.*, standard models that are the base chain of the attachment chain and have the same pitch length) will only vary by two or three product characteristics in most cases. OCM notes that, in determining home market similar matches, it selected the standard chain model of the same pitch length as the most similar model.

Regarding configuration of models, OCM reiterates that it included only standard configuration chain sales in the home market sales data base because (1) special configurations are physically different from the standard configuration of the same model, (2) the manufacturing cost for special chain is significantly higher than that of standard chain, and (3) at the time it prepared the home market data base, OCM believed that its U.S. sales were all made in standard configuration. OCM claims that its position that only home market standard configuration chain sales should be compared with U.S. standard configuration chain sales is consistent with and supported by the statute. OCM states that the first choice in the hierarchy of merchandise that can serve as the foreign like product is defined by section 771(16)(A) of the Act as ''The subject merchandise and other merchandise which is identical in physical characteristics with, and was produced in the same country by the same person as, that merchandise.'' Because special configuration chain is not ''identical in physical characteristics with'' standard chain, it would not be the first choice in the hierarchy and should not be compared to standard chain. Instead, standard chain is the first choice in the hierarchy described in the statute, and this is correctly what OCM used in reporting the foreign like product.

OCM next repeats its arguments regarding the Department's finding that nine of the ten sales examined in OCM's June 1996 sales ledger contained an offset link, a joint link, a connecting link, or was endless. OCM states that this finding is incorrect.

Referencing the issue raised in *Comment 3* regarding the seven U.S. sales of special configuration chain, OCM claims that its error with regard to reporting home market sales of special configuration chain does not support the preliminary results notice conclusion that the Department was ''unable to determine the extent of unreported home market sales of merchandise identical or similar to merchandise sold in the United States.''

OCM claims that the preliminary results notice and OCM FA Memorandum cite one cost reporting discrepancy (*i.e.*, that OCM did not report variable costs of manufacture (VCOMs) for certain models of chain sold in both the U.S. and home markets during the POR.) OCM states that it has already demonstrated that the Department was wrong in concluding that OCM reported sales of special chain in the home market sales data base, so in fact OCM reported the correct VCOM's for all models. OCM acknowledges, however, that it reported the incorrect VCOM for the seven U.S. sales of special chain, but insists that this was the only discrepancy for this issue.

According to OCM, the above comments demonstrate that the Department may not predicate its use of total FA on allegations that OCM's method for selecting home market identical and similar models was inappropriate, since its methodology resulted in the selection of all identical and most similar home market models. OCM asserts that the descriptions of its model match methodology should resolve any doubts that the Department had about OCM's similar model selection methodology and should put to rest the Department's assertion that OCM ''excluded certain home market sales of identical and similar models we would have used in model matching.''

Department Position: We disagree with OCM's claim that it provided the necessary information in the form and manner requested as required by section 776(a)(2)(B) of the Act. Regarding the first of OCM's three assertions meant to support the above claim, we continue to maintain that OCM did not report all appropriate home market sales and cost information. OCM itself states that it unilaterally decided which product characteristics to use in selecting similar home market models to U.S. sales (*i.e.*, 5 of the 18 product characteristics identified by the Department). As stated in the OCM FA Memorandum, and acknowledged by OCM, the Department allowed OCM to report limited home market sales contingent upon a determination at verification that it had reported all appropriate home market comparison sales. OCM had every opportunity to justify and substantiate the appropriateness and accuracy of its home market reporting methodology during verification. However, in almost every instance, we found unexplained discrepancies. First, OCM's questionnaire response claimed that it reported all home market sales of merchandise identical to that sold in the United States. However, at verification, we discovered that OCM had, in fact, made certain sales of specialty chain in the United States, but did not report home market sales of the same merchandise. Second, at verification, OCM officials informed us that they had directed their staff to report home market sales of only standard chain with no special links (*i.e.*, not to report standard chain with non-standard links). However, since certain chain sold to the United States contained non-standard links, this methodology clearly would result in exclusion of models that might have been the most appropriate matches for certain U.S. sales. Third, while reviewing the reported sales at verification, we found that OCM had reported some home market sales of standard chain with non-standard links (despite its intention otherwise). Finally, we note that OCM classified standard chain with a loose attachment as plain standard chain. Therefore, we disagree with OCM that its methodology resulted in the selection of all identical and most similar home market models.

We also disagree with OCM's contentions regarding our findings that ''we were unable to verify the accuracy and completeness of OCM's costs.'' First, with respect to cost, we note that OCM failed to report any cost for specialty chain or for standard chain with non-standard links. Second, OCM's questionnaire responses did not contain

accurate information on how the cost differences were calculated. Furthermore, we found at verification discrepancies in OCM's calculations as well as evidence that OCM's material cost adjustment based on four models is not representative of the rest of the subject merchandise.

In addition, in adjusting reported standard labor costs, OCM did not address the issue of standard production times, which are a part of the calculated model-specific labor costs. Finally, with respect to both the material and the labor cost variances, we note that the data used to calculate those variances does not correspond to the period on which the standard costs are based (*i.e.*, OCM compared costs between two periods, neither of which corresponded to the standard cost base period). For further discussion *see* the Department Position for Comment 11, the OCM FA Memorandum and the OCM Verification Report.

Comment 11: FA—Whether the Findings of Verification Justify Use of Total FA. OCM claims that, with the exception of the chain weights and freight rates, the numbers submitted by OCM consistently matched those in its accounting records and could be traced through the accounting system. OCM notes that, although the Department found that the cost data could not be verified, the OCM verification report states that OCM's reported 1993 cost data ''reconciled * * * with'' internal cost ledgers. OCM also notes that the Department verified that the four models used to update the material costs were, in fact, the four top selling models to all markets during the POR, and that the Department successfully traced the December 1996 material costs through OCM's accounting system and financial statements. OCM goes on to state that the accuracy of its labor cost data used to update the standard costs to the POR, and its factory overhead expenses used in the VCOM calculations, were likewise confirmed.

OCM states that the above information contradicts the Department's preliminary results conclusions that (1) the information could not be verified, (2) the Department could not establish whether the reported costs reflect actual costs for the POR, and (3) the Department was unable to establish the credibility of the information contained in OCM's questionnaire responses. OCM then asserts that these statements make no sense in light of the overall OCM Verification Report. OCM states, however, that if the cost data it submitted was not the data the Department wanted it to report, the issue is a reporting problem, not a verification problem. OCM acknowledges the problems it had reconciling standard costs to actual costs.

OCM states that, since the problems were in fact reporting issues rather than verification issues, there are three implications arising from this. First, the Department can no longer claim that OCM failed verification and use that as a rationale for total FA. Second, the CAFC's decision in *Olympic Adhesives, Inc.* v. *United States,* 899 F.2d 1565 (Fed. Cir., 1990) (*Olympic Adhesives*), restrains the Department from using total FA where a company reported standard costs because it could not report actual costs, and because the facts show that OCM complied with section 782(c)(1) of the Act. Third, OCM claims that, since a failed verification no longer supports the use of total FA, OCM has now met the five criteria contained in 19 USC 1677m(e) in which Congress directs the Department to use information submitted by a respondent even if it does not meet all applicable requirements established by the Department. Thus, OCM concludes that evidence cited by the preliminary results notice does not support the proposition that OCM's ''information cannot be verified.''

Department Position: We disagree with OCM's claim that, with the exception of the chain weights and freight rates, the information submitted by OCM consistently matched that in its accounting records and could be traced through the accounting system. OCM's statement that the OCM Verification Report states that OCM's reported 1993 cost data ''reconciled * * * with'' internal cost ledgers is accurate, but disingenuous. Specifically, the 1993 materials costs were the result of an extensive research survey, the findings of which were recorded in the ''Unit Materials and Weight Book.'' The information contained in this book was subsequently transferred to OCM's ''Cost of Production Book,'' which is the basis for OCM's 1993 costs (*see* OCM Verification Report at 21). However, the fact that some information from the standard cost research survey could be traced through OCM's internal records is not the real issue. Rather, the issue is that OCM did not utilize the data from its standard cost research survey. Instead, OCM reported material cost information from December 1993, a month outside the period used to derive the standard costs.

Furthermore, even though the four models OCM used to update the material costs were in fact the four top selling models to all markets during the POR, they did not comprise a significant percentage of total sales during the POR and, therefore, did not reflect an actual variance for OCM's costs. We do not agree with OCM, however, that this is a reporting problem. Clearly, OCM elected to use data that did not correspond to the variance it was attempting to calculate, although it did not so state in its questionnaire response. Thus, the supposed variance is invalid. (*see* OCM Verification Report at 23). The fact remains that the Department found that the cost data could not be verified. *See* OCM comments 8 and 10.

OCM's assertion that the accuracy of its labor cost data used to update the standard costs to the POR, and factory overhead expenses used in the VCOM calculations were likewise confirmed, are also inaccurate. The Department was able to confirm the accuracy of OCM's aggregate factory overhead expenses for 1996; however, in attempting to ascertain the validity of OCM's reported labor cost data, which was used to update the standard costs to the POR, we found that OCM did not calculate a variance between standard and actual POR production times, which should be a part of the reported model-specific labor costs (*see* OCM FA Memorandum at 7).

Furthermore, we found that OCM attempted to calculate a labor rate variance based on the periods April 1993—March 1994 and April 1996—March 1997 while standard labor costs were based on the period April 1993—September 1993. As an explanation for this, OCM stated that, since the standards were an average, the fact that the labor rate variance was calculated based on comparison of two 12 month periods and the standard rates were based on six months should not matter. We disagree with OCM that this was an appropriate methodology for calculating its labor and overhead variances.

The Department's position in the preliminary results of this review that we could not reconcile OCM's reported material and labor costs to its internal books and records and, therefore, could not establish whether the reported costs reflect actual costs for the POR are consistent with our findings at verification and detailed in the OCM Verification Report. The fact remains that the Department was unable to establish the credibility of the information contained in OCM's questionnaire responses.

Comment 12: FA—Whether OCM Acted to the Best of its Ability. OCM argues that the OCM Verification Report statement that ''OCM has not * * * acted to the best of its ability in providing the necessary information'' is incorrect. OCM refers to the conclusion

that ''OCM elected not to follow the Department's clear instructions * * * that OCM must report all appropriate home market sales and utilize an appropriate cost methodology.'' OCM claims it has already addressed the Department's findings regarding its reporting of home market sales.

Regarding cost-related examples cited by the preliminary results notice, OCM first addresses the following statement:

> For example, the company used standard cost data to report model-specific material and labor costs, even though the Department does not accept standard costs for purposes of antidumping analysis.

OCM asserts that it stated in its August 15, 1997, response that it did not maintain product-specific actual cost data. OCM states that penalizing it for failing to report non-existent data is contrary to sections 776(a) and 782(c)(1) of the Act, as well as *Olympic Adhesives* and *Borden*.

OCM maintains that it attempted to calculate product-specific actual costs, but that none of its ideas, or those of the Department suggested in meetings between OCM's counsel and the Department on November 18, 1997 and December 18, 1997, were achievable in a reasonable amount of time. OCM reiterates the four ideas it considered to produce model-specific actual manufacturing costs, and outlines the reasons that it could not execute these ideas. OCM then acknowledges that, while one of the Department's verifiers was able to calculate actual 1996 material costs for one model using documents provided at verification, this task would have taken one individual roughly 1.5 to 3 work weeks to calculate the costs for all models sold in the United States. OCM next notes that, for labor costs, it would have been impossible to calculate actual costs because OCM does not maintain information about labor or machine time spent on each product.

OCM asserts that the Department's position that standard costs are unacceptable ''for purposes of antidumping analysis'' is inconsistent with section 782(d)(c)(1) of the Act. OCM claims that there is compelling evidence that OCM acted to the best of its ability because: (1) OCM actively and aggressively attempted to produce the information requested; (2) none of the possible methods to calculate a model-specific actual cost were reasonable; and, (3) OCM suggested and subsequently submitted an alternative form of data.

OCM next addresses the Department's concern that, in calculating a variance between standard and actual costs for the POR, the company compared data that did not reflect either the period used to calculate the standard costs (April 1993–September 1993) or the POR (April 1996–March 1997). OCM asserts that it used POR data (December 1996) for both material and labor costs, but acknowledges that it did not use the standard cost base period (April 1993–September 1993) in updating its calculations. In the case of labor costs, OCM asserts that, since labor cost data from the standard cost data period was not available, its conduct in this regard clearly reflected acting to the best of its ability to provide responsible and responsive information to the Department.

Regarding material costs, OCM believes that December was an appropriately representative month in both 1993 and 1996 to update the standard material costs, as the material costs did not change very much from month to month and December reflected a month within both the POR and the end of the calendar year. OCM argues that, just because other time periods could have been used, this does not indicate that OCM did not act to the best of its ability by choosing December of 1993 and 1996. OCM claims that the fact that December 1993 is not part of the standard cost base period does not establish that the choice of December 1993 is indicative that OCM did not act to the best of its ability.

Finally, OCM addresses the Department's concern that it ''calculated its variance for its four highest selling models of roller chain and applied a simple average of these variances to the standard costs reported for all other models.'' OCM first notes that this statement applies exclusively to material costs. Next, OCM estimates that it would take an inordinate amount of time to calculate updated model-specific material cost figures. OCM then asserts that, while it ''certainly could have used more than four models'' to update the material cost figures, the fact that it only used four models is not a basis for concluding that OCM did not act to the best of its ability.

Department Position: There is no disagreement among all parties in this review that OCM failed to follow the Department's instructions to report its home market sales of roller chain models and the product characteristics related to those products. Rather, as stated numerous times above, OCM unilaterally decided which of the 18 characteristics selected by the Department were most important. Notwithstanding OCM's actions, the Department accepted OCM's reporting methodology with the understanding that it was incumbent upon OCM to demonstrate, at verification, that its limited reporting methodology was in fact appropriate. As discussed above (*see* OCM comments 1 through 4), we found at verification that: (1) OCM's methodology, as stated, was not reflected in the actual home market database; (2) OCM did not provide complete and accurate home market sales in accordance with its stated methodology; and (3) OCM omitted sales of roller chain models that could have been deemed similar to U.S. models that did not have identical matches.

Second, regarding cost issues, the Department neither rejected OCM's reported standard costs or deemed them unverifiable just because they were standard costs. Rather, upon finding the deficiencies between the methodology explained in the questionnaire responses and those explained at verification, coupled with the fact that OCM failed to report costs of the ''loose'' links sold (and packaged) with certain models of chain, we determined that we were unable to establish the credibility of OCM's reported costs. *See* OCM comments 8 and 10 as well as the OCM Verification Report and OCM FA Memorandum. Thus, we disagree with OCM that it acted to the best of its ability in providing the necessary information. While we understand the stated problems OCM encountered in the compilation of all the necessary data in order to accurately respond to the Department's questionnaire and supplemental questionnaires, our findings at verification clearly demonstrate that OCM did not act to the best of its ability in providing the necessary information.

Comment 13: Whether the Department's Decision to Use Adverse FA is in Accordance with Law and is Supported by Substantial Evidence. OCM contends that, in order for the Department to apply adverse FA, it must first determine that OCM did not cooperate to the best of its ability. OCM asserts that there is no basis for such a finding. First, it has reported all home market sales of all identical and most similar home market models. Second, the existence of the seven unmatched U.S. sales is insignificant. Third, it has demonstrated that it properly excluded home market sales of the models the Department claimed should have been reported. Fourth, two models with the same pitch length will be more similar than two models with different pitch lengths, despite possibly having certain other characteristics in common. Fifth, its matching selection process, which is based on matching home market

standard chain sales against U.S. sales of standard chain, attachment chain or special chain (all of which were the same pitch length as the home market models) was appropriate. Sixth, it actively and aggressively sought to find a method for producing VCOM and TCOM information that would be acceptable to the Department and, in fact, suggested an alternative form of the information, namely, the appropriate cost data that represented updated material, labor and overhead costs. Therefore, OCM concludes that there is no evidence in the preliminary results notice, or in the OCM FA Memorandum to support the Department's position that OCM did not act to the best of its ability to comply with the Department's information request. OCM argues that there are only indirect references in the OCM FA Memorandum about counsel being ''informed'' and ''reminded'' about OCM's obligations. OCM asserts that, just because the Department ''instructed,'' ''informed'' and ''reminded'' it of its obligations does not mean that OCM did not act to the best of its ability.

OCM argues that, other than the seven U.S. sales of special configuration chain, there should be no issue regarding OCM's sales reporting, and that there is no impediment to calculating actual dumping margins for all identical models. OCM also states that its standard costs updated to the POR should be used (in VCOM and TCOM) in calculating difference in merchandise adjustments for similar model matches. OCM argues that, if the Department continues to determine that its cost information is unusable, then the Department should use a non-adverse FA rate for OCM's U.S. sales which do not have an identical home market model match. OCM argues that the Department should correct the errors identified herein and revise OCM's dumping margin accordingly.

Petitioner notes that, in its case brief, OCM argues that many of the Department's findings were based on its own mistakes in reviewing the company's data at verification and on an erroneous interpretation of OCM's model match criteria. Petitioner recognizes that, while it was not present during verification and thus cannot evaluate several of OCM's fact-specific arguments, an examination of the available materials indicates that the Department conducted a thorough analysis of the relevant information, documented significant weakness in OCM's questionnaire responses, and, after giving OCM opportunities to submit revised materials, correctly determined that it had no choice but to apply an FA margin.

Petitioner notes that the Department concluded that it could not rely on OCM's submitted data in calculating dumping margins because the data failed to satisfy the requirements of section 782(e) of the Act. Specifically, petitioner states that the Department found that it could not reconcile OCM's material and labor costs with its internal books and records, that OCM failed to report all appropriate home market sales and cost information after being informed of deficient responses, that the Department could not determine the extent of unreported home market sales or VCOM's, and that OCM did not act to the best of its ability to report data as the Department requested.

Petitioner argues that while OCM asserts that it did not fail verification, OCM acknowledged that the Department has questioned whether its data ''is so incomplete that it cannot serve as a reliable basis for reaching the applicable determination,'' and whether OCM has acted to the best of its ability to provide the requested information. Petitioner asserts that, consequently, OCM's data fail the third prong of the ''facts available'' test, regardless of the accuracy of the information itself.

Petitioner then addresses OCM's argument that, although the company was unable to submit certain information in the form requested, it attempted to work with the Department to provide information in alternate forms, and therefore acted to the best of its ability to provide the requested information. Petitioner notes that OCM suggests that the Department cannot penalize a company by imposing an FA margin for failure to produce nonexistent data. Petitioner acknowledges that the courts have explained that the mere inability to report requested information because a respondent does not record such information in its system does not itself exempt the respondent from application of best information available, the predecessor to FA. *Cf. Hussey Copper, Ltd.* v. *United States*, 834 F. Supp. 413, 424 (CIT 1993).

Petitioner argues that there is ample support on the record to justify application of an FA margin to OCM. However, petitioner also acknowledges that the OCM Verification Report did, in fact, indicate that there were substantial areas of OCM's responses in which the Department found virtually no discrepancies. Moreover, petitioner notes that OCM has not participated in recent roller chain proceedings. Petitioner concludes that it ultimately supports the Department's decision to apply a less adverse FA margin to OCM.

Department Position: We disagree with OCM. As fully discussed in OCM comments 1 through 4 and 8 through 12, above, we were unable to establish the credibility of the home market sales and cost data reported in OCM's questionnaire responses. Moreover, as discussed in the comments above, we continue to determine that OCM did not act to the best of its ability in providing all the necessary data. As in the preliminary results, we continue to find that, in determining the dumping margin for OCM, the application of adverse FA is warranted in this case. *See* the OCM FA Memorandum for a discussion of the adverse facts available rate applied to OCM.

Tsubakimoto

Comment 1: Scope of the Tsubakimoto Revocation Notice. Tsubakimoto argues that the petitioner's attempt to limit the scope of the Department's revocation notice with respect to Tsubakimoto is untimely. Tsubakimoto states that on two prior occasions, the petitioner has attempted to contest the Department's determination to revoke the order as it applies to Tsubakimoto. Tsubakimoto notes that the petitioner filed a complaint with the Court of International Trade (CIT) contesting the Department's *Revocation in Part of Antidumping Finding: Roller Chain, Other than Bicycle, From Japan*, 54 FR 33259 (August 14, 1989) (1989 *Revocation Notice*). However, the CIT dismissed the case as being untimely filed. *See American Chain Association* v. *United States*, 13 CIT 1090, 1092, and 1095, 746 F. Supp. 112 (December 28, 1989). Furthermore, Tsubakimoto contends that the petitioner attempted to circumvent the findings of the CIT by subsequently filing a challenge to the final results of the Department's 1986–1987 administrative review. Tsubakimoto notes that once again the CIT dismissed the case, stating the ''antidumping duty determination was revoked without timely challenge.'' *See American Chain Association* v. *United States*, 14 CIT 666, 746 F. Supp 116 (September 17, 1990). Tsubakimoto continues that in this same ruling the CIT stated that a revocation ''becomes final when a litigant misses the statutory deadline for challenging that determination, as the plaintiff did here.'' Id.

In the subject administrative review, Tsubakimoto argues that the petitioner is trying to address an issue which it has twice before been precluded from challenging by the CIT. Tsubakimoto

argues that if the Department permits the petitioner to challenge the scope of the revocation, it will unlawfully extend the statutory deadline for challenging such a determination. Tsubakimoto, therefore, requests that the Department dismiss the petitioner's comments as untimely and continue its current practice with respect to the Tsubakimoto revocation.

The petitioner argues that Tsubakimoto's ''timeliness'' argument is merely a diversionary tactic, with no basis in law or fact. Regarding the CIT's dismissal of its challenge of the Department's *1989 Revocation Notice*, the petitioner maintains that there is no evidence that any of the parties ever contemplated that the appeals might potentially address the current scope question. The petitioner asserts that for Tsubakimoto to suggest otherwise is disingenuous. The petitioner stresses that throughout the course of this review, it has emphasized that it is not seeking coverage of roller chain manufactured by Tsubakimoto, but is seeking to clarify that the scope of the revocation is consistent with its express terms—that it is limited to roller chain that is *both* manufactured *and* exported by Tsubakimoto. The petitioner maintains that this question is timely and notes that in the three prior reviews it consistently requested that the Department calculate margins for all merchandise by a certain other manufacturer even if that merchandise had been exported by Tsubakimoto. The petitioner argues however that it was not until the beginning of the current review that Tsubakimoto admitted that it was, in fact, exporting roller chain to the United States manufactured by the company in question. *See* Comment 4 below for further discussion of this allegation.

Department Position: The Department has considered petitioner's request for an administrative review of Tsubakimoto as a reseller of chain produced by other Japanese companies rather than as a challenge to the Department's final determination of Tsubakimoto's revocation. As stated by petitioner, it is not attempting to alter the scope of the revocation notice since it is not seeking coverage of roller chain manufactured by Tsubakimoto, but rather, is seeking clarification regarding merchandise which is exported by Tsubakimoto but manufactured by another Japanese producer. In that regard, we agree that clarification is warranted and have reviewed the evidence on the record. *See* Tsubakimoto Comment 2 for further discussion of revocation of Tsubakimoto as a reseller/exporter.

Comment 2: Revocation of Tsubakimoto as a Reseller/Exporter. The petitioner submits that the Department's preliminary determination that the 1989 revocation applies to Tsubakimoto in both its capacity as a manufacturer/exporter and reseller/exporter is not supported by the relevant facts on the record, is otherwise contrary to law, and should be reversed in the final results.

The petitioner first argues that, in determining the scope of the Department's revocation determination with respect to Tsubakimoto, it is important to consider the language of the revocation notice. Specifically, the notice states, in relevant part that ''This partial revocation applies to all unliquidated entries of this merchandise manufactured and exported by Tsubakimoto * * *'' *See 1989 Revocation Notice.* The petitioner contends that by its very terms, the revocation only applies to merchandise that has been both manufactured and exported by Tsubakimoto since it is a fundamental tenet of statutory construction that ''the plain and unambiguous meaning of a statute prevails in the absence of clearly expressed legislative intent to the contrary.'' *F.lli de Cecco di Felippo Fara San Martino S.p.A.* v. *United States*, Consolidated Court No. 96–08–01930, 1997 Ct. Int'l Trade LEXIS at 17 (October 2, 1997). The petitioner further states that only ''the most extraordinary showing of contrary intentions'' will lead the courts to disregard the plain meaning of statutory language. *Id.* Arguing that these principles of construction apply when determining the scope of the Tsubakimoto revocation, the petitioner contends that it is clear on its face that the phase ''merchandise manufactured and exported by Tsubakimoto'' only reached roller chain actually produced by Tsubakimoto. In order to cover merchandise manufactured by the other parties, the petitioner maintains that the phrase would have to have been written in the disjunctive (*e.g.*, ''merchandise manufactured or exported by Tsubakimoto'').

The petitioner argues that past Department determinations support the straightforward reading of the Tsubakimoto revocation notice, citing *Steel Wire Strand for Pressed Concrete from Japan* 55 FR 28796 (1990) (*Steel Wire Strand from Japan*) as the only other case in which the Department has been called upon to interpret the phrase ''manufactured and exported.'' The petitioner notes that the Department determined that ''the exclusion in that case was applicable only to merchandise manufactured and exported by the respondent, not to merchandise exported by the respondent that had been *produced* by another manufacturer.''

The petitioner further argues that when the Department seeks to reach beyond merchandise produced by a named foreign respondent, it carefully tailors the language of its revocation notices to accomplish this objective. *See e.g., Steel Wire Rope from the Republic of Korea: Effective Date of Revocation in Part of Antidumping Duty Order*, 63 FR 20380 (April 24, 1998), *Pressure Sensitive Plastic Tape from Italy: Final Results of Antidumping Administrative Review and Revocation in Part*, 53 FR 16444 (May 9, 1988), *Spun Acrylic Yarn from Japan: Final Results of Antidumping Administrative Review and Revocation in Part*, 52 FR 43781 (November 16, 1987), *Elemental Sulphur from Canada: Preliminary Results of Administrative Review of Antidumping Finding and Intent to Revoke in Part*, 49 FR 32632 (August 15, 1984), and *Ferrite Cores (of the Type Used in Consumer Electronic Products) from Japan: Preliminary Results of Antidumping Administrative Review and Intent to Revoke in Part,* 52 FR 11524 (April 9, 1987). In each of these cases, the petitioner states that the Department used language stipulating that the scope of the notice covered merchandise ''manufactured and/or exported'' by the entity in question. The petitioner also cites the Department's approach to the potential revocation of other Japanese roller chain producers and exporters in the 1980–1981 review (*see Roller Chain other than Bicycle from Japan: Preliminary Results of Administrative Review of Antidumping Finding and Tentative Determination to Revoke in Part*, 47 FR 44597 (October 8, 1982)), in which the Department also used the language ''manufactured and exported,'' as illustrative of their argument. The petitioner argues that the quoted language clearly demonstrates that (1) the Department understood the phrase ''manufactured and exported by'' to require both elements (*i.e.*, both production and exportation); and (2) when formulating revocation language applicable to a reseller/exporter, the Department was quite careful to specify the precise source of the chain in question.

Therefore, the petitioner maintains that the Department was simply wrong when it stated in *RC 96–97 Preliminary Results* that ''determinations in other administrative proceedings concerning roller chain from Japan indicate that Tsubakimoto was revoked as a manufacturer/exporter and reseller/

exporter.'' The petitioner contends that the prior determinations clearly demonstrate that the language employed in that notice was intended to limit the revocation to roller chain that is both manufactured and exported by Tsubakimoto (*i.e.*, not to include roller chain produced by other manufacturers and exported by Tsubakimoto).

The petitioner does not dispute Tsubakimoto's claim that the Department calculated margins for roller chain ''manufactured and exported by Tsubakimoto'' but also for roller chain which Tsubakimoto purchased from affiliated suppliers and sold during the period looked at for revocation. However, the petitioner states that this in no way undermines the clear and unambiguous language of the Tsubakimoto revocation notice. The petitioner suggests that roller chain manufactured by one of the affiliated suppliers was not treated as Tsubakimoto-manufactured chain in the 1986–1987 review, but rather was treated as roller chain purchased from an ''outside independent'' company, as articulated in Tsubakimoto's questionnaire response at the time. The petitioner notes that the Department did not collapse Tsubakimoto and the supplier in question but instead permitted Tsubakimoto to report the ''constructed value'' of the supplier-manufactured chain based upon the prices that Tsubakimoto paid the affiliated supplier for the chain. Lastly on this point, the petitioner states that there is no evidence that the margins calculated for the roller chain purchased from affiliated suppliers has a material impact on Tsubakimoto's weighted-average dumping margin. In fact, the petitioner contends that the weighted-average margin would have been *de minimis* whether or not it included the affiliated-party sales. The petitioner then asserts that the margins calculated for roller chain purchased from affiliated suppliers did not directly affect the antidumping duties owed on Tsubakimoto-produced chain or vice versa since the assessment rates were calculated on a sale-by-sale basis, and that these transaction-specific margins were not used in assessing antidumping duties on the Tsubakimoto exports. To support this argument, the petitioner cites *Roller Chain other than Bicycle from Japan; Final Results of Antidumping Duty Administrative Review and Intent to Revoke in Part*, 54 FR 3099, 3100 (January 23, 1989) (*1989 RC Final Results*), which states that ''Individual differences between United States price and foreign market value may vary from the percentage stated above.''

The petitioner continues by arguing that the affiliated producer in question (as mentioned above) was listed separately in the 1986–1987 notice of initiation. *See Initiation of Antidumping and Countervailing Duty Administrative Reviews* 52 FR 18937 (1987). The petitioner maintains that the Department would have had an obligation to calculate margins for roller chain manufactured by this company even if it had not initiated a review of Tsubakimoto-produced chain. As it turned out, the petitioner continues, the affiliated producer in question was responsible for providing data with respect to its direct U.S. sales, while Tsubakimoto was responsible for furnishing data concerning the affiliated producer's chain which it resold to the United States. However, the petitioner maintains that this does not mean that these two sales channels bore no relationship whatsoever. The petitioner asserts that they were merely two different avenues through which identical chain reached the U.S. market. Moreover, the petitioner notes that the final results notice of the 1980–1983 backlog reviews presumably identifies a cash deposit rate for any sales of the affiliated producer's merchandise through Tsubakimoto since it has a rate for the manufacturer's merchandise exported by all others. The petitioner suggests that given the fact that in subsequent reviews this affiliated producer has received antidumping margins over the *de minimis* cut-off, the Department could well have concluded that if this affiliated producer's roller chain were covered by the Tsubakimoto revocation notice, the affiliated producer would restructure its selling activities so as to avoid/evade the strictures of the U.S. antidumping laws. In other words, the petitioner suggests that the affiliated producer could potentially have used Tsubakimoto as a conduit to sell dumped product to the United States. The petitioner states that had it been aware that the revocation notice was intended to reach sales of the affiliated producers'-manufactured roller chain, it would have raised the issue as part of the 1986–1987 proceeding.

Moreover, the petitioner contends that the relevant Customs Service liquidation instructions separately addressed roller chain ''produced by Tsubakimoto.'' The petitioner states that following the completion of the 1986–1987 roller chain administrative review, the results were challenged in the U.S. Court of International Trade (CIT). As a result, the petitioner continues, on March 23, 1989, the Department communicated to the Customs Service that ''The Court of International Trade, however, has enjoined the liquidation of unliquidated entries of roller chain, other than bicycle, from Japan, produced by Tsubakimoto Chain, which are covered by the final results * * *'' The petitioner argues that it is patently obvious that these liquidation instructions only applied to roller chain produced by Tsubakimoto itself and did not apply to roller chain manufactured by other Japanese roller chain producers. Furthermore, the petitioner notes that following the termination of the CIT appeal, Customs instructions were sent out on September 20, 1989 stating that ''effective immediately, field offices may resume liquidation of future entries of the subject merchandise manufactured by Tsubakimoto without regard to antidumping duties.'' The petitioner adds that the above instructions were modified on October 26, 1989 to read that only roller chain that was both ''manufactured and exported by Tsubakimoto'' was to be liquidated ''without regard to antidumping duties.''

The petitioner warns that Tsubakimoto's assertion that the Department ''has never issued separate cash deposit rates or assessment instruction for any entries by Tsubakimoto of chain manufactured by affiliated parties'' should be carefully considered. The petitioner states that while the statement may potentially be correct depending on the intended meaning of the term ''separate,'' it hides a larger truth. Specifically, the petitioner asserts that since 1989, the Department has consistently calculated antidumping cash deposit rates for the affiliated producer's-manufactured roller chain which exceeded the *de minimis* cut-off. The petitioner argues that if Tsubakimoto has chosen not to post the applicable antidumping cash deposits on its affiliated producer's exports, it has done so unilaterally, without consulting the Department or the Customs Service.

Lastly, the petitioner maintains that there is absolutely no support in the record of the 1986–1987 review for the proposition that the Department had determined to collapse Tsubakimoto and its affiliated producer as alluded to by Tsubakimoto in its June 19, 1997 submission. The petitioner states that all three companies were treated as ''independent companies'' as requested by Tsubakimoto.

Tsubakimoto argues that the Department properly determined in its preliminary results ''that the 1989 notice of revocation in part applies to

Tsubakimoto in both its capacity as a manufacturer/exporter and reseller/exporter of roller chain.'' *See RC 96–97 Preliminary Results.* Tsubakimoto maintains that the record shows, throughout the course of the antidumping proceeding, the Department has consistently treated Tsubakimoto's sales of subject merchandise in the same manner (*i.e.*, sales of chain manufactured by affiliated companies were treated as Tsubakimoto sales for review purposes). Tsubakimoto states that neither the language of the revocation, nor the underlying proceedings that lead up to the revocation, contain any reference that the Department was excluding sales made by Tsubakimoto of chain produced by other parties.

Tsubakimoto asserts that in the 1986/1987 administrative review, as well as in all prior reviews, the Department calculated its antidumping margin with respect to Tsubakimoto based upon all sales made by Tsubakimoto. *See RC 1989 Final Results. See also Roller Chain, Other Than Bicycle, From Japan: Final Results of Antidumping Duty Administrative Review,* 51 FR 43755 (December 4, 1986). Tsubakimoto reiterates its claim that the record is devoid of any evidence which indicates that the Department intended to exclude any reviewed sales from the revocation. Tsubakimoto continues that, based upon its submitted sales data (both as a manufacturer and reseller), the Department concluded that ''there is no likelihood of resumption of sales at less than fair value by Tsubakimoto.'' *RC 1989 Final Results* at 3101. Also citing the *RC 1989 Final Results,* Tsubakimoto states that the Department, when identifying Tsubakimoto, stated that ''This review covers Tsubakimoto * * *, a manufacturer/exporter of Japanese roller chain.'' Tsubakimoto argues that this sentence reveals that the Department reviewed Tsubakimoto both in its role as a manufacturer and exporter of subject merchandise without any limitation as to the manufacturer of the chain being exported. Moreover, Tsubakimoto notes that the Department's revocation notice stated that revocation applies to ''all unliquidated entries of this merchandise manufactured and exported by Tsubakimoto and entered, or withdrawn from warehouse, for consumption on or after September 1, 1983.'' *See 1989 Revocation Notice.*

Tsubakimoto further states that subsequent to the revocation notice, the Department continued its practice and has never issued separate cash deposit rates or assessment instructions for Tsubakimoto entries manufactured by affiliated producers. Tsubakimoto notes that following the *1989 Revocation Notice,* the Department instructed the Customs Service to liquidate Tsubakimoto's entries without regard to the manufacturer of the chain. Moreover, Tsubakimoto notes that in *RC 96–97 Preliminary Results,* the Department stated that ''the Department's determinations in other administrative proceedings concerning roller chain from Japan indicate that Tsubakimoto was revoked as a manufacturer/exporter and reseller/exporter.'' Furthermore, Tsubakimoto argues, the concept of assessment rates does not pertain to either the weighted-average margin analysis or the final results on which the Department based its revocation. Tsubakimoto asserts that there was no separate rate established for Tsubakimoto's sales of chain made by other producers; no separate margin analysis programs or printouts issued; and all of the final results consistently listed only one cash deposit rate for Tsubakimoto.

Therefore, Tsubakimoto maintains that, given the Department's practice and based upon the underlying facts of the record, the revocation applies to all imports by Tsubakimoto. Tsubakimoto argues that it would be illogical, and contrary to law, for the Department to review all of Tsubakimoto's sales as one channel of trade and to calculate one unified weighted-average margin and only revoke the order with respect to one type of chain.

Tsubakimoto further argues that the petitioner's argument that the Department should adopt certain principles relating to statutory construction is completely irrelevant to the present matter. Tsubakimoto states that there is no statutory mandate that the Department follow any particular course of analysis when applying its past determinations. Tsubakimoto maintains that the Department is guided by the general principles that its actions be in accordance with law, reasonable, and supported by substantial evidence. Tsubakimoto claims that these guiding principles give the Department the discretion which is necessary in many cases when the Department is interpreting and applying its own previous determinations as it is in this case.

Tsubakimoto refutes the relevance of the cases cited by the petitioner in its attempt to emphasize the significance of the language ''manufactured and exported.'' Tsubakimoto states that with regard to *Wire Strand from Japan,* the language of the determination clearly shows that the company in question was not exporting products manufactured by another producer during the relevant period of time and that if it were to export merchandise manufactured by another manufacturer, such merchandise would be subject to cash deposits, etc. Tsubakimoto argues that in the instant case, Tsubakimoto was exporting chain manufactured by other producers, a fact of which the Department and the petitioner were well aware. Moreover, according to Tsubakimoto, the Department's determinations were based on its analysis of all of Tsubakimoto's sales. Tsubakimoto therefore maintains that the petitioner had every opportunity during each of the respective reviews, and the revocation proceeding itself, to object to the Department's treatment of Tsubakimoto's sales of chain produced by other manufacturers but did not do so and that it is now too late. Tsubakimoto argues that the petitioner's citations to other non-chain notices are equally unpersuasive and that the petitioner's argument is based on a literal reading of the language in each notice without any attempt to analyze the facts of each individual case. Regarding the petitioner's citation to roller chain determinations in 1982 and 1983, Tsubakimoto notes that the Department clearly specified different channels of trade when it wished to treat the channels differently. In the present case, Tsubakimoto states that the Department did not add any language to its notices, either during the reviews, or in the revocation, that indicated that Tsubakimoto's sales of chain produced by other manufacturers were to be treated differently.

Tsubakimoto next states that it does not understand how the petitioner's argument that Tsubakimoto purchased chain from ''outside independent'' companies supports its claim that the Department has not consistently treated Tsubakimoto sales without regard to manufacturer. Tsubakimoto contends that the petitioner has failed to contradict the fact that the Department always requested Tsubakimoto to include its sales of chain made by other producers in its questionnaire response; that the Department has always published one margin rate for all of Tsubakimoto's U.S. sales; and that the Department, knowing that its analysis leading up to the revocation included sales of chain made by another producer, never stated in any notice that it intended to, or was in fact, distinguishing between Tsubakimoto's sales of chain it produced from sales of chain produced by other manufacturers. Tsubakimoto also stresses that it is very important to note that the petitioner has

failed to identify even one instance in any of the numerous proceedings leading up to the revocation, as well as the revocation proceeding itself, where it requested the Department treat Tsubakimoto's sales differently based on the manufacturer of the chain. Tsubakimoto hypothesizes that the reason for this is that the petitioner never objected to such treatment during the relevant proceedings.

Tsubakimoto maintains that the facts alleged by the petitioner that transaction-specific margins were applied to individual Tsubakimoto exports, even if true and if there were facts on the record to support the allegation, is meaningless to the issue at hand. Tsubakimoto notes that sale-specific assessment rates are not relevant to whether the Department will revoke a finding or an order. Tsubakimoto continues that, individual assessments on each export, if true, is not significant because this is true of Tsubakimoto-made chain as well, thus, if the petitioner's argument is true, the margin calculated for other sales of Tsubakimoto-made chain did not affect the margin calculated for another sale of Tsubakimoto-made chain.

Tsubakimoto discounts the petitioner's statement that there is no evidence that the margins calculated on sales of chain made by another producer ''had a material impact on Tsubakimoto's weighted average dumping margin.'' Tsubakimoto contends that there are no facts on this record to support this claim. Tsubakimoto also discounts the petitioner's argument that it is significant that one of Tsubakimoto's suppliers was listed separately in the 1986–1987 notice of initiation. Tsubakimoto notes that the petitioner failed to mention that not all of the suppliers were so listed. Nevertheless, Tsubakimoto maintains that the Department's initiation of the supplier in question was proper since there was more than one channel of trade for that supplier which had to be analyzed separately. Tsubakimoto argues that this initiation notice did not in any way controvert the fact that the Department eventually issued one single margin rate for Tsubakimoto.

Tsubakimoto argues that the petitioner's assertion that had it known the revocation notice was intended to reach sales of an affiliated producer-manufactured roller chain it would have raised the issue in the 1986–1987 proceeding is nothing more than post hoc rationalization and irrelevant.

Tsubakimoto concludes that the Department's preliminary decision is fully supported by fact and law and is consistent with how the Department has treated Tsubakimoto in every proceeding leading to the revocation.

Department Position: We disagree with petitioner that the Department's revocation of Tsubakimoto applies only to merchandise that has been both produced and exported by Tsubakimoto. Petitioner's briefs did not provide any new arguments that we did not consider in making our preliminary results finding. Therefore, as we stated in the *RC 96–97 Preliminary Results,* the evidence on the record demonstrates that the Department revoked Tsubakimoto with respect to both the manufacturer/exporter and reseller/exporter operations the company conducts. Although, as petitioner argues, regarding the principles of construction, the phrase ''manufactured and exported'' used by the Department in the 1989 *Revocation Notice* could be read to limit Tsubakimoto's revocation to roller chain manufactured by Tsubakimoto, we continue to find that other factors demonstrate the revocation also covers Tsubakimoto as a reseller. Specifically, the *de minimis* margin calculated in the 1986–1987 administrative review, which is the foundation of the revocation under the Department's regulations at that time (*see* 19 CFR 353.54 (1987)) included sales made by Tsubakimoto of roller chain it purchased from two other Japanese manufacturers. Therefore, the Department's revocation was based upon Tsubakimoto's pricing practices as both a manufacturer/exporter and reseller/exporter (*see RC 96–97 Preliminary Results*). We disagree with the petitioner's contention that the margins calculated for the roller chain purchased from affiliated suppliers are not relevant to the overall Tsubakimoto dumping margin. All sales used to calculate the dumping margin which resulted in the eventual revocation are equally important to the overall calculation regardless of whether they raise or lower the margin.

The petitioner argues that the margins calculated for roller chain from affiliated suppliers did not directly affect the antidumping duties owed on Tsubakimoto-produced chain or vice versa since the margins were calculated on a sale-by-sale basis. Although petitioner's statements are technically correct, we find that they shed no light on whether the Department revoked Tsubakimoto as a reseller of another company's product. The Department calculates transaction-specific dumping margins in all reviews. These margins are then weight-averaged for purposes of calculating a single cash deposit rate. In addition, during the early and middle 1980's, the Department, in some cases, was still issuing ''master list'' assessment instructions. Where the Department had started to move toward issuing assessment rates, rather than ''master list'' (i.e., transaction-specific) assessment instructions, the assessment rates issued were importer-specific rates. Therefore, the fact that the Department calculated transaction-specific margins for the subject roller chain reviews does not support the petitioner's argument regarding the Department's treatment of Tsubakimoto as a reseller of another manufacturer's product.

We agree with the petitioner's contention that the affiliated producer in question was listed separately in the 1986–1987 notice of initiation and that the Department would have had an obligation to calculate margins for roller chain manufactured by this company even if it had not initiated a review of Tsubakimoto-produced chain. Our determination in no way excludes the affiliated supplier from the order with respect to the roller chain it manufactures and exports to the United States.

Therefore, we have continued to apply the revocation to Tsubakimoto as a manufacturer/exporter and reseller/exporter.

Comment 3: Tsubakimoto's Allegation of New Information. In its July 13, 1998, rebuttal brief, Tsubakimoto argues that the petitioner included two items of new information in its July 2, 1998, case brief. Specifically, Tsubakimoto states that the following two statements, made by the petitioner, are untimely submissions of new factual information and should be stricken from the record: (1) that ''individual assessment rates were calculated for shipments of purchased chain, and these rates were calculated as if the chain had been purchased from an unrelated party,'' and (2) that ''it is the ACA's further understanding that for these pre-revocation administrative transactions, the antidumping duties assessed on roller chain purchased from related manufacturers varied from those assessed on individual shipments of Tsubaki-manufactured chain.'' *See* petitioner's July 2, 1998 case brief at 7 and 16.

The petitioner responded to Tsubakimoto's allegation of new information on July 21, 1998, when it indicated where in the record of this segment of the proceeding the information can be found on which it based its two statements concerning assessment instructions. According to the petitioner, the passages in question ''flow directly'' from the standard

assessment language used by the Department in two previously published **Federal Register** notices. *See* petitioner's July 21, 1998 letter at 2.

With regard to the first statement in question, the petitioner states that this argument was presented in nearly identical terms in its July 30, 1997 submission. In that submission, the petitioner stated:

''* * * it should be emphasized that separate margins were calculated for the various shipments of roller chain which Tsubakimoto exported to the United States. Thus the margins calculated for roller chain purchased from related suppliers did not directly affect the antidumping duties owed on Tsubakimoto-produced chain or vice versa.''

See Roller Chain, Other Than Bicycle, From Japan; Final Results of Antidumping Duty Administrative Review and Intent to Revoke In Part, 54 FR 3100 (Jan. 14, 1989) (''The Department will instruct the Customs Service to assess antidumping duties on all appropriate entries. Individual differences between United States price and foreign market value may vary from the percentage stated above.'').

See petitioner's July 21, 1998 letter at 4. Since the arguments presented in its July 30, 1997 and the July 21, 1998 submissions are nearly identical, the petitioner concludes that there is no basis for Tsubakimoto's claim that the passage in question represents new information to the record of this proceeding.

With respect to the second statement, the petitioner notes that the passage in question is found in footnote 5 of its July 2, 1998 case brief. This footnote states in its entirety:

''It is the ACA's information and belief that, in administrative reviews covering earlier time periods, the Commerce Department also calculated margins on a transaction-specific basis. *See,* e.g., Roller Chain, Other than Bicycle, from Japan, 52 FR 17425 (1987) (April 1, 1981 through September 1, 1983). It is the ACA's further understanding that for these pre-revocation administrative transactions, the antidumping duties assessed on roller chain purchased from related manufacturers varied from those assessed on individual shipments of Tsubaki-manufactured chain. *Contra* Tsubaki Submission at 2, 3 (July 23, 1997).''

See petitioner's July 21, 1998 letter at 5. The petitioner observes that this footnote cites the final determination of the roller chain review for Tsubakimoto for the period April 1, 1981 through September 1, 1983. According to the petitioner, the notice of final results for the 1981–1983 reviews expressly stated that:

''* * * the Department will instruct the Customs Service to assess antidumping duties on all appropriate entries. Individual differences between United States price and foreign market value may vary from the percentage stated above. The Department will issue appraisement instructions on Tsubakimoto directly to the Customs Service.''

See petitioner's July 21, 1998 letter at 6. The petitioner states that its understandings as to the Department's approach to the appraisement of the Tsubakimoto sales follow directly from this passage of the published notice. Although the petitioner acknowledges that the notice of final results for the 1981–1983 reviews is not on the record of this segment of the proceeding, it states that it is absurd to argue, as Tsubakimoto has done, ''that a party to an administrative proceeding may not characterize statements in a published **Federal Register** notice in its case brief.'' *See* petitioner's July 21, 1998 submission at 6. Furthermore, the petitioner contends that if Tsubakimoto's argument was accepted, parties to antidumping proceedings could not cite to any agency notices or court decisions in their briefs unless copies of those determinations had previously been submitted to the agency within the 180-day window set out in 19 CFR 351.31(a)(1)(ii).

Department Position: We agree with the petitioner that the two statements identified by Tsubakimoto do not contain new factual information. After analyzing the arguments presented by Tsubakimoto and the petitioner, we find that both of the petitioner's statements are assertions based upon information already contained in the record of this proceeding. *See* Memorandum To the File from Mark Manning, *Tsubakimoto Chain Co.'s Allegation of New Information Contained in the American Chain Association's Case and Rebuttal Briefs in the Administrative Review of Roller China, Other Than Bicycle, From Japan,* dated August 5, 1998. Briefs are intended to provide parties the opportunity to argue facts already on the record. The petitioner's case brief was timely submitted, and did not contain factual information not already on the record. Therefore, we determine that it is appropriate to leave the statements contained in the petitioner's case brief on the record of this proceeding.

Izumi

Comment 1: Adverse Facts Available. The petitioner argues that the Department assigned Izumi a relatively favorable FA rate of 17.57 percent because of Izumi's ''substantial efforts to cooperate'' during the review, even though the Department found that Izumi had ''not demonstrated * * * that it acted to the best of its ability'' to provide the requested information on Izumi's direct sales to the United States. The petitioner argues that Izumi's minimal efforts to comply with the Department's repeated requests for information over the course of this proceeding cannot be viewed as ''cooperation.'' Therefore, the petitioner maintains that Izumi's substantial failures in this proceeding should subject it to the higher FA rate of 42.48 percent, the rate calculated for Kaga in the preliminary results of review.

The petitioner notes that under the ''best information available'' standard that preceded the current ''facts available'' rule, the Department utilized a two-tier approach for selecting the appropriate rate, pegged to the company's level of cooperation. The petitioner acknowledges that best information available is no longer the law, but states that the two-tier approach developed under this standard is relevant to understanding the Department's decisions on FA.

The petitioner theorizes that the purported ''substantial efforts to cooperate'' appear primarily to have consisted of (1) the submission of inadequate responses to the Department's questionnaire, and (2) participation in a failed verification. The petitioner maintains that Izumi substantially failed to cooperate in this review, citing the *RC 96–97 Preliminary Results,* which states that Izumi failed to comply with the Department's repeated requests for third country sales and appropriate cost information. Further, citing the same notice, the petitioner states that ''Izumi had not demonstrated on the record that it acted to the best of its ability in providing the necessary information'' and had ''elected not to follow the Department's clear instructions, which were enunciated in several questionnaires, that Izumi must report all appropriate third country sales and an appropriate cost methodology.'' The petitioner claims that Izumi clearly chose not to provide critical data requested by the agency and, thereby, made it impossible for the Department to calculate antidumping margins for the company's U.S. sales.

The petitioner further argues that Izumi is an experienced player in the proceedings, and that it has demonstrated in the past, that when it desires, it can provide more comprehensive data. Moreover, the petitioner argues that Izumi's failure to provide the Department with the requested information hindered the Department's ability to calculate

accurate dumping margins and had the same practical effect as the decision by the Pulton Chain Company to withdraw from the proceeding.

Given Izumi's failure to cooperate, the petitioner contends that the Department's application of a relatively-favorable facts available margin is at odds with prior precedent. The petitioner cites the CIT's decision to uphold the Department's determination to apply a calculated margin, which was higher than that provided in the petition, as FA for a ''large sophisticated company with demonstrated ability to participate in the antidumping investigation'' which failed to provide adequate cost of production and constructed value information. *See Empressa Nacional.* The petitioner states that the Court was not receptive to the company's argument that the Department should have taken into consideration its ''previous extensive cooperation,'' including the fact that it responded in a timely fashion to the Department's other questionnaires. The petitioner argues that Izumi's faulty responses to the Department's questionnaires should carry no more weight here.

The petitioner also cites *Extruded Rubber Thread from Malaysia; Final Results of Antidumping Administrative Review,* 63 FR 12752 (March 16, 1998) as a recent case in which the Department applied ''the highest rate calculated for any respondent in any segment of the proceeding'' to a company which submitted responses to all questionnaires, passed its sales verification, and verified parts of its cost response. In applying a high adverse FA margin for this company, the petitioner states that the Department explained that it was unable to reconcile a number of the company's costs, and that even if some of the accounting staff was inexperienced at the time of verification, the company was experienced in the antidumping proceedings, and that the company had control over the documents necessary to prepare its response and conduct verification. The petitioner notes that the above-referenced company received the same adverse FA margin as a company that did not cooperate at all in the same review. The petitioner further cites *Pipes and Tubes from Thailand* as another example of where the Department applied an adverse inference to a company who had failed to provide complete responses at verification due to its lack of preparation. The petitioner argues that Izumi's timely submission of some of the requested information should not protect it from a more adverse FA margin.

The petitioner also argues that the facts surrounding Izumi's responses to the Department's requests are distinguishable from the cases cited by the Department in the *RC 96–97 Preliminary Results,* where a respondent may not have acted to the best of its ability to comply, but was deemed sufficiently cooperative to warrant a less adverse fact available rate. For example, the petitioner states that in *Fresh Cut Flowers—Columbia 1997,* the Department noted that the respondent in question ''faced difficult circumstances during the review period.'' The petitioner asserts that it knows of no such circumstances facing Izumi in the instant review. Moreover, the petitioner claims that with the exception of the rate applied to companies that did not respond to the Department's questionnaires, or responded after the deadline, the margin selected for the company in the *Fresh Cut Flowers—Columbia 1997* case was the highest imposed in the proceeding. The petitioner also states Izumi's situation is distinguishable from that in *AFBs 1997.* In *AFBs 1997,* the petitioner notes that although the Department may not have selected the highest potential margin, the rate chosen was more than twice as high as that received by any other respondent. Moreover, the petitioner continues, the Department had determined that ''use of the flawed response would have yielded a more favorable margin'' for the respondent. The petitioner contends that, unlike *AFBs 1997,* there is no assurance that the rate chosen in the preliminary results for Izumi will encourage cooperation in the future because it was not possible for the Department to compare the chosen rate to Izumi's calculated rate due to the flawed response. The petitioner argues that, presumably, Izumi would have ''acted to the best of its ability'' to provide missing data if it believed that the data would have produced a favorable margin. In fact, the petitioner contends, the 17.57 percent rate, which has been imposed in prior review proceedings, has not prompted any measurable change in Izumi's level of cooperation. *See Final Results of Antidumping Duty Administrative Review and Partial Termination: Roller Chain, Other than Bicycle, from Japan,* 57 FR 6806 (February 28,1992).

Izumi argues that it acted to the best of its ability and responded to all of the Department's requests for information. Izumi maintains that the problems encountered at verification were the result of Izumi's unsophisticated record keeping and accounting systems. Izumi emphasizes that it is not a large sophisticated company as portrayed by the petitioner; rather, its records are not computerized and it has no formal cost accounting system. Moreover, Izumi contends that it is a family-owned operation that is so small it is not required to file its financial statements with the Japanese Ministry of Trade and Industry.

Izumi states that it was required to submit a great deal of sales data as well as detailed data concerning the physical characteristics of each model sold in the U.S. and home markets-much of which it states was correctly reported. Izumi identifies only one instance in which its data contained errors (*i.e.,* where it omitted certain sales to the Philippines). Izumi further states that it also provided cost information to the best of its ability. Izumi contends that, despite its efforts being hindered by the fact that it has no cost accounting system, it did its best to report its costs based on the methodology used to report its costs in the original investigation.

Given these facts, Izumi argues that there is no basis for assigning Izumi an adverse FA rate under the guidelines set forth by the CIT in *Borden.* Izumi first states that *Borden* makes clear that the standards the Department used to apply ''best information available'' under the pre-URAA amendments to the Act no longer apply. Therefore, Izumi maintains that the petitioner's reliance on the old ''two-tiered'' methodology is unavailing. Izumi next states that *Borden* drew a distinction between ''an unwillingness, rather than simply an inability to cooperate.'' Izumi argues that nothing in the record of the present review indicates an unwillingness on the part of Izumi to cooperate. Lastly, Izumi notes that, like the respondent in *Borden,* Izumi does not have a cost accounting system, which lead to the submission of information that the Department found to have problems.

Izumi asserts that the petitioner's contention that an inadequate response is the equivalent of deliberate non-cooperation is ridiculous. Izumi argues that if the petitioner was correct, the Department would always have to make the most adverse assumptions in assigning FA since an adequate response can never be subject to the application of FA. Moreover, Izumi maintains that the petitioner's argument that Izumi provided more comprehensive data in prior reviews is untrue. Izumi contends that it did not behave any differently in this review than it has in past reviews. Izumi also asserts that it had difficulty in obtaining third county data as the great volume of

data had to be manually reviewed and separated by country, and that it had difficulties in accumulating the cost data given the above-referenced lack of a cost accounting system. Izumi states that it has always done its best to respond fully and completely to the Department's requests for information and that the petitioner's characterizations of Izumi's efforts as non-cooperative are inaccurate.

Furthermore, Izumi maintains that, contrary to the petitioner's assertion that the Department did not make an adverse inference in assigning Izumi a preliminary margin, the Department did, in fact, make an adverse inference with regard to Izumi. Izumi contends that the rate assigned for the preliminary results is higher than any calculated rate for Izumi for the past five reviews. Izumi states that the non-adverse FA rate for Izumi in the immediately preceding review (1995–1996) was only 2.26 percent. Izumi maintains that the resulting 600 percent increase in the deposit rate can hardly be characterized as favorable. Izumi argues, that even if the Department was justified in making an adverse inference in determining Izumi's rate, it was correct not to use the most adverse rate. Izumi asserts that there is nothing in the statute which mandates the use of an adverse inference where a respondent has been cooperative. Thus, Izumi argues, the cases cited by the petitioner do not bind the Department in this case. Izumi states, that unlike *Pipes and Tubes from Thailand,* a case cited by the petitioner, the Department has already found that Izumi did significantly cooperate with the Department. Regarding *Fresh Cut Flowers—Columbia 1997,* Izumi states that its situation is similar in that it has made significant efforts to both respond to the Department's questionnaires and undergo verification.

Finally, Izumi argues that the Department should also reject the petitioner's demand that the Department use the rate assigned to Kaga for the preliminary results. Izumi maintains that Kaga's rate was the result of serious clerical errors, is not reliable, and should not be used as the basis for Izumi's rate. Also, Izumi states that the Department assigned Kaga's rate as the most adverse facts available rate to another respondent in this review which refused to undergo verification.

Department Position: We agree with Izumi, in part. For the reasons explained in the *RC 96–97 Preliminary Results* and the Izumi FA Memorandum, the application of section 782(e) of the Act does not overcome section 776(a)'s direction to use FA for Izumi's submissions. Thus, the use of FA is warranted in this case. Furthermore, because Izumi did not act to the best of its ability to comply with the request for information under section 776(b), an adverse inference is warranted. We note that, unlike in *Borden,* however, as stated in the *RC 96–97 Preliminary Results,* because Izumi made substantial efforts to cooperate throughout the course of this review, including undergoing verification, we are continuing to resort to FA that are less adverse to the interest of Izumi. Therefore, we used for Izumi an adverse FA rate of 12.68 percent (a rate calculated for another respondent in the 1990–1991 review of this proceeding). This rate is a significant increase from the company's current cash deposit rate and thus is sufficiently adverse to induce cooperation by Izumi in future reviews of this proceeding. If, in subsequent reviews, it is determined that the adverse FA rate assigned to Izumi is not prompting Izumi to completely and accurately report all requested information, the selection of the facts available rate may be revisited.

Comment 2: Affiliation. Izumi maintains that Company X, [1] an affiliated Japanese producer of roller chain, is a separate entity from Izumi. Izumi further argues that Company X's ownership interest in Izumi, which was verified by the Department, has not changed significantly during the almost 20 year history in which the Department has had responsibility for the case. Izumi contends that this relationship is well known to the Department and that the Department has always calculated a separate margin for each company. Furthermore, Izumi contends that Company X does not hold a controlling interest in Izumi and that the sole Company X director on Izumi's Board of Directors is affirmatively prohibited from voting in matters which affect Company X. Izumi requests that the Department continue to treat the two companies as separate entities.

Department Position: In our preliminary results, we noted that the majority of Izumi's home market sales were made to Company X, and therefore, we would be reviewing the appropriateness of continuing our analysis of Izumi as a separate entity for the purposes of the final determination. In order to conduct our analysis of whether to collapse Izumi and Company X into one entity under the antidumping law, the Department issued a questionnaire to Izumi on May 27, 1998 and a supplemental questionnaire on July 16, 1998. In order to gain additional information, we also issued a questionnaire to Company X on July 16, 1998. Izumi filed timely responses on June 24, 1998 and August 3, 1998, and Company X filed a timely response to its questionnaire on August 3, 1998. The parties submitted their case and rebuttal briefs on this issue on September 1, 1998 and September 9, 1998, respectively.

Due to the proprietary nature of this issue, we are unable to discuss publicly the information on the record. Therefore, we have summarized the parties' proprietary arguments, and the Department's comments, in a separate decision memorandum that has been placed on the record of this proceeding. *See Decision Memorandum: Roller Chain, Other than Bicycle, from Japan—Izumi Chain Mfg. Co. Ltd., Affiliation Issue, 1996–1997 Administrative Review,* November 4, 1998 (*Izumi Decision Memorandum*).

After analyzing the information provided by Izumi and Company X in their questionnaire responses and the arguments presented in the parties' briefs, we have determined that there is not sufficient evidence on the record of this case to determine that Izumi and Company X should be collapsed under the antidumping law. *See* the *Izumi Decision Memorandum* at 23. However, we will request additional information for this analysis and further examine this issue in the context of the ongoing 1997–1998 administrative review of this order.

Final Results of Review

As a result of this review, we have determined that the following margins exist for the period April 1, 1996 through March 31, 1997:

Manufacturer/exporter	Weighted-average margin percentage
Daido Kogyo Company Ltd. ...	00.03
Enuma Chain Mfg. Company	00.03
Izumi Chain Mfg. Company Ltd.	12.68
Kaga Kogyo/Kaga Industries ..	12.68
OCM Chain Company	12.68
Pulton Chain Company Inc.	17.57
R.K. Excel Company Ltd.	00.28
Sugiyama Chain Company, Ltd.	12.68

Cash Deposit Requirements

The Department shall determine, and the Customs Service shall assess, antidumping duties on all appropriate entries.

The following deposit requirements shall be effective upon publication of

[1] Due to the proprietary nature of the affiliation, we have referred to the company in question as 'Company X'.

this notice of final results of administrative review for all shipments of the subject merchandise from Japan that are entered or withdrawn from warehouse, for consumption on or after the publication date, as provided by 751(a)(1) of the Act: (1) the cash deposit rates for the reviewed companies will be the rates listed above, except if the rate is less than 0.5 percent and, therefore, de minimis, the cash deposit rate will be zero; (2) for merchandise exported by manufacturers or exporters not covered in this review but covered in a previous segment of this proceeding, the cash deposit rate will continue to be the company-specific rate published in the most recent final results in which that manufacturer or exporter participated; (3) if the exporter is not a firm covered in this review or in any previous segment of this proceeding, but the manufacturer is, the cash deposit rate will be that established for the manufacturer of the merchandise in these final results of review or in the most recent final results of review in which that manufacturer participated; and (4) if neither the exporter or the manufacturer is a firm covered in this review or in any previous segment of this proceeding, the cash deposit rate will be 15.92 percent, the ''all others'' rate based on the first review conducted by the Department in which a ''new shipper'' rate was established in the final results of antidumping finding administrative review (48 FR 51801, November 14, 1983). These requirements shall remain in effect until publication of the final results of the next administrative review.

For duty assessment purposes, we have calculated importer-specific assessment rates for roller chain. For CEP sales we calculated an importer-specific assessment rate by aggregating the dumping margins calculated for all U.S. sales to each importer and dividing this amount by the estimated entered value of subject merchandise sold during the POR to that importer. We calculated the estimated entered value by subtracting international movement expenses and expenses incurred in the United States from the gross sales value. For assessment of EP sales, for each importer, we calculated a per unit importer-specific assessment amount by aggregating the dumping margins calculated for all U.S. sales to each importer and dividing this amount by the total quantity of subject merchandise sold to that importer during the POR.

This notice serves as a final reminder to importers of their responsibility under 19 CFR 353.26 to file a certificate regarding the reimbursement of antidumping duties prior to liquidation of the relevant entries during this review period. Failure to comply with this requirement could result in the Secretary's presumption that reimbursement of antidumping duties occurred and the subsequent assessment of double antidumping duties.

This notice serves as the only reminder to parties subject to administrative protective order (APO) of their responsibility concerning the disposition of proprietary information disclosed under APO in accordance with 19 CFR 353.34(d). Timely written notification of return/destruction of APO materials or conversion to judicial protective order is hereby requested. Failure to comply with the regulation and the terms of an APO is a sanctionable violation.

This administrative review and notice are in accordance with sections 751(a)(1) and 777(i)(1) of the Act.

Dated: November 4, 1998.

Holly A. Kuga,

Acting Assistant Secretary for Import Administration.

[FR Doc. 98–30414 Filed 11–13–98; 8:45 am]

BILLING CODE 3510–DS–P

DEPARTMENT OF COMMERCE

International Trade Administration

[A–401–040]

Stainless Steel Plate From Sweden: Final Results of Antidumping Duty Administrative Review

AGENCY: Import Administration, International Trade Administration, Department of Commerce.

ACTION: Notice of Final Results of Antidumping Duty Administrative Review.

SUMMARY: On July 8, 1998, the Department of Commerce (The Department) published the preliminary results of review in the antidumping duty administrative review on stainless steel plate from Sweden. (63 FR 36877). The review covers two manufacturers/exporters (Avesta Sheffield AB (Avesta) and Uddeholm Tooling AB, Bohler-Uddeholm Corporation and Uddeholm Limited (collectively Uddeholm)) of the subject merchandise to the United States and the period June 1, 1996 through May 31, 1997.

EFFECTIVE DATE: November 16, 1998.

FOR FURTHER INFORMATION CONTACT: John Totaro or Nithya Nagarajan, Import Administration, International Trade Administration, U.S. Department of Commerce, 14th Street and Constitution Avenue, NW, Washington, DC 20230; telephone (202) 482–3793.

SUPPLEMENTARY INFORMATION:

Applicable Statute

Unless otherwise indicated, all citations to the Tariff Act of 1930, as amended (the Act) are references to the provisions effective January 1, 1995, the effective date of the amendments made to the Act by the Uruguay Round Agreements Act (URAA). In addition, unless otherwise indicated, all citations to the Department's regulations are references to the provisions codified at 19 CFR part 351 (1998).

Background

The Department of the Treasury published an antidumping finding on stainless steel plate from Sweden on June 8, 1973 (38 FR 15079). On July 8, 1998, the Department published in the **Federal Register** the preliminary results of antidumping duty administrative review of this antidumping finding (63 FR 36877) for the period June 1, 1996 through May 31, 1997. The Department has now completed this review in accordance with section 751(a) of the Act.

Scope of the Review

Imports covered by this review are shipments of stainless steel plate which is commonly used in scientific and industrial equipment because of its resistance to staining, rusting and pitting. Stainless steel plate is classified under Harmonized Tariff Schedule of the United States (HTSUS) item numbers 7219.11.00.00, 7219.12.00.05, 7209.12.00.15, 7219.12.00.45, 7219.12.00.65, 7219.12.00.70, 7219.12.00.80, 7219.21.00.05, 7219.21.00.50, 7219.22.00.05, 7219.22.00.10, 7219.22.00.30, 7219.22.00.60, 7219.31.00.10, 7219.31.00.50, 7220.11.00.00, 7222.30.00.00, and 7228.40.00.00. Although the subheadings are provided for convenience and customs purposes, the written description of the merchandise is dispositive.

On November 21, 1997, Avesta and Avesta Sheffield NAD, Inc. requested clarification to determine whether stainless steel slabs that are manufactured in Great Britain and rolled into hot bands in Sweden are within the scope of the antidumping finding. On December 22, 1997, the Department determined that British slabs rolled into hot bands in Sweden are within the scope of the finding.

Analysis of Comments Received

We invited interested parties to comment on the preliminary results of

this administrative review. We received timely comments from Uddeholm and Avesta. We received timely rebuttal comments from petitioners, Allegheny Ludlum Steel Corp., G.O. Carlson, Inc., and Lukens, Inc.

Avesta

Comment 1: Avesta argues that the Department should establish the CEP profit ratio based on Avesta's consolidated annual financial statement. Respondent argues that the Department based the CEP profit ratio on the financial statements of Avesta Sheffield, NAD, Inc. (the North American Division) rather than the consolidated financial statements of the whole company. Avesta argues that section 772(d)(3) requires the Department to adjust CEP for an amount of profit allocable to U.S. sales and that the Department's practice has been to base this calculated profit on revenues and expenses associated with total sales of subject merchandise (both in the home market and in the United States). In addition, Avesta argues that under section 772(f)(2)(C), the Department has three alternatives for calculating CEP profit including relying on the respondent company's financial reports covering the production and sales of merchandise in all countries, and that in this case the only information available to the Department is the financial report for the consolidated company which indicates that Avesta incurred a loss during the period of review (POR). Therefore, respondent urges the Department to set the CEP profit ratio to zero.

Petitioners did not object to Avesta's comment.

Department's Position: The Department agrees with Avesta. Consistent with the provisions of sections 772(d)(3) and 772(f)(2)(C) of the Act, as amended, the Department is applying a CEP profit ratio of zero on all sales made in the United States due to the fact that Avesta incurred a loss during the POR.

Comment 2: Avesta argues that the Department should recalculate CEP profit applying the profit ratio only to U.S. selling expenses related to economic activities in the United States, excluding foreign and U.S. movement charges as well as indirect selling expenses and inventory carrying costs incurred in Sweden. Respondent argues that the Department incorrectly applied the profit ratio to foreign movement charges, U.S. movement charges, indirect selling expenses incurred in Sweden, and imputed inventory carrying costs incurred in Sweden prior to export to the U.S. Respondent argues that movement expenses are not classified as selling expenses within the meaning of section 772(d) of the Act, and therefore should not be included in the CEP profit calculation. In addition, Avesta argues that the expenses associated with economic activity in the U.S. do not include those indirect selling expenses and inventory costs incurred in the home market prior to exportation, and therefore the CEP profit ratio should not be applied to the expenses in calculating total CEP profit.

Petitioners offered no objections to respondent's comments.

Department's Position: The Department agrees in part with respondent. Both the SAA, at 823, and the Department's regulations, at 19 CFR 351.402(b), explain that, under section 772(d) of the Act, we only deduct from CEP the expenses associated with commercial activity in the United States which relate to the resale to an unaffiliated purchaser. *See also, Antifriction Bearings (Other than Tapered Roller Bearings) and Parts Thereof From France, Germany, Italy, Japan, Romania, Singapore, Sweden and the United Kingdom; Final Results of Antidumping Duty Administrative Reviews,* 63 FR 33320, 33344 (June 18, 1998). The movement expenses and imputed expenses at issue are, by definition, not associated with economic activities in the United States, movement expenses have been deducted from CEP and, therefore, should not be included in ''total United States expenses'' for purposes of calculating the CEP profit ratio. These expenses are associated with the sale of the merchandise to the affiliated reseller. However, ''total United States expenses'' includes all selling expenses (direct and indirect) associated with the unaffiliated sale in the United States. Therefore, consistent with the Department's methodology, we have calculated total actual profit using total U.S. selling expenses, deducted from the U.S. starting price as directed by Section 772(d)(1) of the Act. *See, e.g., Small Diameter Circular Seamless Carbon and Alloy Steel Standard Line and Pressure Pipe From Germany; Final Results of Antidumping Duty Administrative Review,* 63 FR 13217 (March 18, 1998). For purposes of these final results of review, we have not included inventory carrying costs (DINVCARU) or U.S. movement expenses in total U.S. expenses as these expenses were not deducted from CEP. However, we have included in total U.S. expenses all selling expenses incurred in making the sale to the U.S. unaffiliated customer.

Comment 3: Avesta states that the Department erred by deducting the cost of brokerage and handling at the U.S. port of entry (USOTRE1U) twice in the calculation of net price. Petitioners have not objected to Avesta's requested correction.

Department's Position: We agree with Avesta and have adjusted the final margin calculation program to adjust for USOTRE1U only once.

Comment 4: Avesta contends that the Department erred in the preliminary results of review by matching U.S. sales of CONNUMU 2422151, 2423121, and 2423151 with home market sales of CONNUMH 2323152 rather than CONNUMH 2623152. Respondent states that CONNUMU 2422151, 2423121, and 2423151 are all heat resistant steels. Similarly, respondent argues that CONNUMH 2623152 and 2622152 are also a heat resistant steels whereas CONNUMH 2323152 is a ''general service and wet corrosion'' steel that has a different purpose and use than heat resistance steels and is therefore not comparable to the U.S. CONNUMs. Based on the chemical differences and uses of the home market CONNUMs, respondent urges the Department to compare CONNUMU 2422151, 2423121 to home market CONNUM 2622152, and U.S. CONNUM 2423151 to home market CONNUM 2623152.

Petitioner objected to the information in Avesta's case brief discussing the chemical and physical specifications of the home market and U.S. CONNUMs as new factual information. However, petitioner did not offer any objection to the proposed changes in the matching methodology utilized in the preliminary results of review.

Department's Position: We agree with respondent. The Department incorrectly matched CONNUMU 2422151, 2423121, and 2423151 with CONNUMH 2323152. For purposes of the final results of review, the Department has compared U.S. CONNUMs 2422151, 2423121 to home market CONNUM 2622152, and U.S. CONNUM 2423151 to home market CONNUM 2623152 due to the fact that these are the most similar products based on product specifications. In response to petitioner's comment, the Department has determined that Avesta's submission in its case brief does not constitute new factual information under § 351.301 of the Department's regulations. Consistent with the Department's request in the original questionnaire, Avesta provided detailed product specification and concordance information in its October 8, 1997, section A response in Exhibits A–36 and A–37. In conclusion, the Department is comparing the above

mentioned U.S. CONNUMs to home market CONNUMs 2622152 and 2623152.

Uddeholm

Comment 5: Uddeholm contends that the Department did not deduct further manufacturing expenses in its calculation of CEP and normal value. Uddeholm argues that it reported cutting and grinding expenses incurred in connection with its sales in the United States and Canada as further manufacturing expenses, but inconsistent with section 772(d)(2) of the Act, the Department did not adjust for these expenses in calculating CEP. Uddeholm also points out that the Department did adjust for further manufacturing expenses reported by the other respondent in the case, Avesta, but failed to make the same adjustment on Uddeholm sales. Further, Uddeholm contends that the Department should make a similar adjustment to normal value as a circumstance of sale adjustment as instructed by the statute.

Petitioners argue that the expenses Uddeholm reported as ''cutting and grinding expenses'' in fact included expenses both for cutting and grinding and for two other processing operations, milling and slitting. As such, petitioners allege that the ''cutting and grinding expenses'' reported by respondent are overly broad for purposes of utilizing these expenses as adjustments to U.S. price and normal value. In addition, petitioners argue that Uddeholm's Canadian customers were charged separately for cutting and grinding expenses, whereas only 50 percent of U.S. customers were charged separately for these same expenses. Petitioners therefore contend that Uddeholm's difference in pricing methodology is an indication that cutting and grinding costs were ''bundled'' with the end price and are distortive of actual U.S. price as these expenses were not recovered. Petitioners argue that the only accurate means of determining the true further manufacturing cost of cutting and grinding would be to create two sets of sales one where the customer was charged separately for these expenses and one where no charges were assessed. Absent this separation, petitioners argue that there is insufficient record evidence to warrant allowing adjustments for further manufacturing from U.S. price and normal value.

Department's Position: Pursuant to § 351.402 of its regulations, the Department adjusts U.S. price for expenses associated with commercial activities in the United States that relate to the sale to an unaffiliated purchaser. The Department will not make an adjustment for expenses related solely to the sale to an affiliated importer. Similarly, under § 351.410 of the Department's regulations, the Department is authorized to make circumstance of sale adjustments to normal value for differences in direct selling expenses. Direct selling expenses are defined as expenses such as commissions, credit expenses, guarantees, and warranties, that result from and bear a direct relationship to the particular sale in question. In the instant review, the cutting and grinding expenses incurred by Uddeholm in the U.S. market are expenses associated with economic activity in the United States and are properly deducted from CEP. However, the cutting and grinding expenses incurred in the comparison market are not direct selling expenses as defined in § 351.410 and have therefore not been deducted from normal value.

In response to petitioner's concern, the Department has reviewed the record to determine the manner in which cutting and grinding expenses are incurred and/or charged to the unaffiliated customer in both the U.S. and comparison markets. Upon review of the record the Department has determined that there is no evidence to indicate that Uddeholm's U.S. cutting and grinding costs are bundled with the U.S. end price, nor is there evidence to indicate that there is a dual pricing structure where cutting and grinding expenses are charged to customers in the comparison market and only charged 50 percent of the time to U.S. customers. The evidence on the record merely indicates that cutting and grinding expenses are incurred in both the U.S. market and the comparison market on sales to unaffiliated customers and these expenses are reported as a price adjustment. Therefore, for purposes of these final results of review, the Department is adjusting Uddeholm's U.S. price for the reported cutting and grinding expenses but is not applying a circumstance of sale adjustment to normal value for similar expenses incurred in the comparison market. This is consistent with the Department's treatment of Avesta's reported cutting and grinding expenses in both the preliminary and final results of review.

Comment 6: Uddeholm states that the Department did not compare U.S. sales to the weighted-average normal values for the calendar month in which the U.S. sale occurred. Respondent contends that the Department should have matched sales within the most contemporaneous month (*e.g.*, June 1996 to June 1996). However, the margin program has compared all U.S. sales to the weighted average normal value for June 1996 which is an error which should be corrected. Petitioners offered no objections to respondent's argument.

Department's Position: The Department has reviewed the margin program and has corrected this error for the final results of review.

Comment 7: Uddeholm states that the Department did not use contemporaneous weighted-average third country indirect expenses to calculate the CEP offset. Based upon an analysis of the margin program discussed in Comment 6, above, respondent argues that the CEP offset calculated for June 1996 was used for all CEP sales during the POR. Petitioners did not rebut respondent's argument.

Department's Position: The Department has reviewed the margin program and has corrected this error for the final results of review.

Comment 8: Uddeholm notes that the Department used the incorrect profit ratio to calculate CEP profit. The Department's analysis memo indicates that the calculated CEP profit ratio was the result of total operating profit divided by total actual expenses. However, in transcribing the result to the margin calculation program the Department used the incorrect number. Petitioners did not rebut respondent's requested change.

Department's Position: The Department agrees with respondent and has corrected the final margin calculation program consistent with respondent's comment.

Final Results of Review

As a result of this review, we have determined that the following margins exist for the period June 1, 1996, through May 31, 1997:

Company	Margin percentage
Avesta Sheffield AB	25.05
Uddeholm Corporation	9.47

The Department shall determine, and the U. S. Customs Service shall assess, antidumping duties on all appropriate entries. The Department shall issue appraisement instructions directly to the Customs Service. For assessment purposes, we have calculated importer-specific duty assessment rates for the merchandise based on the ratio of the total amount of antidumping duties calculated for the examined sales during the POR to the total entered value of sales examined during the POR. Individual differences between U.S.

price and normal value may vary from the percentages stated above.

Furthermore, the following deposit requirements shall be effective upon publication of this notice of final results of review for all shipments of stainless steel plate from Sweden entered, or withdrawn from warehouse, for consumption on or after the publication date, as provided for by section 751(a)(1) of the Act: (1) The cash deposit rate for the reviewed companies will be the rates stated above; (2) for previously investigated or reviewed companies not listed above, the cash deposit rate will continue to be the company-specific rate published for the most recent period; (3) if the exporter is not a firm covered in these reviews, or the original LTFV investigations, but the manufacturer is, the cash deposit rate will be the rate established for the most recent period for the manufacturer of the merchandise; and (4) if neither the exporter nor the manufacturer is a firm covered in these reviews, the cash deposit rate for this case will continue to be 4.46 percent, which was the ''all others'' rate in the LTFV investigation. The deposit requirements, when imposed, shall remain in effect until publication of the final results of the next administrative review.

This notice serves as a final reminder to importers of their responsibility under 19 CFR 353.26 to file a certificate regarding the reimbursement of antidumping duties prior to liquidation of the relevant entries during this review period. Failure to comply with this requirement could result in the Secretary's presumption that reimbursement of antidumping duties occurred and the subsequent assessment of double antidumping duties.

This notice also serves as a reminder to parties subject to administrative protective order (''APO'') of their responsibility concerning the disposition of proprietary information disclosed under APO in accordance with § 353.34(d) of the Department's regulations. Timely notification of return/destruction of APO materials or conversion to judicial protective order is hereby requested. Failure to comply with the regulations and the terms of an APO is a sanctionable violation.

This administrative review and notice are in accordance with sections 751(a)(1) and 777(i)(1) of the Act (19 U.S.C. 1675(a)(1) and 1677f(i)(1)).

Dated: November 5, 1998.

Holly A. Kuga,

Acting Assistant Secretary for Import Administration.

[FR Doc. 98–30566 Filed 11–13–98; 8:45 am]

BILLING CODE 3510–DS–P

DEPARTMENT OF COMMERCE

National Institute of Standards and Technology

Visiting Committee on advanced Technology; Meeting

AGENCY: National Institute of Standards and Technology, Department of Commerce.

ACTION: Notice of partially closed meeting.

SUMMARY: Pursuant to the Federal Advisory Committee Act, 5 U.S.C. app. 2, notice is hereby given that the Visiting Committee on Advanced Technology, National Institute of Standards and Technology (NIST), will meet Tuesday, December 8, 1998 from 8:30 a.m. to 5 p.m. The Visiting Committee on Advanced Technology is composed of fifteen members appointed by the Director of NIST: who are eminent in such fields as business, research, new product development, engineering, labor, education, management consulting, environment, and international relations. The purpose of this meeting is to review and make recommendations regarding general policy for the Institute, its organization, its budget, and its programs within the framework of applicable national policies as set forth by the President and the Congress. The agenda will include an update on NIST programs; Applied Technology Program/Manufacturing Extension Partnership (ATP/MEP) Cooperation on Dissemination; Changes in ATP Procedures for the FY 1999 Competitions; NIST Diversity Initiatives; Chemical Science and Technology laboratory's Process for Setting Project Priorities; Update on Status of Advanced Encryption Standard; Measurements and Data for Aircraft Fire Suppression; and a tour of the Advanced Chemical Sciences Laboratory. Discussions scheduled to begin at 8:30 a.m. and to end at 9:10 a.m. on December 8, 1998, on staffing of management positions at NIST and the NIST budget, including funding levels of the Advanced Technology Program and the Manufacturing Extension Partnership, will be closed.

DATES: The meeting will convene December 8, 1998, at 8:30 a.m. and will adjourn at 5 p.m. on December 8, 1998.

ADDRESSES: The meeting will be held in the Employees' Lounge (seating capacity 80, includes 38 participants), Administration Building, at NIST, Gaithersburg, Maryland.

FOR FURTHER INFORMATION CONTACT: Dr. Brian C. Belanger, Executive Director, Visiting Committee on Advanced Technology, National Institute of Standards and Technology, Gaithersburg, MD 20899–1004, telephone number (301) 975–4720.

SUPPLEMENTARY INFORMATION: The Assistant Secretary for Administration, with the concurrence of the General Counsel, formally determined on August 7, 1998, that portions of the meeting of the Visiting Committee on Advanced Technology which involve discussion of proposed funding of the Manufacturing Extension Partnership and the Advanced Technology Program may be closed in accordance with 5 U.S.C. 552b(c)(9)(B), because those portions of the meetings will divulge matters the premature disclosure of which would be likely to significantly frustrate implementation of proposed agency actions; and that portions of meetings which involve discussion of the staffing issues of management and other positions at NIST may be closed in accordance with 5 U.S.C. 552b(c)(6), because divulging information discussed in those portions of the meetings is likely to reveal information of a personal nature where disclosure would constitute a clearly unwarranted invasion of personal privacy.

Dated: November 10, 1998.

Robert E. Hebner,

Acting Deputy Director.

[FR Doc. 98–30577 Filed 11–13–98; 8:45 am]

BILLING CODE 3510–13–M

COMMITTEE FOR THE IMPLEMENTATION OF TEXTILE AGREEMENTS

Adjustment of an Import Limit for Certain Cotton Textile Products Produced or Manufactured in Egypt

November 10, 1998.

AGENCY: Committee for the Implementation of Textile Agreements (CITA).

ACTION: Issuing a directive to the Commissioner of Customs increasing a limit.

EFFECTIVE DATE: November 17, 1998.

FOR FURTHER INFORMATION CONTACT: Roy Unger, International Trade Specialist, Office of Textiles and Apparel, U.S. Department of Commerce, (202) 482–4212. For information on the quota status of this limit, refer to the Quota Status Reports posted on the bulletin boards of each Customs port or call (202) 927–5850. For information on embargoes and quota re-openings, call (202) 482–3715.

SUPPLEMENTARY INFORMATION:

Authority: Section 204 of the Agricultural Act of 1956, as amended (7 U.S.C. 1854); Executive Order 11651 of March 3, 1972, as amended.

In a Memorandum of Understanding dated October 22, 1998, the Governments of the United States and Arab Republic of Egypt agreed to permit special carryforward of up to 10 percent for Categories 338/339 (cotton knit shirts) in 1998, and that to the extent this special carryforward is used, it will be charged against the 1999 specific limit for these categories at a one to one and one-fourth (1 to 1 1/4) ratio. The current limit for Categories 338/339 is being adjusted for this special carryforward.

A description of the textile and apparel categories in terms of HTS numbers is available in the CORRELATION: Textile and Apparel Categories with the Harmonized Tariff Schedule of the United States (see **Federal Register** notice 62 FR 66057, published on December 17, 1997). Also see 62 FR 67829, published on December 30, 1997.

Troy H. Cribb,

Chairman, Committee for the Implementation of Textile Agreements.

Committee for the Implementation of Textile Agreements

November 10, 1998.

Commissioner of Customs,
Department of the Treasury, Washington, DC 20229.

Dear Commissioner: This directive amends, but does not cancel, the directive issued to you on December 22, 1997, by the Chairman, Committee for the Implementation of Textile Agreements. That directive concerns imports of certain cotton, wool and man-made fiber textile products, produced or manufactured in Egypt and exported during the twelve-month period which began on January 1, 1998 and extends through December 31, 1998.

Effective on November 17, 1998, you are directed to increase the limit for Categories 338/339 to 3,329,394 dozen [1], as provided for under the Uruguay Round Agreement on Textiles and Clothing and a Memorandum of Understanding dated October 22, 1998 between the Governments of the United States and the Arab Republic of Egypt.

The Committee for the Implementation of Textile Agreements has determined that this action falls within the foreign affairs exception to the rulemaking provisions of 5 U.S.C. 553(a)(1).

Sincerely,

Troy H. Cribb,

Chairman, Committee for the Implementation of Textile Agreements.

[FR Doc. 98–30568 Filed 11–13–98; 8:45 am]

BILLING CODE 3510–DR–F

[1] The limit has not been adjusted to account for any imports exported after December 31, 1997.

DEPARTMENT OF DEFENSE

Office of the Secretary

Civilian Health and Medical Program of the Uniformed Services (CHAMPUS)

AGENCY: Office of the Secretary, DoD.

ACTION: Notice of extension of cancer treatment clinical trials demonstration project.

SUMMARY: This notice is to advise interested parties of a one-year extension of a demonstration project in which the DoD provides CHAMPUS reimbursement for eligible beneficiaries who receive cancer treatment under approved National Institutes of Health, National Cancer Institute (NCI) clinical trials. Participation in these clinical trials will improve access to promising cancer therapies for CHAMPUS eligible beneficiaries when their conditions meet protocol eligibility criteria. DoD financing of these procedures will assist in meeting clinical trial goals and arrival at conclusions regarding the safety and efficacy of emerging therapies in the treatment of cancer. At this time, there is insufficient demonstration data for a full evaluation of costs associated with enrollment in clinical trials. Extending the demonstration for an additional year will allow sufficient time for patient accrual to clinical trials and collection of data which allows for comprehensive economic analysis. This demonstration also affects TRICARE, the managed health care program that includes CHAMPUS. This demonstration project, which is under the authority of 10 U.S.C., section 1092, will expire December 31, 1999.

EFFECTIVE DATE: January 1, 1999.

FOR FURTHER INFORMATION CONTACT: Kathleen K. Larkin, Office of the Assistant Secretary of Defense (Health Affairs), TRICARE Management Activity, (703) 681–1745.

SUPPLEMENTARY INFORMATION:

A. Background

On January 24, 1996, the Department provided notice in the **Federal Register** (61 FR 1899) of an expansion of an existing demonstration for breast cancer treatment clinical trials to include all cancer treatment clinical trials under approved National Cancer Institute (NCI) clinical trials. The demonstration purpose is to improve beneficiary access to promising new therapies, assist in meeting the National Cancer Institute's clinical trial goals, and arrival at conclusions regarding the safety and efficacy of emerging therapies in the treatment of cancer. The January 24, 1996, notice anticipated the possibility of extending the demonstration.

The NCI trials program is the principal means by which the oncology community has developed clinical evidence for the efficacy of various treatment approaches in cancer therapy. Participating institutions include NCI's network of comprehensive and clinical cancer centers, university and community hospitals and practices, and military treatment facilities. Despite this extensive network which includes the nation's premier medical centers, cure rates for most types of cancer remain disappointing, highlighting the significant effort still required for improvement. The principal means by which advances in therapy will be realized is through application of research to victims of cancer. In support of NCI's efforts to further the science of cancer treatment, the Department expanded its breast cancer demonstration to include all NCI-sponsored phase II and phase III clinical trials. This expanded demonstration will enhance current NCI efforts to determine safety and efficacy of promising cancer therapies by expanding the patient population available for entry into clinical trials and stabilizing the referral base for these clinical activities. While this demonstration provides an exception to current CHAMPUS benefit limitations, the Department hypothesizes that this increased access to innovative cancer therapies will occur at a cost comparable to that which the Department has experienced in paying for conventional therapies under the standard CHAMPUS program. Results of this demonstration will provide a framework for determining the scope of DoD's continued participation in the NCI's research efforts.

Dated: November 9, 1998.

L.M. Bynum,

Alternate OSD Federal Register Liaison Officer, Department of Defense.

[FR Doc. 98–30477 Filed 11–13–98; 8:45 am]

BILLING CODE 5000–04–M

DEPARTMENT OF DEFENSE

Office of the Secretary

TRICARE; the Civilian Health and Medical Program of the Uniformed Services (CHAMPUS); Specialized Treatment Services (STS) Program

AGENCY: Office of the Secretary, DoD.

ACTION: Notice.

SUMMARY: This notice is to advise interested parties that Naval Hospital

Jacksonville (NAVHOSPJAX), Florida, has been designated a regional Specialized Treatment Services facility (STSF) for total joint replacement. The application for this STSF designation was submitted by NAVHOSPJAX and approved by the Assistant Secretary of Defense (Health Affairs). The Lead Agent for TRICARE Region 3 will oversee that the STSF maintains the quality and standards required for specialized treatment services. This designation covers the following Diagnostic Related Groups:

209—Major Joint and Limb Reattachment Procedures of Lower Extremity
491—Major Joint and Limb Reattachment Procedures of Upper Extremity

DoD beneficiaries who reside in the NAVHOSPJAX STS Catchment Area must be evaluated by NAVHOSPJAX before receiving TRICARE/CHAMPUS cost sharing for procedures that fall under the above Diagnostic Related Groups, in accordance with TRICARE/CHAMPUS Nonavailability Statement policy. Travel and lodging for the patient and, if stated to be medically necessary by a referring physician, for a nonmedical attendant, will be reimbursed by NAVHOSPJAX in accordance with the provision of the Joint Federal Travel Regulation. Although evaluation in person is preferred, it is possible to conduct the evaluation telephonically if the patient is unable to travel to NAVHOSPJAX. If the procedures cannot be performed at NAVHOSPJAX, Humana Military Healthcare Services will provide a medical necessity review prior to issuance of a Nonavailabilty Statement or other similar authorizations. The NAVHOSPJAX STSF Catchment Area includes zip codes within TRICARE Region 3 that fall within a 200-mile radius South and West of NAVHOSPJAX.

EFFECTIVE DATE: March 1, 1999.

FOR FURTHER INFORMATION CONTACT: Lieutenant Junior Grade Phillip Garbark, NAVHOSPJAX, (904) 777–7372, or Commander Donald Rosenbaum or Lieutenant Colonel Richard Heekin, (904) 777–7370; or Lt. Col Teresa Sommese, TRICARE Management Activity, (703) 618–3628, extension 5029; or Mr. Tariq Shahid, TRICARE Management Activity, (303) 676–3801.

SUPPLEMENTARY INFORMATION: In FR DOC 93–27050, appearing in the **Federal Register** on November 5, 1993 (Vol. 58, FR 58955–58964), the final rule on the STS Program was published. Included in the final rule was a provision that a notice of all military and civilian STS facilities be published in the **Federal Register** annually. This notice is issued under the authority of 10 U.S.C. 1105 and 32 CFR 199.4(a)(10).

Dated: November 9, 1998.

L.M. Bynum,

Alternate OSD Federal Register Liaison Officer, Department of Defense.

[FR Doc. 98–30473 Filed 11–13–98; 8:45 am]

BILLING CODE 5000–04–M

DEPARTMENT OF DEFENSE

Office of the Secretary

TRICARE; The Civilian Health and Medical Program of the Uniformed Services (CHAMPUS); Specialized Treatment Services (STS) Program

AGENCY: Office of the Secretary, DoD.

ACTION: Notice.

SUMMARY: This notice is to advise interested parties that Dwight D. Eisenhower Army Medical Center (EAMC), Fort Gordon, Georgia, has been designated a regional Specialized Treatment Services facility (STSF) for Neurosurgery, Orthopedic Surgery, General Surgery, Peripheral Vascular Surgery, and Head and Neck Surgery. The application for this STSF designation was submitted by the Lead Agent for TRICARE Region 3 and approved by the Assistant Secretary of Defense (Health Affairs). The Lead Agent will oversee that the STSF maintains the quality and standards required for specialized treatment services. This designation covers the following Diagnostic Related Groups:

001—Craniotomy, Age Greater than 17, Except for Trauma
004—Spinal Procedures
049—Major Head and Neck Procedures
191—Pancreas, Liver and Shunt Procedures with CC
110—Major Cardiovascular Procedures with CC
111—Major Cardiovascular Procedures without CC
286—Adrenal and Pituitary Procedures
209—Major Joint and Limb Reattachment Procedures of Lower Extremity
491—Major Joint and Limb Reattachment of Upper Extremity

DoD beneficiaries who reside in the EAMC STS Catchment Area must be evaluated by EAMC before receiving TRICARE/CHAMPUS cost sharing for procedures that fall under the above Diagnostic Related Groups, in accordance with TRICARE/CHAMPUS Nonavailability Statement policy. Travel and lodging for the patient and, if stated to be medically necessary by a referring physician, for a nonmedical attendant, will be reimbursed by EAMC in accordance with the provisions of the Joint Federal Travel Regulation. Although evaluation in person is preferred, it is possible to conduct the evaluation telephonically if the patient is unable to travel to EAMC. If the procedure cannot be performed at EAMC, Humana Military Healthcare Services will provide a medical necessity review prior to issuance of a Nonavailability Statement or other similar authorizations. The EAMC STSF Catchment Area is defined by zip codes in the Defense Medical Information System STS Facilities Catchment Area Directory. The Catchment Area includes zip codes within TRICARE Region 3 that fall within a 200-mile radius of EAMC.

EFFECTIVE DATE: March 1, 1999.

FOR FURTHER INFORMATION CONTACT: Colonel Richard Traugott, EAMC, (706) 787–8288; or Lt. Col. Teresa Sommese, TRICARE Management Activity, (703) 681–3628, extension 5029; or Mr. Tariq Shahid, TRICARE Management Activity, (303) 676–3801.

SUPPLEMENTARY INFORMATION: In FR DOC 93–27050, appearing in the **Federal Register** on November 5, 1993 (Vol. 58, FR 58955–58964), the final rule on the STS Program was published. Included in the final rule was a provision that a notice of all military and civilian STS facilities be published in the **Federal Register** annually. This notice is issued under the authority of 10 U.S.C. 1105 and 32 CFR 199.4(a)(10).

Dated: November 9, 1998.

L.M. Bynum,

Alternate OSD Federal Register Liaison Officer, Department of Defense.

[FR Doc. 98–30478 Filed 11–13–98; 8:45 am]

BILLING CODE 5000–04–M

DEPARTMENT OF DEFENSE

Office of the Secretary

TRICARE; The Civilian Health and Medical Program of the Uniformed Services (CHAMPUS); Specialized Treatment Services (STS) Program

AGENCY: Office of the Secretary, DOD.

ACTION: Notice.

SUMMARY: This notice is to advise interested parties that Brooke Army Medical Center (BAMC) and Wilford Hall Medical Center (WHMC), hereinafter referred to as Destination San Antonio, have been designated the Regional Specialized Treatment Service facilities (STSFs) for DRGs 1, 3, 4, 49, 104–107, 110–111, 191, 209, 491, 286, and 357. The application for the STSF designation was submitted by the Lead Agency for TRICARE Region 6 and approved by the Assistant Secretary of Defense (Health Affairs). The Lead

Agent will oversee that the STSFs maintain the quality and standards required for specialized treatment services. DoD beneficiaries residing within a 200-mile radius of Destination San Antonio facilities falling into the above patient category must be evaluated by Destination San Antonio staff before receiving care for these DRGs under direct military care or TRICARE/CHAMPUS cost sharing. Travel and lodging for the patient and, if stated to be medically necessary by a referring physician, for a nonmedical attendant, will be reimbursed by Destination San Antonio facility in accordance with the provisions of the Joint Federal Travel Regulation. Although evaluation in person is preferred, it is possible to conduct the evaluation telephonically if the patient is unable to travel to a Destination San Antonio facility. If the care for these DRGs cannot be performed at the Destination San Antonio facilities, the TRICARE Managed Care Support Contractor for Region 6 will provide a medical necessity review prior to issuance of an Inpatient Care Authorization or Non-availability Statement.

EFFECTIVE DATE: March 1, 1999.

FOR FURTHER INFORMATION CONTACT:

For DRSs 49, 191, 209, 491, and 286, contact Wilford Hall Medical Center, Office of the Medical Staff, at (210) 292–6002. For DRGs 1, 3, and 4 contact COL Baskin or LTC Anders at (202) 916–3203/2225. For DRGs 104–107 and 110–111 contact Brooke Army Medical Center's Nurse Coordinator, Cardiothoracic Surgery Service, at (210) 916–3392. For DRG 357, contact COL Morton at (210) 916–2525. The TRICARE Management Activity points of contact are Lt. Col. Teresa Sommese at (703) 681–3628, extension 5029, or Mr. Tariq Shahid at (303) 676–3801.

SUPPLEMENTARY INFORMATION: In FR DOC 93–27050, appearing in the **Federal Register** on November 5, 1993 (Vol. 58, 58955–58964), the final rule on the STS Program was published. Included in the final rule was a provision that a notice of all military and civilian STS facilities be published in the **Federal Register** annually. This notice is issued under the authority of 10 U.S.C. 1105 and 32 CFR 199.4(a)(10).

Dated: November 9, 1998.

L.M. Bynum,

Alternate OSD Federal Register Liaison Officer, Department of Defense.

[FR Doc. 98–30479 Filed 11–13–98; 8:45 am]

BILLING CODE 5000–04–M

DEPARTMENT OF DEFENSE

GENERAL SERVICES ADMINISTRATION

NATIONAL AERONAUTICS AND SPACE ADMINISTRATION

[OMB Control No. 9000–0136]

Submission for OMB Review; Comment Request Entitled Commercial Item Acquisitions

AGENCIES: Department of Defense (DOD), General Services Administration (GSA), and National Aeronautics and Space Administration (NASA).

ACTION: Notice of request for an extension to an existing OMB clearance.

SUMMARY: Under the provisions of the Paperwork Reduction Act of 1995 (44 U.S.C. Chapter 35), the Federal Acquisition Regulation (FAR) Secretariat has submitted to the Office of Management and Budget (OMB) a request to review and approve an extension of a currently approved information collection requirement concerning Commercial Item Acquisitions.

DATES: Comments may be submitted on or before December 16, 1998.

ADDRESSES: Send comments regarding this burden estimate or any other aspect of this collection of information, including suggestions for reducing this burden, to: FAR Desk Officer, OMB, Room 10102, NEOB, Washington, DC 20503, and a copy to the General Services Administration, FAR Secretariat (MVRS), 1800 F Street, NW, Room 4035, Washington, DC 20405. Please cite OMB Control No. 9000–0136, Commercial Item Acquisitions in all correspondence.

FOR FURTHER INFORMATION CONTACT: Victoria Moss, Federal Acquisition Policy Division, GSA (202) 501–4764.

SUPPLEMENTARY INFORMATION:

A. Purpose

The Federal Acquisition Streamlining Act of 1994 included Title VIII, entitled Commercial Items. The title made numerous additions and revisions to both the civilian agency and Armed Service acquisition statutes to encourage and facilitate the acquisition of commercial items and services by Federal Government agencies.

To implement these changes, DOD, NASA, and GSA amended the Federal Acquisition Regulation to include streamlined/simplified procedures for the commercial items. As part of the steamlined procedures, a new solicitation provision was developed to take the place of the multitude of certifications and representations used in Government solicitations. This new provision is significantly shorter and collects less information than the corresponding provisions used in non-commercial acquisitions.

The new estimated number of respondents is based on FY 97 FPDS data. In reviewing the burden associated with this clearance, it became clear that the majority of burden hours previously requested actually related to requirements in other FAR parts and was already approved under existing clearances. This clearance now addresses only information collections required by FAR Part 12, Commercial Item Acquisitions. This information collection is centered in the provision at 52.212–3. It is possible that this clearance still double counts responses approved under other clearances. A review is underway to identify and correct any such double counting.

B. Annual Reporting Burden

Public reporting burden for this collection of information is estimated to average *18.7* minutes per response, including the time for reviewing instructions, searching existing data sources, gathering and maintaining the data needed, and completing and reviewing the collection of information.

The annual reporting burden is estimated as follows: Respondents, *118,000;* responses per respondent, *12.1* total annual responses, *1,427,800;* preparation hours per response, *.312;* and total response burden hours, *445,450.*

Obtaining Copies of Proposals

Requester may obtain a copy of the justification from the General Services Administration, FAR Secretariat (MVRS), Room 4035, Washington, DC 20405, telephone (202) 501–4755. Please cite OMB Control No. 9000–0136 regarding Commercial Item Acquisitions in all correspondence.

Dated: November 9, 1998.

Edward C. Loeb,

Director, Federal Acquisition Policy Division.

[FR Doc. 98–30486 Filed 11–13–98; 8:45 am]

BILLING CODE 6820–34–P

DEPARTMENT OF DEFENSE

Office of the Secretary

Defense Science Board Task Force on Coalition Warfare

ACTION: Notice of Advisory Committee meetings.

SUMMARY: The Defense Science Board Task Force on Coalition Warfare will meet in closed session on November 24 and December 14, 1998 at Strategic Analysis, Inc., 4001 N. Fairfax Drive, 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 address how best to make future U.S. military capabilities, embodied by JV2010, coalition compatible.

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: November 9, 1998.

L.M. Bynum,

Alternate OSD Federal Register Liaison Officer, Department of Defense.

[FR Doc. 98–30474 Filed 11–13–98; 8:45 am]

BILLING CODE 5000–04–M

DEPARTMENT OF DEFENSE

Office of the Secretary

Defense Science Board Task Force on Space Superiority

ACTION: Notice of Advisory Committee Meetings.

SUMMARY: The Defense Science Board Task Force on Space Superiority will meet in closed session on January 27–28 at Los Angeles AFB, CA; on February 16, at the NRO, Westfield Complex, Chantilly, VA; and on March 24–25, 1999 at US Space Command, Peterson AFB, CO.

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 and compile recommendations on how best to respond to the evolving space environment in a manner which would preserve U.S. leadership, superiority and dominance in national security space capabilities.

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: November 9, 1998.

L.M. Bynum,

Alternate OSD Federal Register Liaison Officer, Department of Defense.

[FR Doc. 98–30475 Filed 11–13–98; 8:45 am]

BILLING CODE 5000–04–M

DEPARTMENT OF DEFENSE

Office of the Secretary

Executive Committee Meeting of the Defense Advisory Committee on Women in the Services (DACOWITS)

AGENCY: Advisory Committee on Women in the Services, DOD.

ACTION: Notice.

SUMMARY: Pursuant to section 10(a), Pub. L. 92–463, as amended, notice is hereby given of a forthcoming Quarterly Executive Committee Meeting of the Defense Advisory Committee on Women in the Services (DACOWITS). The purpose of the Executive Committee Meeting is to provide transitional training to the incoming 1999 Executive Committee members and an Awards Presentation for the 1998 Executive Committee members. The Awards presentation Hosted by the Secretary of Defense is opened to the public. All other portions are for training only and are not open to the public.

DATES: December 7, 1998, 8:30 a.m.–4 p.m.

ADDRESSES: SECDEF Conference Room 3E869, The Pentagon, Washington, DC.

FOR FURTHER INFORMATION CONTACT: Lieutenant Colonel Sandy Lewis, ARNGUS, DACOWITS and Military Women Matters, OASD (Force Management Policy), 4000 Defense Pentagon, Room 3D769, Washington, DC 20301–4000; telephone (703) 697–2122.

SUPPLEMENTARY INFORMATION: Meeting agenda:

Monday, December 7, 1998

Time

2 p.m.

Event

Executive Committee Awards Presentation (Secretary of Defense Conference—3E869, Please be seated by 1:45 p.m.)

Dated: November 9, 1998.

L.M. Bynum,

Alternate OSD Federal Register Liaison Officer, DoD.

[FR Doc. 98–30476 Filed 11–13–98; 8:45 am]

BILLING CODE 5000–04–M

DEPARTMENT OF EDUCATION

Submission for OMB Review; Comment Request

AGENCY: Department of Education.

ACTION: Submission for OMB review; comment request.

SUMMARY: The Leader, Information Management Group, 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 December 16, 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, NW., Room 10235, New Executive Office Building, Washington, DC 20503 or should be electronically mailed to the internet address *Werfeld@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, SW., 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 Leader, Information Management Group, 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: November 9, 1998.

Kent H. Hannaman,

Leader, Information Management Group, Office of the Chief Financial and Chief Information Officer.

Office of Postsecondary Education

Type of Review: Revision.
Title: Addendum to Federal Direct PLUS Loan Promissory Note Endorser.
Frequency: On occasion.
Affected Public: Individuals or households.
Reporting and Recordkeeping Hour Burden:
Responses: 44,160.
Burden Hours: 22,080
Abstract: This form is the means by which an endorser for a Federal Direct PLUS Loan borrower with an adverse credit history applies for and promises to repay the Federal Direct PLUS Loan if the borrower does not repay it.

Office of Postsecondary Education

Type of Review: Revision.
Title: Federal Direct PLUS Loan Application and Promissory Note.
Frequency: On occasion.
Affected Public: Individuals or households.
Reporting and Recordkeeping Hour Burden:
Responses: 176,640.
Burden Hours: 88,320
Abstract: This form is the means by which a Federal PLUS Loan borrower promises to repay his or her loan.

[FR Doc. 98–30529 Filed 11–13–98; 8:45 am]

BILLING CODE 4000–01–P

DEPARTMENT OF ENERGY

[FE Docket Nos. 98–73–NG, 98–75–NG, 98–70–NG, 98–74–NG, 98–79–NG, 98–78–NG, 98–77–NG, 97–78–NG, 98–81–NG, 98–80–LNG, 96–80–NG, 96–02–NG, 96–03–NG, 98–84–NG, and 98–82–NG]

Orders Granting, Amending, and Transferring Authorizations to Import and/or Export Natural Gas, Including Liquefied Natural Gas

Clinton Energy Management Services, Inc., Rumford Power Associates Limited, Partnership
Rochester Gas and Electric Corporation
Enron Energy Services, Inc.
Transcanada Gas Services Inc.
Duke Energy Trading and Marketing, L.L.C.
BC Gas Utility Ltd.
Dynegy Marketing and Trade (Formerly) Natural Gas Clearinghouse
Interenergy Corporation and Interenergy Resources Corporation
Ferrell International Limited
Statoil Energy, Inc. (Formerly Eastern Energy Marketing, Inc.)
Statoil Energy, Inc. (Formerly Eastern Energy Marketing, Inc.)
Statoil Energy, Inc. (Formerly Eastern Energy Marketing, Inc.)
Koch Energy Trading, Inc.
CXY Energy Marketing (U.S.A.) Inc.

AGENCY: Office of Fossil Energy, DOE.

ACTION: Notice of Orders.

SUMMARY: The Office of Fossil Energy (FE) of the Department of Energy gives notice that it has issued Orders granting, amending, and transferring various natural gas, including liquefied natural gas, import and export authorizations. These Orders are summarized in the attached appendix.

These Orders may be found on the FE web site at http://www.fe.doe.gov., or on the electronic bulletin board at (202) 586–7853.

They are also available for inspection and copying in the Office of Natural Gas & Petroleum Import and Export Activities, Docket Room 3E–033, Forrestal Building, 1000 Independence Avenue, S.W., Washington, D.C. 20585, (202) 586–9478. The Docket Room is open between the hours of 8:00 a.m. and 4:30 p.m., Monday through Friday, except Federal holidays.

Issued in Washington, D.C., on November 9, 1998.

John W. Glynn,

Manager, Natural Gas Regulation, Office of Natural Gas & Petroleum, Import and Export Activities, Office of Fossil Energy.

Appendix—Orders Granting, Amending, and Transferring Import/Export Authorization

DOE/FE Authority

Order No.	Date issued	Importer/Exporter FE docket no.	Two-Year Maximum		Comments
			Import volume	Export volume	
1420	10/13/98	Clinton Energy Management Services, Inc., 98–73–NG.	400 Bcf		Import and export up to a combined total from and to Canada and Mexico, over a two–year term beginning on the date of first delivery.
1421	10/22/98	Rumford Power Associates Limited Partnership, 98–75–NG.	34 Bcf		Import and export up to a combined total from and to Canada over a two–year term beginning on the date of first delivery.
1422	10/22/98	Rochester Gas and Electric Corporation, 98–70–NG.	200 Bcf	.....	Import from Canada over a two–year term beginning December 1, 1998, through November 30, 2000.
1423	10/23/98	Enron Energy Services, Inc., 98–74–NG.	200 Bcf		Import and export up to a combined total from and to Canada and Mexico, over a two–year term beginning on the date of first delivery.
1424	10/26/98	TransCanada Gas Services Inc., 98–79–NG.	700 Bcf	300 Bcf	Import from Canada, and export up to a combined total to Canada and Mexico, over a two–year term beginning on the date of first delivery.
1425	10/26/98	Duke Energy Trading and Marketing, L.L.C. 98–78–NG.	200 Bcf		Import and export up to an aggregate total, including LNG from and to Canada and Mexico, and import LNG from other countries over a two–year term beginning October 31, 1998, and ending October 30, 2000.

Order No.	Date issued	Importer/Exporter FE docket no.	Two-Year Maximum		Comments
			Import volume	Export volume	
1426	10/26/98	BC Gas Utility Ltd., 98–77–NG.	25 Bcf	25 Bcf	Import and export from and to Canada, over a two–year term beginning on the date of first delivery after November 30, 1998.
1316–A	10/27/98	Dynegy Marketing and Trade, (Formerly Natural Gas Clearinghouse), 97–78–NG.	.....	.....	Name change.
1427	10/29/98	Interenergy Corporation and Interenergy Resources Corporation, 98–81–NG.	73 Bcf	73 Bcf	Import and export from and to Canada over a two–year term beginning on date of first delivery after October 31, 1998.
1428	10/29/98	Ferrell International Limited, 98–80–LNG.	45 Bcf	.....	Import LNG from foreign countries over a two–year term beginning on date of first shipment.
1224–A	10/29/98	Statoil Energy, Inc. (Formerly Eastern Energy Marketing, Inc.), 96–80–NG.	.....	.....	Name change.
1151–A	10/29/98	Statoil Energy, Inc. (Formerly Eastern Energy Marketing, Inc.), 96–02–NG.	.....	.....	Name change.
1152–A	10/29/98	Statoil Energy, Inc. (Formerly Eastern Energy Marketing, Inc.), 96–03–NG.	.....	.....	Name change.
1429	10/30/98	Koch Energy Trading, Inc., 98–84–NG.	73 Bcf	.....	Import from Canada over a two–year term beginning on November 3, 1998, through November 2, 2000.
1431	10/30/98	CXY Energy Marketing (U.S.A.) Inc., 98–82–NG.	200 Bcf		Import and export up to an aggregate from and to Canada and Mexico, over a two–year term beginning January 1, 1999, through December 31, 2000.

[FR Doc. 98–30556 Filed 11–13–98; 8:45 am]

BILLING CODE 6450–01–P

DEPARTMENT OF ENERGY

Office of Energy Efficiency and Renewable Energy

Golden Field Office; Broad Based Solicitation for Submission of Financial Assistance

AGENCY: Department of Energy (DOE).

ACTION: Notice of solicitation number DE–PS36–99GO10383, broad based solicitation for submission of financial assistance applications involving research, development, and demonstration for renewable energy and energy efficiency technologies.

SUMMARY: The DOE Office of Energy Efficiency and Renewable Energy (EERE) has a continuing interest in receiving applications for grants and cooperative agreements supporting renewable energy and energy efficiency basic research, directed and applied research, cooperative demonstrations, and related activities. The Broad Based Solicitation will provide specific information and will consist of two parts: the first part is generic and will consist of guidelines and requirements for submitting applications; the second part will be specific to designated program areas of interest and will consist of individual supplemental announcements issued at a later date. These individual supplemental announcements will contain technology specific information, anticipated programmatic funding levels, eligibility requirements, evaluation criteria, any cost sharing requirements, application deadlines, and any other requirements specific to the supplemental announcements.

Notices of release of the detailed supplemental announcements will be published separately in the **Federal Register** as they become available. It is anticipated that the initial supplemental announcements will be in the following program areas: (1) Innovative technologies that will increase the efficiency or lower the cost of producing and converting biomass to transportation fuels; (2) demonstration programs to obtain operational data regarding alternative fuel and advanced technologies for use by fleet managers in making vehicle acquisition decisions; (3) research, development and demonstration of innovative concepts applicable to trucks and other heavy vehicles so they can be more energy efficient and able to use alternative fuels while simultaneously reducing emissions; (4) the use of artificial intelligence techniques to synthesize and extract patterns of heavy-duty truck performance under a variety of real-world operating conditions from real-time operational data on fuel efficiency, cost effectiveness, and emissions of heavy-duty trucks; (5) component technology development in the areas of hydrogen production, storage, and utilization; and (6) geothermal technology innovation in the areas of drilling, energy conversion, fracture detection and analysis, heat recovery systems, by-product recovery, and waste management.

All information regarding the solicitation will be posted on the DOE Golden Field Office Home page at the address identified below.

DATES: DOE expects to issue the first part of the Solicitation the week of November 9, 1998.

ADDRESSES: The first part of the Solicitation will be posted on the DOE Golden Field Office Home Page at http://www.eren.doe.gov/golden/solicitations.htm. It is DOE's intention not to issue hard copies of the Solicitation.

FOR FURTHER INFORMATION CONTACT: John Motz, Contract Specialist, at 303–275–4737, e-mail john__motz@nrel.gov, or Doug Hooker, Project Officer, at 303–275–4780, e-mail doug__hooker@nrel.gov.

Issued in Golden, Colorado, on November 4, 1998.

John W. Meeker,

Chief, Procurement, Golden Field Office.

[FR Doc. 98–30557 Filed 11–13–98; 8:45 am]

BILLING CODE 6450–01–P

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

[Docket No. RP98–113–005]

Colorado Interstate Gas Co.; Notice of Tariff Filing

November 9, 1998.

Take notice that on November 4, 1998, Colorado Interstate Gas Company (CIG), tendered for filing to become part of its FERC Gas Tariff, First Revised Volume No. 1, Substitute Fifth Revised Sheet No. 303 to be effective October 1, 1998.

It has been pointed out that in CIG's filing in compliance with the order that was issued on September 29,1998 in Docket No. RP98–113–003 CIG inadvertently left out the word ''TF–1'' on Fifth Revised Sheet No. 303. CIG is filing herein to correct this error.

Any person desiring to protest this filing should file a protest with the Federal Energy Regulatory Commission, 888 First Street, NE., Washington, D.C. 20426, in accordance with § 385.211 of the Commission's rules and regulations. All such protests must be filed as provided in § 154.210 of the Commission's Regulations. Protests will be considered by the Commission in determining the appropriate action to be taken, but will not serve to make protestants parties to the proceeding. Copies of this filing are on file with the Commission and are available for public inspection in the Public Reference Room.

Linwood A. Watson, Jr.,

Acting Secretary.

[FR Doc. 98–30522 Filed 11–13–98; 8:45 am]

BILLING CODE 6717–01–M

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

[Docket No. CP98–800–000]

Eastern Shore Natural Gas Company; Notice of Pre-Certificate Site Visit

November 9, 1998.

On November 16, 1998, the Office of Pipeline Regulation (OPR) staff will conduct a pre-certificate site visit, with representatives of Eastern Shore Natural Gas Company, of the proposed pipeline route near Delaware City in New Castle County, Delaware and near New London in Chester County, Pennsylvania.

All interested parties may attend. Those planning to attend must provide their own transportation.

For further information, please contact Paul McKee at (202) 208–1611.

Linwood A. Watson, Jr.,

Acting Secretary.

[FR Doc. 98–30515 Filed 11–13–98; 8:45 am]

BILLING CODE 6717–01–M

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

[Docket No. CP99–45–000]

El Paso Natural Gas Company; Notice of Application

November 9, 1998.

Take notice that on October 30, 1998, El Paso Natural Gas Company (Applicant), P.O. Box 1492, El Paso, Texas 79978, filed in Docket No. CP99–45–000 an abbreviated application pursuant to Section 7(b) of the Natural Gas Act, as amended, and Sections 157.7 and 157.18 of the Federal Energy Regulatory Commission's (Commission) regulations thereunder, for permission and approval to abandon certain facilities located in Pima County, Arizona, all as more fully set forth in the application which is on file with the Commission and open to public inspection.

Applicant proposes to abandon in place approximately 1,792 feet of Line No. 1008 and abandon by removal approximately 3,214 feet of the same line. Applicant states that it was prepared to replace and lower a section of pipe due to the encroachment of a residential subdivision. Applicant indicates that due to its subsequent determination to abandon the 5,006 foot section of Line 1008 because of deterioration, Applicant isolated approximately 1,792 feet of this section which was already exposed for the replacement and lowering, by appropriately cutting and capping each end. Applicant further states that it thus proposes to abandon this 1,792-foot section of Line No. 1008 in place and the remaining 3,214 feet of pipe by removal. Applicant asserts that the proposal herein will not result in a change of service, does not affect Applicant's ability to perform its obligations to provide transportation service on its system, and will not adversely affect Applicant or its customers in any way.

Any person desiring to be heard or to make any protest with reference to said application should on or before November 30, 1998, file with the Federal Energy Regulatory Commission, Washington, DC 20426, a petition 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 the proceeding or to participate as a party in any hearing therein must file a petition to intervene in accordance with the Commission's Rules.

Take further notice that, pursuant to the authority contained in and subject to the jurisdiction conferred upon the Federal Energy Regulatory Commission by Sections 7 and 15 of the Natural Gas Act and the Commission's Rules of Practice and Procedure, a hearing will be held without further notice before the Commission on this application if no petition to intervene is filed within the time required herein, and if the Commission on its own review of the matter finds that the abandonment is required by the public convenience and necessity. If a petition for leave to intervene is timely filed, or if the Commission on its motion believes that a formal hearing is required, further notice of such hearing will be duly given.

Under the procedure herein provided for, unless otherwise advised, it will be unnecessary for Applicant to appear or be represented at the hearing.

Linwood A. Watson, Jr.,

Acting Secretary.

[FR Doc. 98–30517 Filed 11–13–98; 8:45 am]

BILLING CODE 6717–01–M

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

[Docket No. RP99–79–001]

Equitrans, L.P.; Notice of Proposed Changes in FERC Gas Tariff

November 9, 1998.

Take notice that on November 5, 1998, Equitrans, L.P. (Equitrans) tendered for filing as part of its FERC Gas Tariff, First Revised Volume No. 1, the following revised tariff sheet to become effective November 2, 1998:

Substitute Third Revised Sheet No. 269

Equitrans states that the purpose of this filing is to comply with the Commission's Letter Order issued on October 29, 1998 in the captioned docket. In its October 29 Order, the Commission required Equitrans to: (1)

incorporate GISB standard 1.3.2 (v) and (vi) either verbatim or by reference; (2) to eliminate the premature Version 1.3 GISB standards; and (3) to include the current Version 1.2 GISB standards. Equitrans has incorporated by reference GISB standard 1.3.2. (v) and (vi) and the corrected references to Version 1.2 and Version 1.3 of the GISB standards.

Any person desiring to protest this filing should file a protest with the Federal Energy Regulatory Commission, 888 First Street, N.E., Washington, D.C. 20426, in accordance with Section 385.211 of the Commission's Rules and Regulations. All such protests must be filed as provided in Section 154.210 of the Commission's Regulations. Protests will be considered by the Commission in determining the appropriate action to be taken, but will not serve to make protestants parties to the 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. 98–30506 Filed 11–13–98; 8:45 am]

BILLING CODE 6717–01–M

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

[Docket No. CP99–52–000]

Florida Gas Transmission Co.; Notice of Request Under Blanket Authorization

November 9, 1998.

Take notice that on November 3, 1998, Florida Gas Transmission Company (FGT), 1400 Smith Street, Houston, Texas 77002, filed in Docket No. CP99–52–000 a request pursuant to § 157.205 of the Commission's regulations under the Natural Gas Act (18 CFR 157.205) for authorization to construct and operate a new delivery point in East Baton Rouge Parish, Louisiana for the City of Zachary (Zachary), under FGT's blanket certificate issued in Docket No. CP82–553–000 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.

FGT states that the proposed delivery point would be constructed adjacent to FGT's 24-inch and 30-inch Mainline and would include two 3-inch hot taps, less than 50 feet of 3-inch line, electric flow measurement equipment, and any related appurtenant facilities necessary for FGT to deliver up to 1500 MMBtu per day to Zachary.

FGT states further that the estimated cost of the facilities would be approximately $41,775, which would be fully reimbursed by Zachary.

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 § 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. 98–30520 Filed 11–13–98; 8:45 am]

BILLING CODE 6717–01–M

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

[Docket No. RP99–77–001]

Kentucky West Virginia Gas Company L.L.C.; Notice of Proposed Changes in FERC Gas Tariff

November 9, 1998.

Take notice that on November 5, 1998, Kentucky West Virginia Gas Company, L.L.C. (Kentucky West) tendered for filing as part of its FERC Gas Tariff, Third Revised Volume No. 1, the following revised tariff sheets to become effective November 2, 1998:

Substitute Third Revised Sheet No. 120
Substitute First Revised Sheet No. 174

Kentucky West states that the purpose of this filing is to comply with the Commission's Letter Order issued on October 29, 1998 in the captioned docket. In its October 29 Order, the Commission required Kentucky West to: (1) Incorporate GISB standard 1.3.2 (v) and (vi) either verbatim or by reference; (2) to eliminate the premature inclusion of GISB Version 1.3 standards; (3) to include the current Version 1.2 GISB standards; and (4) to include the missing tariff language from § 13.1 (e)(vi) on Sheet No. 120. Kentucky West has incorporated by reference GISB standard 1.3.2 (v) and (vi), the corrected references to Version 1.2 and Version 1.3 of the GISB standards and included the missing tariff language on Sheet No. 120.

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 § 385.211 of the Commission's Rules and Regulations. All such protests must be filed as provided in § 154.210 of the Commission's Regulations. Protests will be considered by the Commission in determining the appropriate action to be taken, but will not serve to make protestants parties to the proceedings. Copies of this filing are on file with the Commission and are available for public inspection in the Public Reference Room.

Linwood A. Watson, Jr.,

Acting Secretary.

[FR Doc. 98–30523 Filed 11–13–98; 8:45 am]

BILLING CODE 6717–01–M

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

[Docket No. ER99–466–000]

Minnesota Power & Light Company; Notice of Filing

November 9, 1998.

Take notice that on November 2, 1998, Minnesota Power & Light Company tendered for filing a signed Service Agreement with United Power Association under its market-based Wholesale Coordination Sales Tariff (WCS–2) to satisfy its filing requirements under this tariff.

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 and protests should be filed on or before November 20, 1998. Protests will be considered by the Commission to determine the appropriate action to be taken, but will not serve to make protestants 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.

Linwood A. Watson, Jr.,

Acting Secretary.

[FR Doc. 98–30501 Filed 11–13–98; 8:45 am]

BILLING CODE 6717–01–M

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

[Docket No. ER98–4301–001]

Mountainview Power Company; Notice of Filing

November 9, 1998.

Take notice that on October 30, 1998, Mountainview Power Company, pursuant to the Commission's October 16, 1998 order, filed its compliance filing in the above-captioned docket.

Mountainview Power Company has served this compliance filing upon all parties on the service list complied by the Secretary in this proceeding.

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 and protests should be filed on or before November 19, 1998. Protests will be considered by the Commission to determine the appropriate action to be taken, but will not serve to make protestants 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.

Linwood A. Watson, Jr.,

Acting Secretary.

[FR Doc. 98–30504 Filed 11–13–98; 8:45 am]

BILLING CODE 6717–01–M

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

[Docket No. ER99–465–000]

New England Power Pool; Notice of Filing

November 9, 1998.

Take notice that on November 2, 1998, the New England Power Pool Executive Committee filed for acceptance a signature page to the New England Power Pool (NEPOOL), Agreement dated September 1, 1971, as amended, signed by El Paso Power Services Company (El Paso). The NEPOOL Agreement has been designated NEPOOL FPC No. 2.

The Executive Committee states that the Commission's acceptance of El Paso's signature page would permit NEPOOL to expand its membership to include El Paso. NEPOOL further states that the filed signature page does not change the NEPOOL Agreement in any manner, other than to make El Paso a member in NEPOOL.

NEPOOL requests an effective date of January 1, 1999, for commencement of participation in NEPOOL by El Paso Power Services Company.

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 and protests should be filed on or before November 20, 1998. Protests will be considered by the Commission to determine the appropriate action to be taken, but will not serve to make protestants 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.

Linwood A. Watson, Jr.,

Acting Secretary.

[FR Doc. 98–30502 Filed 11–13–98; 8:45 am]

BILLING CODE 6717–01–M

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

[Docket No. ER99–464–000]

Niagara Mohawk Power Corporation; Notice of Filing

November 9, 1998.

Take notice that on November 2, 1998, Niagara Mohawk Power Corporation (NMPC), tendered for filing with the Federal Energy Regulatory Commission an executed Transmission Service Agreement between NMPC and West Penn Power d/b/a Allegheny Energy. This Transmission Service Agreement specifies that West Penn Power d/b/a Allegheny Energy has signed on to and has agreed to the terms and conditions of NMPC's Open Access Transmission Tariff as filed in Docket No. OA96–194–000. This Tariff, filed with FERC on July 9, 1996, will allow NMPC and West Penn Power d/b/a Allegheny Energy to enter into separately scheduled transactions under which NMPC will provide transmission service for West Penn Power d/b/a Allegheny Energy as the parties may mutually agree.

NMPC requests an effective date of October 23, 1998. NMPC has requested waiver of the notice requirements for good cause shown.

NMPC has served copies of the filing upon the New York State Public Service Commission and West Penn Power d/b/a Allegheny Energy.

Any person desiring to be heard or to protest said filing should file a motion to intervene or protest with the Federal Energy Regulatory Commission, 888 First Street, NE., Washington, DC 20426, in accordance with Rules 211 and 214 of the Commission's Rules of Practice and Procedure (18 CFR 385.211 and 18 CFR 385.214). All such motions and protests should be filed on or before November 20, 1998. Protests will be considered by the Commission to determine the appropriate action to be taken, but will not serve to make protestants 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.

Linwood A. Watson, Jr.,

Acting Secretary.

[FR Doc. 98–30503 Filed 11–13–98; 8:45 am]

BILLING CODE 6717–01–M

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

[Docket No. RP99–78–001]

Nora Transmission Company; Notice of Proposed Changes in FERC Gas Tariff

November 9, 1998.

Take notice that on November 5, 1998, Nora Transmission Company, (Nora) tendered for filing as part of the its FERC Gas Tariff, First Revised Volume No. 1, the following revised tariff sheet to become effective November 2, 1998:

Substitute Third Revised Sheet No. 173

Nora states that the purpose of this filing is to comply with the Commission's Letter Order issued on October 29, 1998 in the captioned docket. In its October 29 Order, the Commission required Nora to: (1) incorporate GISB standard 1.3.2 (v) and (vi) either verbatim or by reference; (2)

to eliminate the premature Version 1.3 GISB standards; and (3) to include the current Version 1.2 GISB standards. Nora has incorporated by reference GISB standard 1.3.2 (v) and (vi) and corrected the references to Version 1.2 and Version 1.3 of the GISB standards.

Any person desiring to protest this filing should file a protest with the Federal Energy Regulatory Commission, 888 First Street, N.E., Washington, D.C. 20426, in accordance with Section 385.211 of the Commission's Rules and Regulations. All such protests must be filed as provided in Section 154.210 of the Commission's Regulations. Protests will be considered by the Commission in determining the appropriate action to be taken, but will not serve to make protestants parties to the 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. 98–30507 Filed 11–13–98; 8:45 am]

BILLING CODE 6717–01–M

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

[Docket No. ER99–467–000]

Southern Company Services, Inc.; Notice of Filing

November 9, 1998.

Take notice that on November 2, 1998, Southern Company Services, Inc. (SCSI), acting as agent for Alabama Power Company, Georgia Power Company, Gulf Power Company, Mississippi Power Company, and Savannah Electric and Power Company (collectively referred to as the Operating Companies), tendered for filing Amendment No. 10, to The Southern Company System Intercompany Interchange Contract (IIC) dated October 31, 1998, as amended. The amendment reflects modifications in the procedure used to determine generation unit ratings under the IIC. The amendment does not apply to unit power sale agreements and similar bulk power sale arrangements.

SCSI requests an effective date of January 1, 1999, for this submittal.

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 and protests should be filed on or before November 20, 1998. Protests will be considered by the Commission to determine the appropriate action to be taken, but will not serve to make protestants 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.

Linwood A. Watson, Jr.,

Acting Secretary.

[FR Doc. 98–30500 Filed 11–13–98; 8:45 am]

BILLING CODE 6717–01–M

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

[Docket No. CP99–48–000]

Southern Natural Gas Co.; Notice of Request Under Blanket Authorization

November 9, 1998.

Take notice that on November 2, 1998, Southern Natural Gas Company (Southern), Post Office Box 2563, Birmingham, Alabama 35202–2563, filed in Docket No. CP99–48–000, a request pursuant to §§ 157.205 and 157.212 of the Commission's regulations under the Natural Gas Act (18 CFR 157.205 and 157.212) for authorization to construct and operate a delivery point, including measurement and appurtenant facilities, for service to the city of Calera (Calera) in Shelby County, Alabama, under Southern's blanket certificate issued in Docket No. CP82–406–000, pursuant to section 7(c) 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.

Southern proposes to construct and operate a new delivery point at or near Mile Post 31.2 on its 6-inch Bessemer-Calera Line and 8-inch Bessemer-Calera Loop Line in Shelby County, Alabama so it can provide transportation service to Calera, so that Calera may provide natural gas service to commercial and residential customers in Shelby County, Alabama.

Southern estimates the cost to construct this point of delivery will be $201,550. Southern says Calera has agreed to reimburse Southern for the cost of constructing and installing the facilities. Southern states that it will transport gas on behalf of Calera under its existing service agreements pursuant to Southern's Rate Schedules FT and FT–NN and Rate Schedule IT. Southern relates that Calera does not propose to add any transportation demand to its firm service as a result of the addition of the delivery point. Southern states that the installation of the proposed facilities will have no adverse effect on its ability to provide its firm deliveries.

Any person or the Commission's staff may, within 45 days after issuance of the instant notice by the Commission, file with the Federal Energy Regulatory Commission, 888 First Street, NE., Washington, DC 20426, 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 § 157.205 of the regulations under the Natural Gas Act (18 CFR 157.205) a protest to the request. If not 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. 98–30518 Filed 11–13–98; 8:45 am]

BILLING CODE 6717–01–M

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

[Docket No. CP99–49–000]

Southern Natural Gas Co.; Notice of Request Under Blanket Authorization

November 9, 1998.

Take notice that on November 2, 1998, Southern Natural Gas Company (Southern), Post Office Box 2563, Birmingham, Alabama 35202–2563, filed in Docket No. CP99–49–000 a request pursuant to §§ 157.205 and 157.216 of the Commission's Regulations under the Natural Gas Act (18 CFR 157.205 and 157.216) for authorization to abandon a measurement facility in Chatham County, Georgia under Southern's blanket certificate issued in Docket No. CP82–406–000 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.

Southern proposes to abandon a measurement facility at its Savannah #3 meter station. Southern states that the American 500B diaphragm meter at the Savannah #3 Meter Station is no longer necessary. It was originally installed to measure gas at low flow rates but has

not been in use in many years. Southern states that the abandonment of facilities will not result in any termination or interruption of existing service.

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 § 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. 98–30519 Filed 11–13–98; 8:45 am]

BILLING CODE 6717–01–M

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

[Docket No. CP99–35–000]

Texas Gas Transmission Corporation; Notice of Request Under Blanket Authorization

November 9, 1998.

Take notice that on October 26, 1998, as supplemented October 29, 1998, Texas Gas Transmission Corporation (Texas Gas), P.O. Box 20008, Owensboro, Kentucky 42304, filed in Docket No. CP99–35–000, a request pursuant to Section 157.205 and 157.216(b) of the Commission's Regulations under the Natural Gas Act (18 CFR Sections 157.205 and 157.216), for authorization to abandon by removal the Germany Oil-Church Point Receipt Meter located on Texas Gas's Church Point 4-Inch Line in Acadia Parish, Louisiana, under Texas Gas's blanket certificate issued in Docket No. CP82–407–000, all as more fully set forth in the request on file with the Commission and open to public.

It is stated that this meter station was constructed in 1988 to receive gas from Germany Oil Company for transportation for various shippers and reported in Texas Gas's 1988 annual Report of Blanket Certificate Activities under Texas Gas's blanket certificate issued in Docket No. CP82–407–000.

It is further stated that the facilities to be removed consist of a 2-inch skid-mounted meter and related facilities. Texas Gas states that it estimates the cost of removal would be $500.

Texas Gas states that it is requesting authorization to abandon this meter station as the producer has plugged and abandoned the site, and the landowner has requested return of the land.

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. 98–30516 Filed 11–13–98; 8:45 am]

BILLING CODE 6717–01–M

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

[Docket No. TM99–2–30–000]

Trunkline Gas Company; Notice of Filing

November 9, 1998.

Take notice that on October 30, 1998, Trunkline gas Company (Trunkline) tendered for filing its Annual Interruptible Storage Revenue Credit Surcharge Adjustment in accordance with Section 24 of the General Terms and Conditions of its FERC Gas Tariff, First Revised Volume No. 1.

Trunkline states that the purpose of this filing is to comply with Section 24 of the General Terms and Conditions of its FERC Gas Tariff, First Revised Volume No. 1 which requires that at least 30 days prior to the effective date of adjustment, Trunkline shall make a filing with the Commission to reflect the adjustment, if any, required to Trunkline's Base Transportation Rates to reflect the result of the Interruptible Storage Revenue Credit Surcharge Adjustment. Trunkline further states that due to the minimal interruptible storage activity, no adjustment is required to Base Transportation Rates.

Trunkline states that copies of this filing are being served on all affected customers and applicable state regulatory agencies.

Any person desiring to be heard or to protest said filing should file a motion to intervene or a protest with the Federal Energy Regulatory Commission, 888 First Street, N.E., Washington, D.C. 20426, in accordance with Sections 385.214 or 385.211 of the Commission's Rules and Regulations. All such motions or protests must be filed on or before November 16, 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. 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. 98–30505 Filed 11–13–98; 8:45 am]

BILLING CODE 6717–01–M

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

[Docket No. RP97–375–005]

Wyoming Interstate Company, Ltd.; Notice of Informal Settlement Conference

November 9, 1998.

Take notice that an informal settlement conference will be convened in this proceeding on Thursday, November 12, 1998. The conference will begin at 8:30 a.m. at the offices of the Federal Energy Regulatory Commission, 888 First Street, NE., Washington, DC 20426, for the purpose of exploring the possibility of settlement in this proceeding.

Any party, as defined by 18 CFR 385.102(c), or any participant, as defined by 18 CFR 385.102(b), is invited to attend. Persons wishing to become a party must move to intervene and receive intervenor status pursuant to the Commission's regulations 18 CFR 385.214.

For additional information, contact John P. Roddy at (202) 208–0053.

Linwood A. Watson, Jr.,

Acting Secretary.

[FR Doc. 98–30521 Filed 11–13–98; 8:45 am]

BILLING CODE 6717–01–M

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

[Docket No. EC99–7–000, et al.]

American Ref-Fuel Company of Delaware Valley, L.P., et al.; Electric Rate and Corporate Regulation Filings

November 4, 1998.

Take notice that the following filings have been made with the Commission:

1. American Ref-Fuel Company of Delaware Valley, L.P.

[Docket No. EC99–7–000]

Take notice that on October 29, 1998, American Ref-Fuel Company of Delaware Valley, L.P. (ARC Delaware) submitted for filing with the Federal Energy Regulatory Commission (Commission) pursuant to 18 CFR Part 33, a ''Petition of American Ref-Fuel Company of Delaware Valley, L.P. for an Order Under Section 203 of the Federal Power Act Approving the Transfer of Jurisdictional Assets.''

Applicant has requested that the Commission, by order issued no later than December 16, 1998, authorize the transfer of 50 percent of the partnership interests in ARC Delaware. ARC Delaware is the lessee of a waste to energy generating facility located in the City of Chester, Delaware County, Pennsylvania.

Comment date: November 30, 1998, in accordance with Standard Paragraph E at the end of this notice.

2. Western Systems Power Pool

[Docket No. ER91–195–034]

Take notice that the following informational filing has been made with the Commission and is available for public inspection and copying in the Commission's Public Reference Room:

On October 30, 1998, Western Systems Power Pool filed certain information as required by the Commission's June 1, 1992 order in Docket No. ER91–195–000.

3. Boston Edison Co.

[Docket No. ER99–333–000]

Take notice that on October 27, 1998, Boston Edison Company (Boston Edison) filed, for informational purposes only, amended true-up to actual reports for calendar years 1995 and 1996 regarding charges to Cambridge Electric Light Company for the use of Station 509. Boston Edison's charges for the use of Station 509 are governed by its FERC Rate Schedule No. 101. A report for calendar year 1995 charges was previously accepted for filing in Docket No. ER97–2067–000. A report for calendar year 1996 charges was previously accepted for filing in Docket No. ER98-1985–000.

4. New England Power Pool

[Docket No. ER99–407–000]

Take notice that on October 30, 1998, the New England Power Pool (NEPOOL or Pool) Executive Committee, filed a request for termination of memberships in NEPOOL, with an effective date of November 1, 1998, of QST Energy (QST) and CNG Energy Services (''CNG''). Such termination is pursuant to the terms of the NEPOOL Agreement dated September 1, 1971, as amended, and previously signed by QST and by CNG. The New England Power Pool Agreement, as amended (the NEPOOL Agreement), has been designated NEPOOL FPC No. 2.

The Executive Committee states that terminations of QST and CNG with an effective date of November 1, 1998 would relieve these entities, at their requests, of the obligations and responsibilities of Pool membership and would not change the NEPOOL Agreement in any manner, other than to remove QST and CNG from membership in the Pool.

Comment date: November 19, 1998, in accordance with Standard Paragraph E at the end of this notice.

5. Mississippi Power Co.

[Docket No. ER99–363–000]

Take notice that on October 29, 1998, Mississippi Power Company tendered for filing an informational filing required under the Transmission Facilities Agreement between Mississippi Power Company and Gulf States Utilities Company (Entergy) dated February 25, 1982.

6. Unitil Power Corp.; Fitchburg Gas and Electric Light Co.; Unitil Resources, Inc.; Shamrock Trading, LLC; The Dayton Power and Light Co.; NEV California, L.L.C.; New Energy Holdings, Inc.; New Energy Ventures, L.L.C.; NEV East, L.L.C.; NEV Midwest, L.L.C.; DPL Energy; Progress Power Marketing, Inc.; Atlanta Gas Light Services, Inc.; f/n/a/ The Energy Spring, Inc.; Anker Power Services, Inc.; Philadelphia Gas Works; Vastar Power Marketing, Inc.; Hinson Power Co.

[Docket Nos. ER99–350–000; ER99–351–000; ER99–352–000; ER98–3526–001; ER99–355–000; ER97–4653–004; ER96–1387–010; ER97–4636–004; ER97–4652–004; ER97–4654–004; ER96–2601–009; ER96–1618–010; ER97–542–005; ER97–3788–004; ER98–124–001; ER95–1685–013; and ER95–1314–014]

Take notice that the following informational filings have been made with the Commission are available for public inspection and copying in the Commission's Public Reference Room:

On October 28, 1998, Unitil Power Corp. filed certain information as required by the Commission's September 25, 1997 order in Docket Nos. ER97–2460–000, *et seq.*

On October 28, 1998, Fitchburg Gas and Electric Light Company filed certain information as required by the Commission's September 25, 1997 order in Docket Nos. ER97–2460–000, *et seq.*

On October 28, 1998, Unitil Resources, Inc. filed certain information as required by the Commission's September 25, 1997 order in Docket Nos. ER97–2460–000, *et seq.*

On October 28, 1998, Shamrock Trading, L.L.C. filed certain information as required by the Commission's August 7, 1998 order in Docket No. ER98–3526–000.

On October 28, 1998, The Dayton Power and Light Company filed certain information as required by the Commission's September 30, 1996 order in Docket No. ER96–2602–000.

On October 28, 1998, NEV California, L.L.C. filed certain information as required by the Commission's November 12, 1997 order in Docket No. ER97–4653–000.

On October 28, 1998, New Energy Holding, Inc. filed certain information as required by the Commission's September 6, 1996 order in Docket No. ER96–1387–000.

On October 28, 1998, New Energy Ventures, L.L.C. filed certain information as required by the Commission's November 12, 1997 order in Docket No. ER97–4636–000.

On October 28, 1998, NEV East, L.L.C. filed certain information as required by the Commission's November 12, 1997 order in Docket No. ER97–4652–000.

On October 28, 1998, NEV Midwest, L.L.C. filed certain information as required by the Commission's November 12, 1997 order in Docket No. ER97–4654–000.

On October 28, 1998, DPL Energy filed certain information as required by the Commission's September 30, 1996 order in Docket No. ER96–2601–000.

On October 28, 1998, Progress Power Marketing, Inc. filed certain information as required by the Commission's August 2, 1996 order in Docket No. ER96–1618–000.

On October 28, 1998, Atlanta Gas Light Services, Inc. (f/n/a/ The Energy Spring, Inc.) filed certain information as required by the Commission's January 8, 1997 order in Docket No. ER97–542–000.

On October 28, 1998, Anker Power Services, Inc. filed certain information

as required by the Commission's September 19, 1997 order in Docket No. ER97–3788–000.

On October 28, 1998, Philadelphia Gas Works filed certain information as required by the Commission's November 19, 1997 order in Docket No. ER98–124–000.

On October 28, 1998, Vastar Power Marketing, Inc. filed certain information as required by the Commission's October 26, 1995 order in Docket No. ER95–1685–000.

On October 28, 1998, Hinson Power Company filed certain information as required by the Commission's August 29, 1995 order in Docket No. ER95–1314–000.

7. Mississippi Power Co.

[Docket No. ER99–374–000]

Take notice that on October 29, 1998, Mississippi Power Company (Mississippi) tendered for filing an informational filing of schedules showing charges produced by the formula rate under the Transmission Facilities Agreement (TFA) between Mississippi Power Company and Alabama Power Company (Alabama) for the calendar year January 1, 1999 through December 31, 1999. Also included are work papers showing determination of total net investment and the derivation of total fixed expenses and cost of capital used in the formula rate.

8. New England Power Pool

[Docket No. ER99–408–000]

Take notice that on October 30, 1998, the New England Power Pool Executive Committee, filed for acceptance a signature page to the New England Power Pool (NEPOOL) Agreement dated September 1, 1971, as amended, signed by Select Energy, Inc. (Select Energy). The NEPOOL Agreement has been designated NEPOOL FPC No. 2.

The Executive Committee states that the Commission's acceptance of Select Energy's signature page would permit NEPOOL to expand its membership to include Select Energy. NEPOOL further states that the filed signature page does not change the NEPOOL Agreement in any manner, other than to make Select Energy a member in NEPOOL. NEPOOL requests an effective date of December 1, 1998, for commencement of participation in NEPOOL by Select Energy.

Comment date: November 19, 1998, in accordance with Standard Paragraph E at the end of this notice.

9. Deseret Generation & Transmission Co-operative

[Docket No. ER99–409–000]

Take notice that on October 30, 1998, Deseret Generation & Transmission Co-operative (Deseret), tendered for filing a proposed rider to its Rate Schedule A, which has been designated as FERC Electric Tariff Original Volume No. 1. The proposed rider sets forth a formula by which Deseret's rates for electric power for service to certain marginal loads of a retail customer of its member, Garkane Power Association, Inc. (Garkane), will be determined. The formula ties the price that Garkane will pay for electric power to serve the marginal loads of its retail customer to an oil commodity index. The rates that Deseret will recover from Garkane will not exceed the rates set forth in Rate Schedule A over the life of the rider.

Deseret requests a waiver of the Commission's notice requirements for an effective date of October 30, 1998.

The proposed rider is being filed in order to assist Garkane in retaining a retail customer that Garkane is in danger of losing due to fluctuations in oil commodity pricing. Deseret has determined that loss of a such a Member retail load would adversely impact Deseret and all of its members, including Garkane.

Copies of this filing have been served upon Bridger Valley Electric Association, Dixie-Escalante Rural Electric Association, Flowell Electric Association, Garkane Power Association, Inc., Moon Lake Electric Association, Inc., Mount Wheeler Power, Inc.

Comment date: November 19, 1998, in accordance with Standard Paragraph E at the end of this notice.

10. Deseret Generation & Transmission Co-operative

[Docket No. ER99–410–000]

Notice is hereby given that effective the 31st day of December 1998, Rate Schedule FERC No. 3, effective October 16, 1996, and filed with the Federal Energy Regulatory Commission by Deseret Generation & Transmission Co-operative will terminate by its own terms. Notice of the termination has been served on Kanab City, Utah by Deseret Generation & Transmission Co-operative.

Comment date: November 19, 1998, in accordance with Standard Paragraph E at the end of this notice.

11. Cogentrix Energy Power Marketing, Inc.

[Docket No. ER99–411–000]

On October 30, 1998, Cogentrix Energy Power Marketing, Inc. (CEPM), a North Carolina corporation, petitioned the Commission for acceptance of CEPM's First Revised Rate Schedule FERC No. 1, providing for the sale of electricity at market-based rates to affiliates that are not public utilities with a franchised electric service territory. CEPM is a wholly-owned indirect subsidiary of Cogentrix Energy, Inc., a developer, owner, and operator of independent power facilities. CEPM has no affiliates that are public utilities with a franchised electric service territory.

Comment date: November 19, 1998, in accordance with Standard Paragraph E at the end of this notice.

12. Commonwealth Edison Company

[Docket No. ER99–416–000]

Take notice that on October 29, 1998, Commonwealth Edison Company (ComEd), tendered for filing service agreements establishing Associated Electric Cooperative, Inc. (AECI) and Cleco Corporation (CLECO) as customers under ComEd's FERC Electric Market Based-Rate Schedule for power sales. ComEd requests an effective date of August 31, 1998 for the AECI Service Agreement to coincide with the first day of service to AECI under this Service Agreement. ComEd requests an effective date of September 4, 1998 for the CLECO Service Agreement to coincide with the first day of service to CLECO under this Service Agreement. Accordingly, ComEd seeks waiver of the Commission's notice requirements. Copies of the filing were served on ASCI, CLECO and the Illinois Commerce Commission.

Comment date: November 18, 1998, in accordance with Standard Paragraph E at the end of this notice.

13. Virginia Electric and Power Co.

[Docket No. ER99–417–000]

Take notice that on October 30, 1998 Virginia Electric and Power Company tendered for filing four documents relating to the provision of capacity and energy from the John H. Kerr Demand Reservoir and the Philpott Project to preference customers of the Southeastern Power Administration: Contract No. 89–00–1501–1149 between the United States of America, Department of Energy, Acting by and through Southeastern Power Administration and Virginia Electric and Power Company; Service Agreement for Network Integration Transmission Service to Southeastern

Power Administration; Network Operating Agreement Between Virginia Electric and Power Company and Southeastern Power Administration; and Service Agreement for Firm Point-to-Point Transmission Service between Virginia Electric and Power Company and Southeastern Power Administration. Virginia Power requests that the Commission waive its notice requirements to allow the contracts to become effective on November 1, 1998.

Comment date: November 19, 1998, in accordance with Standard Paragraph E at the end of this notice.

14. Central Vermont Public Service Corp.

[Docket No. OA97–196–002]

Take notice that on October 29, 1998, Central Vermont Public Service Corporation (Central Vermont) tendered for filing its compliance filing in the above-captioned docket.

Comment date: November 30, 1998, in accordance with Standard Paragraph E at the end of this notice.

15. Northern States Power Co. (Minnesota) and Northern States Power Co. (Wisconsin)

[Docket No. OA97–406–002]

Take notice that on October 29, 1998, Northern States Power Company (Minnesota) and Northern States Power Company (Wisconsin) (together NSP) filed pursuant to Section 37.4 of the Commission's Regulations proposed revisions to their Standards of Conduct and Implementing Procedures on file with the Commission as required by Order 889, Open Access Same-time Information Systems (Formerly Real-time Information Network) and Standards of Conduct, FERC Stats. & Regs. (Regulations Preambles 1991–1996) ¶ 31,035 (1996), Order 889–A, III FERC Stats. & Regs. (Regulations Preambles) ¶ 31,049, Order 889–B, 81 FERC ¶ 61,253 (1997). The proposed revisions are being submitted to comply with certain changes required by the Commission in its order dated September 29, 1998. Arizona Public Service Company, 84 FERC ¶ 61,320 (1998).

Comment date: November 30, 1998, in accordance with Standard Paragraph E at the end of this notice.

16. Dayton Power and Light

[Docket No. OA97–418–002]

Take notice that on October 29, 1998, The Dayton Power and Light Company (Dayton) tendered for filing an amendment to its Standards of Conduct in compliance with an order issued by the Commission in Docket No. OA97–418–001.

Comment date: November 30, 1998, in accordance with Standard Paragraph E at the end of this notice.

17. Central Maine Power Co.

[Docket No. OA97–422–002]

Take notice that on October 29, 1998, Central Maine Power Company (CMP) tendered for filing, pursuant to Section 37.4(c) of the Code of Federal Regulations, 18 CFR 37.4(c), and the Commission's September 29, 1998 Order issued in the above referenced docket, the revised Standards of Conduct to be followed by CMP personnel.

CMP requests that the Standards of Conduct become effective on October 30, 1998.

CMP served copies of the filing upon the Maine Public Utilities Commission.

Comment date: November 30, 1998, in accordance with Standard Paragraph E at the end of this notice.

18. Virginia Electric & Power Co.

[Docket No. OA97–439–004]

Take notice that on October 29, 1998, Virginia Electric & Power Company filed a letter of notification that, in compliance with Ordering Paragraph N of the Commission's September 29, 1998 order in the above-referenced proceeding, Virginia Electric & Power Company has revised its posting on the OASIS by adding job descriptions of the immediate supervisors of its transmission operations and wholesale merchant units.

Comment date: November 30, 1998, in accordance with Standard Paragraph E at the end of this notice.

19. Maine Electric Power Co.

[Docket No. OA97–462–002]

Take notice that on October 29, 1998, Maine Electric Power Company (MEPCO) tendered for filing, pursuant to Section 37.4(c) of the Code of Federal Regulations, 18 CFR 37.4(c), and the Commission's September 29, 1998 Order issued in the above referenced docket, the revised Standards of Conduct to be followed by MEPCO personnel.

MEPCO requests that the Standards of Conduct become effective on October 30, 1998.

MEPCO served copies of the filing upon the Maine Public Utilities Commission.

Comment date: November 30, 1998, in accordance with Standard Paragraph E at the end of this notice.

20. Bangor Hydro-Electric Co.

[Docket No. OA97–519–002]

Take notice that on October 29, 1998, Bangor Hydro-Electric Company tendered for filing notice that it has posted revised organizational charts and job descriptions on its OASIS.

Comment date: November 30, 1998, in accordance with Standard Paragraph E at the end of this notice.

21. Citizens Utilities Co.

[Docket Nos. OA97–520–002, OA97–520–001, OA97–610–002 and OA97–610–001]

Take notice that on October 29, 1998, Vermont Electric Division (VED) of Citizens Utilities Company (Citizens) tendered for filing in compliance with the Commission's September 29, 1998 order in the above-referenced dockets, revisions to the Standards of Conduct for VED and the revised OASIS pages showing organizational charts and job descriptions.

Comment date: November 30, 1998, in accordance with Standard Paragraph E at the end of this notice.

22. The United Illuminating Co.

[Docket No. OA97–597–002]

Take notice that on October 29, 1998, The United Illuminating Company (UI) tendered for filing revisions to its Policy Implementing the FERC Standards of Conduct (Policy). In these revisions, UI supplements its organizational chart posted on OASIS in accordance with the Commission's Order in *The United Illuminating Co., et. al.*, Docket Nos. OA97–597–001, *et. al.* (Sept. 29, 1998).

UI requests an effective date of October 29, 1998.

Copies of this filing were served upon all persons listed on the official service list compiled by the Secretary in Docket No. OA96–521–000.

Comment date: November 30, 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. 98–30514 Filed 11–13–98; 8:45 am]

BILLING CODE 6717–01–P

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

[Docket No. ER99–184–000, et al.]

Idaho Power Co., et al. and Electric Rate and Corporate Regulation Filings

November 5, 1998.

Take notice that the following filings have been made with the Commission:

1. Idaho Power Company

[Docket No. ER99–184–000]

Take notice that on October 13, 1998, Idaho Power Company (IPC), tendered for filing with the Federal Energy Regulatory Commission a Confirmation Agreement under Idaho Power Company FERC Electric Tariff No. 6, Market Rate Power Sales Tariff, between Idaho Power Company and Washington Water Power Company.

Comment date: November 19, 1998, in accordance with Standard Paragraph E at the end of this notice.

2. Bridgeport Energy, L.L.C.

[Docket No. ER99–390–000]

Take notice that on October 29, 1998, Bridgeport Energy, L.L.C. (Bridgeport) tendered for filing a letter requesting an amended effective date of August 1, 1998, for its Installed Capability Purchase and Sale Agreements under Bridgeport's FERC Electric Tariff, Original Volume No. 1 with Northeast Utilities Service Company and Duke Energy Trading and Marketing, L.L.C.

Comment date: November 18, 1998, in accordance with Standard Paragraph E at the end of this notice.

3. Jersey Central Power & Light Company, Metropolitan Edison Company, and Pennsylvania Electric Company

[Docket No. ER99–391–000]

Take notice that on October 30, 1998, Jersey Central Power & Light Company, Metropolitan Edison Company and Pennsylvania Electric Company (d/b/a GPU Energy), filed an executed Service Agreement between GPU Energy and Baltimore Gas and Electric Company (BGE), dated October 28, 1998. This Service Agreement specifies that BGE has agreed to the rates, terms and conditions of GPU Energy's Market-Based Sales Tariff (Sales Tariff) designated as FERC Electric Rate Schedule, First Revised Volume No. 5. The Sales Tariff allows GPU Energy and BGE to enter into separately scheduled transactions under which GPU Energy will make available for sale, surplus capacity and/or energy.

GPU Energy requests a waiver of the Commission's notice requirements for good cause shown and an effective date of October 28, 1998 for the Service Agreement.

GPU Energy has served copies of the filing on regulatory agencies in New Jersey and Pennsylvania.

Comment date: November 19, 1998, in accordance with Standard Paragraph E at the end of this notice.

4. Jersey Central Power & Light Company, Metropolitan Edison Company, and Pennsylvania Electric Company

[Docket No. ER99–392–000]

Take notice that on October 30, 1998, Jersey Central Power & Light Company, Metropolitan Edison Company and Pennsylvania Electric Company (d/b/a GPU Energy), filed an executed Service Agreement between GPU Energy and Commonwealth Edison Company (CEC), dated October 28, 1998. This Service Agreement specifies that CEC has agreed to the rates, terms and conditions of GPU Energy's Market-Based Sales Tariff (Sales Tariff) designated as FERC Electric Rate Schedule, First Revised Volume No. 5. The Sales Tariff allows GPU Energy and CEC to enter into separately scheduled transactions under which GPU Energy will make available for sale, surplus capacity and/or energy.

GPU Energy requests a waiver of the Commission's notice requirements for good cause shown and an effective date of October 28, 1998 for the Service Agreement.

GPU Energy has served copies of the filing on regulatory agencies in New Jersey and Pennsylvania.

Comment date: November 19, 1998, in accordance with Standard Paragraph E at the end of this notice.

5. Florida Power & Light Company

[Docket No. ER99–393–000]

Take notice that on October 30, 1998, Florida Power & Light Company (FPL) filed a Service Agreement with Jersey Central Power and Light Company, Metropolitan Edison Company and Pennsylvania Electric Company, individually and collectively doing business and referred to as GPU Energy for service pursuant to FPL's Market Based Rates Tariff.

FPL requests that the Service Agreement be made effective on October 5, 1998.

Comment date: November 19, 1998, in accordance with Standard Paragraph E at the end of this notice.

6. Southwestern Public Service Company

[Docket No. ER99–394–000]

Take notice that on October 30, 1998, New Century Services, Inc., on behalf of Southwestern Public Service Company (Southwestern), submitted an executed umbrella service agreement under Southwestern's market-based sales tariff with Illinois Power Company. This umbrella service agreement provides for Southwestern's sale and Illinois Power Company's purchase of capacity and energy at market-based rates pursuant to Southwestern's market-based sales tariff.

Southwestern requests that the Service Agreement become effective on October 30, 1998.

Comment date: November 19, 1998, in accordance with Standard Paragraph E at the end of this notice.

7. Portland General Electric Company

[Docket No. ER99–395–000]

Take notice that on October 30, 1998, Portland General Electric Company (PGE) tendered for filing under PGE's Final Rule pro forma tariff (FERC Electric Tariff Original Volume No. 8, Docket No. OA96–137–000), executed Service Agreements for Short-Term and Non-Firm Point-to-Point Transmission Service with Merchant Energy Group of the Americas, Inc.

Pursuant to 18 CFR 35.11, and the Commission's Order in Docket No. PL93–2–002 issued July 30, 1993, PGE respectfully requests that the Commission grant a waiver of the notice requirements to allow the Service Agreements to become effective October 13, 1998.

A copy of this filing was caused to be served upon Merchant Energy Group of the Americas, Inc. as noted in the filing letter.

Comment date: November 19, 1998, in accordance with Standard Paragraph E at the end of this notice.

8. Illinois Power Company

[Docket No. ER99–399–000]

Take notice that on October 30, 1998, Illinois Power Company (Illinois Power), 500 South 27th Street, Decatur, Illinois 62526, tendered for filing an amendment to the existing firm point-to-point transmission agreements under which Wagner Castings Company is taking transmission service pursuant to

its open access transmission tariff. The agreements are based on the Form of Service Agreement in Illinois Power's tariff.

Illinois Power has requested an effective date of October 1, 1998.

Comment date: November 19, 1998, in accordance with Standard Paragraph E at the end of this notice.

9. Southern California Edison Company

[Docket No. ER99–400–000]

Take notice, that on October 30, 1998, Southern California Edison Company (SCE) tendered for filing a change in rate for scheduling and dispatching services as embodied in SCE's agreements with the following entities:

Entity	FERC rate schedule No.
1. Arizona Electric Power Cooperative	132.23
2. Arizona Public Service Company	348.7
3. California Department of Water Resources	112.54, 113.34, 342.8
4. City of Los Angeles Department of Water and Power	163.33
5. Imperial Irrigation District	268.15
6. Metropolitan Water District of Southern California	292.10
7. M-S-R Public Power Agency	339.8
8. Pacific Gas and Electric Company	256.2, 318.10
9. PacifiCorp	275.13
10. Southern California Water Company	349.3

SCE requests that the revised rate for these services be made effective January 1, 1999.

Copies of this filing were served upon the Public Utilities Commission of the State of California and all interested parties.

Comment date: November 19, 1998, in accordance with Standard Paragraph E at the end of this notice.

10. Public Service Electric and Gas Company

[Docket No. ER99–401–000]

Take notice that on October 30, 1998, Public Service Electric and Gas Company (PSE&G) of Newark, New Jersey tendered for filing an agreement for the sale of capacity and energy to Delaware Municipal Electric Corporation (DMEC) pursuant to the PSE&G Wholesale Power Market Based Sales Tariff, presently on file with the Commission.

PSE&G further requests waiver of the Commission's regulations and make the agreement effective as of September 30, 1998.

Copies of the filing have been served upon DMEC and the New Jersey Board of Public Utilities.

Comment date: November 19, 1998, in accordance with Standard Paragraph E at the end of this notice.

11. Public Service Electric and Gas Company

[Docket No. ER99–402–000]

Take notice that on October 30, 1998, Public Service Electric and Gas Company (PSE&G) of Newark, New Jersey tendered for filing an agreement for the sale of capacity and energy to Merchant Energy Group of the Americas, Inc. (MEGA) pursuant to the PSE&G Wholesale Power Market Based Sales Tariff, presently on file with the Commission.

PSE&G further requests waiver of the Commission's regulations and make the agreement effective as of September 30, 1998.

Copies of the filing have been served upon MEGA and the New Jersey Board of Public Utilities.

Comment date: November 19, 1998, in accordance with Standard Paragraph E at the end of this notice.

12. Public Service Electric and Gas Company

[Docket No. ER99–403–000]

Take notice that on October 30, 1998, Public Service Electric and Gas Company (PSE&G) of Newark, New Jersey tendered for filing an agreement for the sale of capacity and energy to Central Hudson Enterprises Corporation (CHEC) pursuant to the PSE&G Wholesale Power Market Based Sales Tariff, presently on file with the Commission.

PSE&G further requests waiver of the Commission's regulations and make the agreement effective as of September 30, 1998.

Copies of the filing have been served upon CHEC and the New Jersey Board of Public Utilities.

Comment date: November 19, 1998, in accordance with Standard Paragraph E at the end of this notice.

13. Public Service Electric and Gas Company

[Docket No. ER99–404–000]

Take notice that on October 30, 1998, Public Service Electric and Gas Company (PSE&G) of Newark, New Jersey tendered for filing an agreement for the sale of capacity and energy to PECO Energy Company (PECO) pursuant to the PSE&G Wholesale Power Market Based Sales Tariff, presently on file with the Commission.

PSE&G further requests waiver of the Commission's regulations and make the agreement effective as of September 30, 1998.

Copies of the filing have been served upon PECO and the New Jersey Board of Public Utilities.

Comment date: November 19, 1998, in accordance with Standard Paragraph E at the end of this notice.

14. MidAmerican Energy Company

[Docket No. ER99–405–000]

Take notice that on October 30, 1998, MidAmerican Energy Company tendered for filing a proposed change in its Rate Schedule for Power Sales, FERC Electric Rate Schedule, Original Volume No. 5. The proposed change consists of certain reused tariff sheets consistent with the quarterly filing requirement.

MidAmerican states that it is submitting these tariff sheets for the purpose of complying with the requirements set forth in *Southern Company Services, Inc.*, 75 FERC ¶ 61,130 (1996), relating to quarterly filings by public utilities of summaries of short-term market-based power transactions. The tariff sheets contain summaries of such transactions under the Rate Schedule for Power Sales for the applicable quarter.

MidAmerican proposes an effective date of the first day of the applicable quarter for the rate schedule change. Accordingly, MidAmerican requests a waiver of the 60-day notice requirement for this filing. MidAmerican states that this date is consistent with the requirements of the *Southern Company Services, Inc.* order and the effective

date authorized in Docket No. ER96–2459–000.

Copies of the filing were served upon MidAmerican's customers under the Rate Schedule for Power Sales and the Iowa Utilities Board, the Illinois Commerce Commission and the South Dakota Public Utilities Commission.

Comment date: November 19, 1998, in accordance with Standard Paragraph E at the end of this notice.

15. New Century Services, Inc.

[Docket No. ER99–406–000]

Take notice that on October 30, 1998, New Century Services, Inc. on behalf of Cheyenne Light, Fuel and Power Company, Public Service Company of Colorado, and Southwestern Public Service Company (collectively Companies) tendered for filing a Service Agreement under their Joint Open Access Transmission Service Tariff for Non-Firm Point-to-Point Transmission Service between the Companies and PacifiCorp Power Marketing, Inc.

The Companies request that the Agreement be made effective on October 22, 1998.

Comment date: November 19, 1998, in accordance with Standard Paragraph E at the end of this notice.

16. Idaho Power Company

[Docket No. ER99–413–000]

Take notice that on October 30, 1998, Idaho Power Company tendered for filing the Agreement for Load Following Services Between the Montana Power Company and Idaho Power Company.

Idaho Power requests that the filing be made effective September 30, 1998.

Comment date: November 19, 1998, in accordance with Standard Paragraph E at the end of this notice.

17. Midwest Independent Transmission System Operator, Inc.

[Docket No. ER99–414–000]

Take notice that on October 30, 1998, the Midwest ISO Participants submitted Amendment No. 1 to the Midwest ISO Agreement. The Amendment clarifies the start-up costs for which reimbursement is required.

The filing has been served on all parties in Docket Nos. ER98–1438 and EC98–24–000.

Comment date: November 16, 1998, in accordance with Standard Paragraph E at the end of this notice.

18. PJM Interconnection, L.L.C.

[Docket No. ER99–412–000]

Take notice that on October 30, 1998, PJM Interconnection, L.L.C. (PJM), tendered for filing seven executed service agreements for firm point-to-point transmission service and five executed service agreements for non-firm point-to-point transmission service.

The effective dates of the firm point-to-point transmission service agreements are: GPU Advanced Resources—August 4, 1998; DTE Edison America, Inc., DTE Energy Trading and Ensearch Energy Services, Inc.—August 6, 1998; Koch Energy Trading, Inc.—October 1, 1998; CSW Energy Services, Inc.—October 2, 1998; and Statoil Energy Trading, Inc.—October 7, 1998.

The effective dates for the non-firm point-to-point transmission service agreements are: GPU Advanced Resources—August 4, 1998; DTE Edison America, Inc. and Ensearch Energy Services, Inc.—August 6, 1998; CSW Energy Services, Inc.—October 2, 1998; and Statoil Energy Trading, Inc.—October 7, 1998.

A copy of this filing has been served on each of the transmission customers that are parties to the service agreements.

Comment date: November 19, 1998, in accordance with Standard Paragraph E at the end of this notice.

19. Commonwealth Chesapeake Company, L.L.C.

[Docket No. ER99–415–000

Take notice that on October 30, 1998, Commonwealth Chesapeake Company, L.L.C. tendered for filing pursuant to Rules 205 and 207, a petition for blanket waivers and blanket approvals under various regulations of the Commission and for an order accepting its FERC Electric Rate Schedule No. 1 to be effective on the in-service date of its proposed generating facility.

Commonwealth Chesapeake Company L.L.C. intends to sell wholesale electric capacity and energy, and it proposes to make such sales subject to rates, terms, and conditions to be mutually agreed to with the purchasing party. Rate Schedule No. 1 provides for the sale of capacity and energy at agreed prices.

Comment date: November 19, 1998, in accordance with Standard Paragraph E at the end of this notice.

20. Louisville Gas and Electric Company

[Docket No. ES99–8–000]

Take notice that on October 29, 1998, Louisville Gas and Electric Company filed an application with the Federal Energy Regulatory Commission seeking authority, pursuant to Section 204 of the Federal Power Act, to issue not more than $300,000,000 of short-term debt on or before November 30, 2000 with a final maturity no later than November 30, 2001.

Comment date: November 20, 1998, in accordance with Standard Paragraph E at the end of this notice.

21. Kentucky Utilities Company

[Docket No. ES99–9–000]

Take notice that on October 29, 1998, Kentucky Utilities Company filed an application with the Federal Energy Regulatory Commission seeking authority, pursuant to Section 204 of the Federal Power Act, to issue not more than $150,000,000 of short-term debt on or before November 30, 2000 with a final maturity no later than November 30, 2001.

Comment date: November 20, 1998, in accordance with Standard Paragraph E at the end of this notice.

22. Kevin Sagara

[Docket No. ID–3251–000]

Take notice that on October 30, 1998, Kevin Sagara (Applicant) tendered for filing with the Federal Energy Regulatory Commission (Commission) an application under Section 305(b) of the Federal Power Act to hold the following positions:

Assistant Secretary, El Dorado Energy, LLC

Assistant Secretary, Enova Energy, Inc.

Comment date: November 30, 1998, in accordance with Standard Paragraph E at the end of this notice.

23. Bob Thomas

[Docket No. ID–3252–000]

Take notice that on October 30, 1998, Bob Thomas filed an application for authorization under Section 305(b) of the Federal Power Act to hold the following positions:

Director, Treasurer, People's Electric Cooperative

Director, Secretary/Treasurer, People's Electric Corporation

Director, Western Farmers Electric Cooperative

Comment date: November 30, 1998, in accordance with Standard Paragraph E at the end of this notice.

24. S.F. Howe

[Docket No. ID–3253–000]

Take notice that on October 30, 1998, S.F. Howe filed an application for authorization under Section 305(b) of the Federal Power Act to hold the following positions:

Director, Secretary, People's Electric Cooperative

Director, President, People's Electric Cooperative

Comment date: November 30, 1998, in accordance with Standard Paragraph E at the end of this notice.

25. R. J. Ethridge

[Docket No. ID–3254–000]

Take notice that on October 30, 1998, R. J. Ethridge filed an application for authorization under Section 305(b) of the Federal Power Act to hold the following positions:

Executive President and General Manager, People's Electric Cooperative
Director, CoBank

Comment date: November 30, 1998, in accordance with Standard Paragraph E at the end of this notice.

Standard Paragraph

E. Any person desiring to be heard or to protest said filing should file a motion to intervene or protest with the Federal Energy Regulatory Commission, 888 First Street, N.E., Washington, D.C. 20426, in accordance with Rules 211 and 214 of the Commission's Rules of Practice and Procedure (18 CFR 385.211 and 18 CFR 385.214). All such motions or protests should be filed on or before the comment date. Protests will be considered by the Commission in determining the appropriate action to be taken, but will not serve to make protestants parties to the proceeding. Any person wishing to become a party must file a motion to intervene. Copies of these filings are on file with the Commission and are available for public inspection.

David P. Boergers,

Secretary.

[FR Doc. 98–30527 Filed 11–13–98; 8:45 am]

BILLING CODE 6717–01–P

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

[Project No. 1494–140]

Grand River Dam Authority; Notice of Availability of Final Environmental Assessment

November 9, 1998.

A final environmental assessment (FEA) is available for public review. The FEA analyzes the environmental impacts of an application filed by Grand River Dam Authority (licensee) to permit Paul Stanten d/b/a Hanger 51-Shangri-La Airpark, (permittee) to construct new marina docking facilities on Isles' End Cove of Grand Lake, the project reservoir. The permittee requests permission to construct 6 floating boat docks containing a total of 146 boat-slips. The marina would be located on the northwest shore of the cove's mouth. In the FEA, staff concludes that approval of the licensee's proposal would not constitute a major Federal action significantly affecting the quality of the human environment. The Pensacola Project is on the Grand River, in Craig, Delaware, Mayes, and Ottawa Counties, Oklahoma.

The FEA was written by staff in the Office of Hydropower Licensing, Federal Energy Regulatory Commission. Copies of the FEA can be obtained by calling the Commission's Public Reference Room at (202) 208–1371.

Linwood A. Watson, Jr.,

Acting Secretary.

[FR Doc. 98–30528 Filed 11–13–98; 8:45 am]

BILLING CODE 6717–01–M

ENVIRONMENTAL PROTECTION AGENCY

[FRL–6189–1]

Agency Information Collection Activities: Second Submission for OMB Review; Comment Request; Collection of Data from Industries with Cooling Water Intake Structures (EPA ICR No. 1828.02)

AGENCY: Environmental Protection Agency (EPA).

ACTION: Notice.

SUMMARY: In accordance with the Paperwork Reduction Act (''PRA'') (44 U.S.C. 3501, *et seq.*), this document announces the resubmission of the following Information Collection Request (ICR) to the Office of Management and Budget (OMB) for review and approval: Industry Screener Questionnaire: Phase I Cooling Water Intake Structures (EPA ICR number 1828.02). This resubmission responds to OMB's disapproval on September 21, 1998 of EPA ICR No. 1828.01, a prior version of this Information Collection Request. In its statement disapproving ICR number 1828.01, OMB directed EPA, among other things, to document that the information to be collected is necessary for the proper performance of the functions of the Agency, including the practical utility of the information being collected. The Disapproval Statement also raised issues concerning the burdensomeness of the screener questionnaire itself. As explained below, EPA believes that this resubmission addresses OMB's objections to the first ICR. EPA has revised the screener questionnaire since its first submission to OMB, resulting in a 40 hour reduction (from 50 to 10 hours) in the estimated time required to complete the screener. The ICR describes the information collection activities and their expected need (including practical utility), burden and cost. It also describes the collection methodology that EPA will use to distribute the data collection instrument and includes the revised data collection instrument.

DATES: Comments must be submitted on or before December 16, 1998.

FOR FURTHER INFORMATION CONTACT: Contact Sandy Farmer by phone at (202) 260–2740, e-mail at farmer.sandy@epamail.epa.gov or download off the Internet at http://www.epa.gov/icr. In all requests, refer to EPA ICR No. 1828.02. The References cited in the ICR are located in the Water Docket under docket number W–98–25-I. The references are available for inspection from 9 to 4 p.m., Monday through Friday, excluding legal holidays at the Water Docket, EB 57, USEPA Headquarters, 401 M., Washington, D.C. For access to docket materials, please call (202) 260–3027 to schedule an appointment.

SUPPLEMENTARY INFORMATION:

Title: Industry Screener Questionnaire: Phase I Cooling Water Intake Structures (EPA ICR No. 1828.02). This is a new collection.

Abstract: As EPA explained in a **Federal Register** notice on May 8, 1998, announcing the submission of ICR No. 1828.01 (63 FR 25473), the Agency is currently developing regulations under section 316(b) of the Clean Water Act (''CWA''), 33 U.S.C. section 1326(b). Section 316(b) provides that any standard established pursuant to sections 301 or 306 of the Clean Water Act and applicable to a point source shall require that the location, design, construction, and capacity of cooling water intake structures reflect the best technology available (BTA) for minimizing adverse environmental impact. The intent is to minimize the impingement and entrainment of fish and other aquatic organisms as they are drawn into a facility's cooling water intake. A consent decree in a lawsuit against the Agency brought by a coalition of environmental groups establishes a seven year schedule for EPA to propose and take final action with respect to regulations addressing impacts from cooling water intake structures. *Cronin* v. *Reilly,* United States District Court for the Southern District of New York, 93 Civ. 0314 (AGS)(Consent Decree entered October 10, 1995).

This resubmission addresses questions raised by OMB regarding the compliance of ICR No. 1828.01 with the requirements of the PRA and its implementing regulations. In its

Disapproval Statement, OMB stated that EPA had not established that the information to be collected is necessary for the proper performance of the Agency's functions, including that it will have practical utility, as required by 5 CFR 1320.9(a). OMB directed EPA to provide evidence that: (1) ''significant adverse environmental impacts are occurring as a result of cooling water intake structures;'' (2) ''point sources are not currently using best technology available to minimize such impacts;'' and (3) ''a national regulatory approach of the type this information collection is designed to support would be more effective at implementing the statutory requirements than the current approach relying on site specific information, best professional judgement of NPDES permit writers, and state regulations tailored to meet local conditions and concerns.''

As detailed in section 2(b) of the ICR, the resubmission provides further information regarding adverse environmental impacts from cooling water intake structures, more fully explains EPA's need for information on the types of technologies that may qualify as BTA, and provides further documentation of the need for a national regulatory approach. EPA is specifically requesting comment on the practical utility of the information being collected in the revised screener questionnaire.

The revised screener questionnaire contains scoping and stratifying questions. EPA intends to use data from the scoping questions to determine what facilities are potentially subject to section 316(b). EPA intends to use data from stratifying questions to support the development of the sample frame for a detailed industry questionnaire that will follow the screener. The screener questionnaire collects information on such topics as cooling water use within industry groups; cooling water intake structure location, design configurations, construction, and capacity; and types of intake water sources. EPA also is collecting some basic economic data at the facility and firm level (e.g., total revenue, number of employees) that will enable the Agency to ensure representation of a broad variety of facility and firm sizes in the sample frame for the detailed questionnaire. The detailed questionnaire will seek more detailed information on the use of cooling water by individual facilities and other important engineering and environmental data.

EPA has the authority to collect this information under section 308 of the CWA (33 U.S.C. section 1318). All recipients of the screener questionnaire are required to complete and return the questionnaire to EPA. The survey instrument will be mailed after OMB approves the ICR. An agency may not conduct or sponsor, and a person is not required to respond to, a collection of information unless it displays a currently valid OMB control number. The OMB control numbers for EPA's regulations are listed in 40 CFR part 9 and 48 CFR Chapter 15. The **Federal Register** document required under 5 CFR 1320.8(d), soliciting comments on the screener questionnaire under ICR No. 1828.01 was published on September 18, 1997 (62 FR 49007). EPA received six sets of comments (75 comments in all). EPA's response to these comments are presented in Attachment 5 of the ICR. A notice announcing that EPA had sent the ICR to OMB for review and approval was published on May 8, 1998 (63 FR 25473). EPA only received one comment letter. The letter came from a public utility; however, the request did not seek information from public utilities.

Burden Statement: The annual public reporting and record keeping burden for this collection of information is estimated to average 10 hours per response. EPA has reduced the burden of the screener questionnaire to 10 hours from 50 hours by significantly reducing the scope and number of questions in the screener. More specifically, EPA has modified or removed all questions except those needed to help EPA determine the subset of in-scope facilities that will receive the detailed industry questionnaire in the future. In particular, EPA has reduced the burden of the question requesting cooling water flow rates (Question 11) by limiting the amount of data sought to one representative year, instead of five years, and by allowing estimates based on best engineering judgement where exact data are not readily available. Question 11 was considered to be the most burdensome question in the screener questionnaire. EPA has included definitions of key terms in the body of the questionnaire and also has included a glossary at the end of the questionnaire. This lengthens the questionnaire considerably, but also helps ensure that the questions are clear and are interpreted consistently by respondents. EPA is specifically seeking comment on whether the inclusion of these definitions both within the text of the questionnaire and in a glossary is helpful or adds to the screener's burden. 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.

Respondents/Affected Entities: Nonutility Power Producers (SIC 49 and all other Industrial Self-Generators), Paper and Allied Products (SIC 2611, 2621, and 2631), Chemical and Allied Products (SIC 28 except 2895, 2893, 2851, and 2879), Petroleum and Coal Products (SIC 2911), and Primary Metals (SIC 3312, 3315, 3316, 3317, 3353, 3363, 3365, and 3366).

Estimated number of respondents: 2,600.

Frequency of Response: This is a one time collection.

Estimated total Annual Hour Burden: 25,870 hours.

Estimated total annualized cost burden: $8,000.

Because the screener questionnaire is now shorter and less burdensome, EPA has shortened the response time from 60 to 45 days.

Send comments on the Agency's need for this information, the accuracy of the burden estimates, and any suggested methods for minimizing respondent burden (including the use of automated collection techniques) to the following addresses. Please refer to EPA ICR No. 1828.02 in any correspondence.

Ms. Sandy Farmer, U.S. Environmental Protection Agency, OP Regulatory Information Division (2137), 401 M Street, SW, Washington, DC 20460;

and

Office of Information and Regulatory Affairs, Office of Management and Budget, Attention: Desk Officer for EPA, 725 17th Street, NW, Washington, DC 20503.

Dated: November 10, 1998.

Richard T. Westlund,

Acting Director, Regulatory Information Division.

[FR Doc. 98–30598 Filed 11–13–98; 8:45 am]

BILLING CODE 6560–50–P

ENVIRONMENTAL PROTECTION AGENCY

[ER–FRL–5496–9]

Environmental Impact Statements and Regulations; Availability of EPA Comments

Availability of EPA comments prepared October 26, 1998 Through October 30, 1998 pursuant to the Environmental Review Process (ERP), under Section 309 of the Clean Air Act and Section 102(2)(c) of the National Environmental Policy Act as amended. Requests for copies of EPA comments can be directed to the Office of Federal Activities at (202) 564–7167. An explanation of the ratings assigned to draft environmental impact statements (EISs) was published in FR dated April 10, 1998 (62 FR 17856).

Draft EISs

ERP No. D-AFS-L65307-WA Rating *LO, Sand Ecosystem Restoration Project, Implementation, Leavenworth Range District, Wenatchee National Forest, Chelan County, WA.

SUMMARY: EPA used a screening tool to conduct a limited review of the action. Based upon the screen, EPA does not foresee having any environmetal objections to the proposed project. Therefore, EPA will not be conducting a detailed review.

ERP No. D–BLM–K67048–AZ Rating EO2, Yarnell Gold Mining Project, Construction and Operation an Open-pit Gold Mine and Ore Processing Facility, Yavapai County, AZ.

SUMMARY: EPA expressed environmental objections due to potential significant adverse impacts to air quality, noise, and the stability of the proposed North Waste Rock Dump (NWRD). PM10 emissions from the project would result in concentrations far exceeding the maximum allowable increase over the baseline concentration (increment) for PM10. EPA recommended control measures and monitoring at the mine. EPA also recommended that the NWRD be eliminated from the project and that the BLM select Alternative 3 as the preferred alternative. EPA recommended that additional information be provided in the FEIS regarding geochemistry; waste rock sampling and handling; monitoring; reclamation bonding; socioeconomic impacts; and mitigation for impacts to air and water quality and nosie and blasting impacts.

ERP No. DS–AFS–L67004–ID Rating EO2, Thompson Creek Mine (TCM), Updated Information, Prevent and/or Control Potential Acid-Rock Drainage, Plan of Operations Approval, Custer County, ID.

SUMMARY: EPA expressed environmental objections based on the narrow scope of the alternatives analysis and precicted adverse water quality effects. EPA requested additional information regarding embankment stability and uncertainties associated with the modeling predictions.

ERP No. DS–BLM–J03011–00 Rating LO, TransColorado Gas Pipeline Transmission Project, Updated Resource Information, Construction, Operation and Maintenance, COE Section 404 and 10 Permits, Right-of-Way Grants and Special Use Permit, La Plata, Delta, Dolores, Garfield, Mesa, Montezuma, Montrose, Rio Blanco, San Miguel Counties, CO and San Juan County, NM.

SUMMARY: EPA expressed lack of environemental objections.

ERP No. D2–BLM–J65212–WY Rating EC2, Newcastle Resource Management Plan, Implementation, Updated Information, Evaluates Alternatives for the Use of Public/Federal Lands and Resources in Portions of Wyoming, Crook, Niobrara and Weston Counties, WY.

SUMMARY: EPA expressed environmental concerns about potential impacts to air quality, water quality and habitat. EPA suggested the Final EIS include analysis of the environmental impacts for all alternatives.

Final EISs

ERP No. F–DOI–K40222–TT. Palau Compact Road Construction, Implementation, Funding, Republic of Palau, Babeldaob Island, Trust Territory of the Pacific Islands.

SUMMARY: EPA continued to express environmental concerns regarding the potential direct and long term impacts of the Palau Compact Road. EPA supported the position of the US Department of the Interior's, that road construction should not begin until long term protection of environmental mitigation sites has been approved by the Republic of Palau.

Dated: November 10, 1998.

William D. Dickerson,

Director, NEPA Compliance Division, Office of Federal Activities.

[FR Doc. 98–30575 Filed 11–13–98; 8:45 am]

BILLING CODE 6560–50–U

ENVIRONMENTAL PROTECTION AGENCY

[ER–FRL–5496–8]

Environmental Impact Statements; Notice of Availability

Responsible Agency: Office of Federal Activities, General Information (202) 564–7167 OR (202) 564–7153.

Weekly receipt of Environmental Impact Statements Filed November 2, 1998 Through November 6, 1998 Pursuant to 40 CFR 1506.9.

EIS No. 980452, Legislative Draft EIS,USA, AK, Alaska Army Lands Withdrawal Renewal for Fort Wainwright and Fort Greely West Training Area, Approval of Permits and Licenses, City of Fairbanks, City of North Pole and City of Delta Junction, North Star Borough, AK, *Due:* February 7, 1999, *Contact:* Anthony Rekas (703) 614–4991.

EIS No. 980453, Draft EIS, NPS, TX, Lyndon B. Johnson National Historical Park, Package 227, General Management Plan, Implementation, Blanco and Gillespie Counties, TX, *Due:* December 28, 1998, Contact: Leslie Starhart (303) 969–2719.

EIS No. 980455, Draft EIS, NPS, NB, SD, Missouri National Recreational River, General Management Plan, Implementation, Cedar and Dixon Counties, NB and Yakton, Clay and Union Counties, SD , *Due:* January 12, 1999, *Contact:* Michael Madell (402) 221–3493.

EIS No. 980456, Draft EIS, FHW, UT, Southeast Highland Drive, Improvements from 9400 South to I–15 Sandy City and Drape City, Salt Lake County, UT, *Due:* January 11, 1999, *Contact:* Tom Allen (801) 963–0182.

EIS No. 980457, Draft EIS, BLM, UT, Grand Staircase-Escalante National Monument Management Plan, Implementation, Cedar City, UT, *Due:* February 12, 1999, *Contact:* Peter Wilkins (435) 865–5100.

EIS No. 980458, Final EIS, GSA, NY, Governors Island Disposition of Surplus Federal Real Property, Implementation, Upper New York Bay, NY, *Due:* December 14, 1998, *Contact:* Peter A. Sneed (212) 264–3581.

EIS No. 980459, Draft EIS, USA, ND, Maple River Dam and Reservoir, Construction and Operation, Flood Control, Cass County Joint Water Resource District, Cass County, ND, *Due:* December 28, 1998, *Contact:* Col. Chris Conrad (703) 695–7824.

EIS No. 980460, Draft EIS, AFS, MT, Clancy-Unionville Vegetation Manipulation and Travel Management Project, Implementation, Helena National Forest, Helena Ranger District,

Lewis and Clark and Jefferson Counties, MT, *Due:* December 28, 1998, *Contact:* Dave Turner (406) 449–5490.

EIS No. 980461, Draft Supplement, UAF, NY, Griffiss Air Force Base (AFB) Disposal and Reuse Implementation, Updated Information, Oneida County, NY, *Due:* December 28, 1998, *Contact:* Jonathan D. Farthing (210) 536–2787.

Amended Notices

EIS No. 980438, Draft Supplement, FHW, CA, CA–1 Improvement, Carmel River Bridge to CA–1/Pacific Grove (Route 68) Interchange, Updated and Additional Information, Funding Section 404 Permit, Monterey County, CA, *Due:* December 21, 1998, *Contact:* John R. Schultz (916) 498–5041. The notice for the above DSEIS should have appeared in the 11/06/98 **Federal Register**. The 45-day Comment Period is Calculated from 11/06/98.

Dated: November 10, 1998.

William D. Dickerson,

Director, NEPA Compliance Division, Office of Federal Activities.

[FR Doc. 98–30576 Filed 11–13–98; 8:45 am]

BILLING CODE 6560–50–U

ENVIRONMENTAL PROTECTION AGENCY

[FRL–6189–2]

Gulf of Mexico Program Policy Review Board Meeting

AGENCY: Environmental Protection Agency (EPA).

ACTION: Notice of Policy Review Board meeting.

SUMMARY: The Gulf of Mexico Program will hold its Policy Review Board Meeting.

DATES: The meeting will be held on December 10 and 11, 1998.

ADDRESSES: The meeting site will be the Magnolia Plantation Hotel, 16391 Robinson Road, Gulfport, MS; telephone (601) 832–8400.

FOR FURTHER INFORMATION CONTACT: James D. Giattina, Director, Gulf of Mexico Program Office, Building 1103, Room 202, Stennis Space Center, MS 39529–6000 at (228) 688–1172.

SUPPLEMENTARY INFORMATION: The meeting is from 1:00 p.m. until 5:00 p.m. on December 10 and from 8:30 a.m. until 12:00 p.m. on December 11. Agenda items will include a Guiding Policies presentation and discussion, a joint Modeling Program presentation, and a Nature Conservancy/Gulf of Mexico Program/National Oceanic and Atmospheric Administration Joint Marine Habitat Initiative presentation. The meeting is open to the public.

James D. Giattina,

Director, Gulf of Mexico Program Office.

[FR Doc. 98–30600 Filed 11–13–98; 8:45 am]

BILLING CODE 6560–50–P

ENVIRONMENTAL PROTECTION AGENCY

[FRL–6189–3]

Gulf of Mexico Program Public Health Focus Team Meeting

AGENCY: Environmental Protection Agency (EPA).

ACTION: Notice of Public Health Focus Team meeting.

SUMMARY: The Gulf of Mexico Program will hold its Public Health Focus Team Meeting.

DATES: The meeting will be on December 8, 9, and 10, 1998.

ADDRESSES: The meeting site will be the River House Conference Facility, Stennis Space Center, MS; telephone (228) 688–7618.

FOR FURTHER INFORMATION CONTACT: James D. Giattina, Director, Gulf of Mexico Program Office, Building 1103, Room 202, Stennis Space Center, MS 39529–6000 at (228) 688–1172.

SUPPLEMENTARY INFORMATION: The meeting is from 1:00 p.m. until 5:05 p.m. on December 8, from 8:00 a.m. until 5:00 p.m. on December 9, and from 8:00 a.m. until 12:00 p.m. on December 10. Agenda items will include: Focus Team By-Laws review, Selection of Focus Team Co-Chairs, Finalization of the Operational Performance Plan, Review of assessment framework for selection of areas to be targeted Gulf-wide for sewage pollution abatement to shellfish growing waters, and Informational Presentations on proposals, on-going projects, and other topics. The meeting is open to the public.

James D. Giattina,

Director, Gulf of Mexico Program Office.

[FR Doc. 98–30599 Filed 11–13–98; 8:45 am]

BILLING CODE 6560–50–P

FEDERAL COMMUNICATIONS COMMISSION

[Report No. AUC–98–21–C (Auction No. 21); DA 98–2246]

Wireless Telecommunications Bureau Postpones December 15, 1998 Auction Date for 528 Multilateration Location and Monitoring Service Licensees; Commencement of the Auction Postponed to February 23, 1999

AGENCY: Federal Communications Commission.

ACTION: Notice.

SUMMARY: In a letter dated October 22, 1998, to the Wireless Telecommunications Bureau, MicroTrax™ requested a temporary delay of the Location and Monitoring Service auction. On October 23, 1998, the Wireless Telecommunications Bureau released a Public Notice seeking comment on MicroTrax's request for temporary delay. By this Public Notice, the Bureau postpones the commencement of the Location and Monitoring Service auction.

DATES: Commencement of the Location and Monitoring Service auction is scheduled for February 23, 1999.

FOR FURTHER INFORMATION CONTACT: Kenneth Burnley, Auctions and Industry Analysis Division, Wireless Telecommunications Bureau, at (202) 418–0660; Kathryn Garland, Operations at (717) 338–2801; Bob Reagle, Operations at (202) 418–0660.

SUPPLEMENTARY INFORMATION: The following is a summary of a Public Notice released by the Wireless Telecommunications Bureau on November 10, 1998. The complete text of this Public Notice is available in its entirety for inspection and copying during normal business hours in the Wireless Telecommunications Bureau Reference Center, 2025 M Street, N.W., Room 5608, Washington, D.C., 20554, and also may be retrieved from the FCC World Wide Web Auctions site at http://www.fcc.gov/wtb/auctions.

Synopsis of the Public Notice

1. In a letter dated October 22, 1998, to the Wireless Telecommunications Bureau (''Bureau''), MicroTrax™ (''MicroTrax'') requested a temporary delay of the Location and Monitoring Service (''LMS'') auction. On October 23, 1998, the Bureau released a Public Notice seeking comment on MicroTrax's request for temporary delay of the auction. *See* ''Wireless Telecommunications Bureau Seeks Comment on Request for Stay of Location and Monitoring Service

Auction; Comment Sought on Request for Temporary Delay from MicroTrax,'' *Public Notice*, DA 98–2144 (rel. October 23, 1998), 63 FR 57688 (October 28, 1998) (''*LMS Stay Public Notice*''). The Bureau received nine comments in response to the *LMS Stay Public Notice.*

2. MicroTrax, and other commenters, specifically note that information on Federal usage of the 902–928 MHz band has not been released by the National Telecommunications and Information Administration (''NTIA''). Pursuant to authority delegated by 47 CFR 0.131, the Bureau will postpone the commencement of the LMS auction to give potential bidders a reasonable opportunity to consider deployment and technical information that NTIA is currently compiling regarding government primary users occupying the 902–928 MHz band. Commencement of the LMS auction is now scheduled for February 23, 1999.

3. In light of this action, any applications manually filed to date will be returned. However, the window for filing the FCC Form 175 will remain open until 5:30 p.m. ET on January 25, 1999. The following critical dates now apply to the rescheduled LMS auction:

Pre-Auction Deadlines:

- Short Form Application (FCC Form 175)—January 25, 1999; 5:30 p.m. ET.
- Upfront Payments (via wire transfer)—February 8, 1999; 6:00 p.m. ET.
- Auction—February 23, 1999.

A subsequent Public Notice will be released announcing a complete list of revised pre-auction deadlines.

Federal Communications Commission.

Amy Zoslov,

Chief, Auctions and Industry Analysis Division, Wireless Telecommunications Bureau.

[FR Doc. 98–30639 Filed 11–13–98; 8:45 am]

BILLING CODE 6712–01–P

FEDERAL DEPOSIT INSURANCE CORPORATION

Sunshine Act Meeting

Pursuant to the provisions of the ''Government in the Sunshine Act'' (5 U.S.C. 552b), notice is hereby given that the Federal Deposit Insurance Corporation's Board of Directors will meet in open session at 10:00 a.m. on Tuesday, November 17, 1998, to consider the following matters:

Summary Agenda: No substantive discussion of the following items is anticipated. These matters will be resolved with a single vote unless a member of the Board of Directors requests that an item be moved to the discussion agenda.

Disposition of minutes of previous Board of Directors' meetings.

Reports of actions taken pursuant to authority delegated by the Board of Directors.

Memorandum re: Budget Variance Summary Report for the Nine Months Ending September 30, 1998.

Discussion Agenda: Memorandum and resolution re: Final Statement of Policy for Section 19 of the Federal Deposit Insurance Act.

The meeting will be held in the Board Room on the sixth floor of the FDIC Building located at 550—17th Street, N.W., Washington, DC.

The FDIC will provide attendees with auxiliary aids (e.g., sign language interpretation) required for this meeting. Those attendees needing such assistance should call (202) 416–2449 (Voice); (202) 416–2004 (TTY), to make necessary arrangements.

Requests for further information concerning the meeting may be directed to Mr. Robert E. Feldman, Executive Secretary of the Corporation, at (202) 898–6757.

Dated: November 10, 1998.

Federal Deposit Insurance Corporation.

Robert E. Feldman,

Executive Secretary.

[FR Doc. 98–30655 Filed 11–12–98; 8:45 am]

BILLING CODE 6714–01–M

FEDERAL MARITIME COMMISSION

Ocean Freight Forwarder License Applicants

Notice is hereby given that the following applicants have filed with the Federal Maritime Commission applications for licenses as ocean freight forwarders pursuant to section 19 of the Shipping Act of 1984 (46 U.S.C. app. 1718 and 46 CFR part 510).

Persons knowing of any reason why any of the following applicants should not receive a license are requested to contact the Office of Freight Forwarders, Federal Maritime Commission, Washington, D.C. 20573.

Unlimited Express Corporation, 149–15 177th Street, 2nd Floor, Jamaica, NY 11434, Officer: Danny Chi-Shiung Yin, Managing Director

Universal Freight Forwarders, Inc., 8225 N.W. 80th Street, Miami, FL 33166, Officers: Luz M. Rios, President, Matilde Portela, Vice President

Southern Cross Shipping Co., 2200 Severn Avenue #Q–105, Metairie, LA 70001, Brian Leslie Scheele, Sole Proprietor

Dated: November 9, 1998.

Joseph C. Polking,

Secretary.

[FR Doc. 98–30485 Filed 11–13–98; 8:45 am]

BILLING CODE 6730–01–M

FEDERAL TRADE COMMISSION

Agency Information Collection Activities; Proposed Collection; Comment Request; Extension

AGENCY: Federal Trade Commission.

ACTION: Notice.

SUMMARY: The proposed information collection requirements described below will be submitted to the Office of Management and Budget (OMB) for review, as required by the Paperwork Reduction Act. The Federal Trade Commission (FTC) is soliciting public comments on proposed extensions of Paperwork Reduction Act clearance for information collection requirements associated with five rules issued and enforced by the Commission. OMB has extended the expiration for these clearances by 180 days, from September 30, 1998 to March 29, 1999. The FTC proposes that OMB extend its approval for the regulations an additional three years from the prior expiration date of September 30, 1998.

DATES: Comments must be submitted on or before January 15, 1999.

ADDRESSES: Send written comments to Gary M. Greenfield, Attorney, Office of the General Counsel, Federal Trade Commission, Washington, DC 20580, 202–326–2753. All comments should be identified as responding to this notice.

FOR FURTHER INFORMATION CONTACT: Requests for additional information or copies of the proposed information requirements should be addressed to Gary M. Greenfield, Attorney, Office of the General Counsel, Federal Trade Commission, Washington, DC 20580, 202–326–2753.

SUPPLEMENTARY INFORMATION: Under the Paperwork Reduction Act of 1995 (PRA) (44 U.S.C. 3501–3520), Federal agencies must obtain approval from OMB for each collection of information they conduct or sponsor. ''Collection of information'' means agency requests or requirements that members of the public submit reports, keep records, or provide information to a third party. 44 U.S.C. 3502(3), 5 CFR 1320.3(c). As required by section 3506(c)(2)(A) of the PRA, the FTC is providing this opportunity for public comment before requesting that OMB extend the existing paperwork clearance for the regulations noted herein.

The FTC invites comments on: (1) Whether the proposed collection of information is necessary for the proper performance of the functions of the agency, including whether the information will have practical utility; (2) the accuracy of the agency's estimate of the burden of the proposed collection of information, including the validity of the methodology and assumptions used; (3) ways to enhance the quality, utility, and clarity of the information to be collected; and (4) ways to minimize the burden of the collection of information on those who are to respond, including through the use of appropriate automated, electronic, mechanical, or other technological collection techniques or other forms of information technology, e.g., permitting electronic submission of responses.

The relevant information collection requirements are as follows:

1. The Funeral Rule, 16 CFR Part 453 (OMB Control Number: 3084–0025), ensures that consumers who are purchasing funeral goods and services have accurate information about the terms and conditions (especially prices) for such goods and services. The Rule requires that funeral providers disclose this information to consumers and maintain records to facilitate enforcement of the Rule.

Estimated annual hours burden: The estimated burden associated with the collection of information required by the Rule is 22,300 hours for recordkeeping and 57,900 hours for disclosures, for a total of 80,200 hours. This estimate is based on the number of funeral providers (approximately 22,300), the number of funerals annually (approximately 2.3 million), and the time needed to fulfill the information collection tasks required by the Rule.

Recordkeeping: The Rule requires that funeral providers retain copies of price lists and statements of funeral goods and services selected by consumers. Based on a maximum average burden of one hour per provider per year for this task, the total burden for the 22,300 providers is 22,300 hours. This estimate is unchanged from 1995.

Disclosure: The Rule requires that funeral providers (1) maintain current price lists for funeral goods and services, (2) provide written documentation of the funeral goods and services selected by consumers making funeral arrangements, and (3) provide information about funeral prices in response to telephone inquiries.

Maintaining current price lists requires that funeral providers revise their price lists from time to time through the year to reflect price changes. Based on a maximum average burden of two hours per provider per year for this task, the total burden for 22,300 providers is 44,600 hours. This estimate is unchanged from the FTC's previous estimate in 1995.

The original rulemaking record indicated that 87 percent of funeral providers provided written documentation of funeral arrangements, even in the absence of the Rule's requirements.[1]

Accordingly, the Rule imposes a disclosure burden on 2,899 providers (13 percent of 22,300 providers). These providers are typically the smallest funeral homes. The disclosure requirement can be satisfied through the use of a standard form (an example of which is available to the industry in the Compliance Guide to the Funeral Rule). Based on an estimation that these smaller homes arrange, on average, approximately 20 funerals per year and that it would take each of them about 3 minutes to record prices for each consumer on the standard form, FTC staff estimates that the total burden associated with this disclosure requirement is one hour per provider not already in compliance, for a total of 2,899 hours.

The Funeral Rule also requires funeral providers to answer telephone inquiries about the provider's offerings or prices. Industry data indicate that only about nine percent of funeral purchasers make telephone inquiries, with each call lasting an estimated three minutes. Only about half of that additional time is attributable to disclosures required solely by the Rule, since many providers would provide the requested information even without the Rule. Thus, assuming that the average purchaser makes two calls per funeral to compare prices, the estimated burden is 10,350 hours [(½×3 minute call×2 calls/funeral)×207,000 funerals (nine percent of 2,300,000 funerals/year)]. This burden likely will decline over time as consumers increasingly rely on the Internet for funeral price information.

In sum, the disclosure total is 57,849 hours (44,600+2,899+10,350), rounded to 57,900 hours. The total estimated hours burden associated with the Rule for both recordkeeping and disclosure requirements is 80,200 (Recordkeeping: 22,300 hours+Disclosure: 57,900 hours).

Estimated annual cost burden: $3,900,000, rounded ($3,560,000 in labor costs and $340,300 in non-labor costs).

Labor costs: Labor costs are derived by applying appropriate hourly cost figures to the burden hours described above. The hourly rates used below are averages.

Clerical personnel, at an hourly rate of $10, can perform the recordkeeping tasks required under the Rule. Based on the estimated hour burden of 22,300 hours, the estimated cost burden for recordkeeping is $223,000 ($10 × 22,300 hours).

The two hours required of each provider, on average, to update price lists should consist of approximately 1.5 hours of managerial or professional time, at $75 per hour, and .5 hours of clerical time, at $10 per hour, for a total of $117.50 per provider. Thus, the estimated total cost burden for maintaining price lists is $2,620,250 ($117.50 × 22,300 providers) (rounded to $2,620,000).

The cost of providing written documentation of the goods and services selected by the consumer is 2,899 hours of managerial or professional time at approximately $75 per hour, or $217,425 (rounded to $217,000).

The cost of responding to telephone inquiries about offerings or prices is 10,350 hours of managerial or professional time at $75, or $766,250 (rounded to $766,000).

The total labor cost of the three disclosure requirements imposed by the Funeral Rule is $3,337,000 ($2,620,000+$217,000+$766,000). The total labor cost for recordkeeping and disclosures is $3,560,000 ($223,000 for recordkeeping + $3,337,000 for disclosures).

Capital or other non-labor costs: The Rule imposes minimal capital costs and no current start-up costs. The Rule first took effect in 1984 and the revised Rule took effect in 1994, so funeral providers should already have in place capital equipment to carry out tasks associated with Rule compliance. Moreover, most funeral homes already have access, for other business purposes, to the ordinary office equipment needed for compliance, so the Rule likely imposes minimal additional capital expense.

Compliance with the Rule, however, does entail some expense to funeral providers for printing and duplication of price lists. Based on a rough estimate of 300 pages per year per provider for copies of the various price lists, at 5 cents per page, and 22,300 providers, the total cost burden associated with printing and copying is $334,500. In

[1] The original version of the Funeral Rule required that funeral providers retain a copy of and give each customer a separate ''Statement of Funeral Goods and Services Selected.'' The 1994 amendments to the Rule eliminated that requirement, allowing instead for such disclosures to be incorporated into a written contract, bill of sale, or other record of a transaction that providers use to memorialize sales agreements with customers.

addition, the estimated 2,899 providers not already providing written documentation of funeral arrangements apart from the Rule will incur additional printing and copying costs. Assuming that those providers use the standard two-page form shown in the Compliance Guide, at 5 cents per page, at an average of 20 funerals per year, the added cost burden would be $5,798, rounded to $5,800. Thus, estimated non-labor costs are $340,300.

The cost of training associated with Rule compliance is generally included in continuing education requirements for licensing and voluntary certification programs. Moreover, the FTC has provided its Compliance Guide to all funeral providers at no cost, and additional copies are available on the FTC web site or by mail. Accordingly, the Rule imposes no additional training costs.

2. The Used Car Rule 16 CFR Part 455 (OMB Control Number: 3084–0108), facilitates informed purchasing decisions by consumers by requiring used car dealers to disclose information about warranty coverage, if any, and the mechanical condition of used cars they offer for sale.

Estimated annual hours burden: The FTC is requesting approval for an estimated burden of 2,225,000 hours relating solely to disclosure requirements.[2] This estimate is based on the number of used car dealers (approximately 80,000 according to industry sources [3]), the number of used cars sold by dealers annually (approximately 30,000,000, according to industry data), and the time needed to fulfill the information collection tasks required by the Rule.[4] The current estimated annual burden reflects a small decrease from the prior estimate, attributable to a more accurate estimate of the number of used cars sold by dealers.

The Rule requires that used car dealers display a one-page, double-sided Buyers Guide in the window of each used car they offer for sale. The component tasks associated with the requirement include (1) ordering and stocking Buyers Guide forms, (2) entering applicable data on Buyers Guides, (3) posting the Buyers Guides on vehicles, and (4) making any necessary revisions in Buyers Guides.

Dealers should need no more than an average of one hour per year to obtain Buyers Guide forms, which are readily available from many commercial printers or could be produced by an office word-processing or desk-top publishing system. Based on a universe of 80,000 dealers, the annual hours burden for producing or obtaining and stocking Buyers guides is 80,000 hours.

Copying vehicle-specific data from dealer inventories to the Buyers Guide forms may take up to two minutes per vehicle if done by hand, and only seconds for those dealers who have automated the process. Adding the warranty information may take an additional one minute for vehicles offered with a warranty, and only seconds for vehicles offered with no warranty (in which case dealers merely check off the ''no warranty'' box). FTC staff estimates the overall average time needed to fill out Buyers Guides is 2.5 minutes per vehicle. Applied to an estimate of 30,000,000 used cars, this amounts to 1,250,000 hours.

Although there will be substantial variance in the time required to post the Buyers Guides on each used car, FTC staff estimates that, on average, dealers will spend 1.75 minutes per vehicle to match the correct Buyers Guide to the vehicle and physically attach it to one of its windows. Based on 30,000,000 vehicles sold, the burden associated with this task is 875,000 hours. Insofar as dealers are able to integrate this process into other activities perform in their ordinary course of business, this estimate likely overstates the actual burden.

If negotiations between buyer and seller over warranty coverage produce a sale on terms other than those originally entered on the Buyers Guide, the dealer must revise the Guide to reflect the actual terms of sale. According to the rulemaking record, bargaining over warranty coverage rarely occurs. Allowing for revision in 2% of sales, at two minutes per revision, staff estimates that dealers will spend 20,000 hours annually revising Buyers Guides.

Estimated annual cost burden: $31,500,000, consisting of $22,500,000 in labor costs and $9,000,000 in non-labor costs.

Labor costs: Labor costs are derived by applying appropriate hourly cost figures to the burden hours described above. Staff has determined that all of the tasks associated with ordering forms, entering data on Buyers Guides, posting Buyers Guides on vehicles, and revising them as needed are typically done by clerical or low-level administrative personnel. Using a clerical cost rate of $10 per hour and an estimate of 2,225,000 burden hours for disclosure requirements, the total labor cost burden would be approximately $22,500,000.

Capital or other non-labor costs: The cost of the Buyers Guide form itself is estimated to be 30 cents per form, so that forms for 30 million vehicles would cost dealers $9,000,000. In making this estimate, staff conservatively assumes that all dealers will purchase preprinted forms instead of producing them internally, although dealers may produce them at minimal expense using current office automation technology. Capital and start-up costs associated with the Rule are de minimis.

3. The Consumer Product Warranty Rule, 16 CFR part 701 (OMB Control Number: 3084–0111), prevents deception by providing consumers with information to assess written warranty terms. The Rule requires that written warranties disclose certain material facts regarding their terms and conditions.

Estimated annual hours burden: In 1995, FTC staff estimated that the required disclosures imposed an average annual burden of 8 hours on each of approximately 4,241 warrantors of products. Because there have been no changes to the Rule's requirements, staff has no reason to believe that this estimate requires revision. Based on this assumption, the total compliance burden relating to disclosures is approximately 34,000 hours (rounded from 33,928).[5] Nonetheless, this estimate likely overstates substantially the actual burden because most warrantors would disclose the terms and conditions of their warranties even in the absence of the Rule.

Estimated annual cost burden: $340,000, consisting solely of labor costs.

Labor cost: The work required to comply with the Rule (ensuring that warranties are printed and included with the product) mostly involves clerical or production staff. Based on an average hourly rate of $10 for these employees and the total hours burden of 34,000 hours, the annual labor cost is approximately $340,000.

Capital or other non-labor cost: The Rule imposes no appreciable current capital or start-up costs. Because it has been in effect since 1976, the vast majority of warrantors have already

[2] The Used Car Rule does not impose any recordkeeping requirements.

[3] Source: 1997 Used Car Market Report (''ADT Market Report''), published by ADT Automotive 435 Metroplex Drive, Nashville, Tennessee 37211.

[4] A relatively small number of dealers opt to contract with outside companies to perform the various tasks associated with complying with the Rule Staff assumes that outside contractors would require about the same amount of time and incur similar cost as dealers to perform these tasks. Accordingly, the hour and cost burden totals shown, while referring to ''dealers,'' incorporate the time and cost borne by outside companies in performing the tasks associated with the Rule.

[5] The Consumer Product Warranty Rule imposes no recordkeeping requirement.

modified their warranties to include information required by the Rule. Rule compliance does not require the use of any capital goods, other than ordinary office equipment, which providers would already have available for general business use.

4. The Pre-Sale Availability Rule, 16 CFR Part 702 (OMB Control Number: 3084–0112), ensures that consumers can make informed purchasing decisions by requiring that the terms of written warranties for consumer products be made available to consumers prior to purchase. The Rule requires retailers to make warranty information available to consumers and requires warrantors (i.e., manufacturers) to provide retailers with materials necessary to do so. The Rule also requires catalog and door-to-door sellers to make warranty information available.

The FTC is seeking approval for an estimated disclosure burden of 2,760,000 hours.[6] This estimate is based on the number of large and small retailers and manufacturers, according to census data, the estimated scope of the compliance burden for businesses by type. FTC staff first calculated burden estimates by type of business in the early 1980s. Staff believes that estimates remain valid for manufacturers, and that subsequent amendments to the Rule to allow more flexibility have reduced the burden on retailers by approximately 50 percent.[7] Approximately 6,552 large retailers and 422,100 small retailers spend an annual average of 26 hours and 6 hours, respectively, to comply with the Rule, for a cumulative combined total of 2,702,952 hours for retailers. Approximately 146 large manufacturers and 4,095 small manufacturers spend an annual average of 52 hours and 12 hours, respectively, for a cumulative total of 56,732 hours for manufacturers. Thus, the combined cumulative total for retailers and manufacturers is 2,759,684 hours, or approximately 2,760,000 hours (rounded from 2,759,684 hours).

Estimated annual cost burden: $27,600,000, consisting solely of labor costs.

Labor costs: Most of Rule 702's disclosure requirements involve simple clerical functions such as maintaining copies of the warranties at the retail level and, at the manufacturer level, ensuring that copies of warranties are provided to retailers. Assuming a clerical labor cost rate of $10/hour and an estimate of 2,760,000 burden hours of disclosures, that total annual labor cost burden is approximately $27,600,000.

Capital or other non-labor costs: The capital or start-up costs imposed by the Rule are de minimis. because the Rule has been in effect since 1976, and the amended Rule since 1987, the vast majority of retailers and warrantors already have developed systems to provide the information the Rule requires. Compliance by retailers typically entails simply filing warranties in binders and posting an inexpensive sign indicating warranty availability.[8] Manufacturer compliance entails providing retailers with a copy of the warranties included with their products.

5. The Informal Dispute Settlement Procedures Rule, 16 CFR Part 703 (OMB Control Number: 3084–0113), helps to ensure that consumers are fully informed regarding informal dispute settlement procedures in product warranties. The Rule imposes certain requirements when a warrantor requires, as part of a written warranty, that consumers first use an informal dispute settlement mechanism (IDSM) to seek resolution of a warranty dispute before pursuant remedies in court. The Rule requires that affected warrantors disclose certain information to consumers. It also requires that warrantors, through IDSMs, retain: (1) individual records for each dispute; (2) indexes that categorize disputes by product model and show the extent to which the warrantor has abided by decision of the resolution process; and (3) statistical summaries that classify disputes according to various status and final disposition categories. Affected entities must conduct an annual audit of their dispute resolution procedures and report to the FTC.

Estimated annual hours burden: The FTC is requesting approval for an estimated burden of 4,333 recordkeeping hours and 1,625 disclosure hours, for a total burden estimate of approximately 6,000 hours. This estimate is based on the number of warranty disputes handled by IDSMs and the average time needed to fulfill the information collection tasks required by the Rule.

Recordkeeping: The Rule requires that IDSMs maintain individual case files, update indexes, complete semi-annual statistical summaries, and submit an annual audit report to the FTC. Since maintenance of individual case records is necessary in the ordinary course of business, the Rule imposes little additional recordkeeping burden. FTC staff estimates that retaining additional information that would not otherwise be kept adds a burden of 30 minutes per case. Staff estimates also that IDSMs require an additional 10 minutes per case for compilation of the indexes, statistical summaries, and annual audit required by the Rule, resulting in a total recordkeeping requirement of 40 minutes per case. Finally, staff estimates that the two IDSMs affected by the Rule handle, combined, about 6,500 covered disputes annually. Thus, the total recordkeeping burden associated with the Rule is approximately 4,333 hours.

Disclosure: The Rules requires that affected warrantors disclose information about the dispute settlement mechanism in the written warranty, and that IDSMs disclose certain information upon request. The incremental cost of a warrantor's required disclosure is negligible. IDSMs must provide certain information, such as their annual audits, to anyone who requests it. In addition, on request, IDSMs must also provide consumers who have had a dispute before them with a copy of records relating to their disputes. FTC staff estimates that the average hour burden of copying and producing this information is approximately 15 minutes for each dispute handled by an IDSM. Based on an estimate of 6,500 disputes annually, the hour burden associated with copying and providing these disclosures is 1,625 hours.

Estimated annual cost burden: $303,000 (rounded), consisting of $103,000 in labor costs and $200,000 in non-labor costs.

Labor costs: Assuming that IDSMs would use skilled clerical personnel, at an hourly rate of $20, to maintain the records required by the Rule, the labor cost of the 4,333 recordkeeping burden hours is approximately $86,660. Assuming that IDSMs would use less skilled labor, at an hourly rate of $10, to reproduce records, the labor costs of the 1,625 hours disclosure burden hours is approximately $16,250. The combined total labor cost for recordkeeping and disclosures is $102,910, rounded to $103,000.

Capital or other non-labor costs: The Rule imposes no appreciable current capital or start-up costs. Because it has been in effect since 1976, the vast majority of warrantors have already

[6] The Pre-Sale Availability Rule does not impose any recordkeeping requirement.

[7] To comply with Rule 702, sellers need only maintain specimen copies of the warranties provided to them by manufacturers. The Rule allows seller substantial flexibility in how to maintain those copies, since the Rule states only that the warranty must be made readily available upon request. If the warrantor prints the warranty on the product's package, for example, the retailer has no further obligation since consumers can readily review the warranty by looking at the package.

[8] Although some retailers may choose to display a more elaborate or expensive sign, that is not required by the Rule.

developed systems to retain the records and provide the disclosures required by the Rule. Rule compliance does not require the use of any capital goods, other than ordinary office equipment, to which providers would already have access.

The only additional cost imposed on IDSMs operating under the Rule that would not be incurred for other IDSMs is the annual audit requirement. One of the two IDSMs currently operating under the Rule estimates the total annual costs of this requirement to be less than $100,000. Since there are two IDSMs operating under the Rule, the total non-labor cost imposed by them is an estimated $200,000. This total includes copying costs of roughly $20,000, which is based on estimated copying costs of 5 cents per page and several conservative assumptions or estimates. Staff estimates that the ''average'' dispute-related file is about 25 pages long and that a typical annual audit file is about 200 pages in length. For purposes of estimating copying costs, staff conservatively assumes that every consumer complainant requests a copy of the file relating to his or her dispute. Staff also assumes that, for 1,000 of the estimated 6,500 disputes each year, consumers request copies of warrantors' annual audit reports (although, based on requests for audit reports made directly to the FTC, the indications are that considerably less requests are actually made). Thus, the estimated total annual copying costs for average-sized files would be approximately $8,125 (25 pages/file $\times$.05 $\times$ 6,500 requests) and $10,000 for copies of annual audits (200 pages/audit report $\times$.05 $\times$ 1,000 requests), rounded to a total of $20,000.

Combined with estimated annual labor cost of $103,000, total estimated annual cost burden is $303,000 ($200,000 + $103,000).

Debra A. Valentine,

General Counsel.

[FR Doc. 98–30604 Filed 11–13–98; 8:45 am]

BILLING CODE 6750–01–M

GENERAL SERVICES ADMINISTRATION

[OMB Control No. 3090–0246]

Submission for OMB Review; Comment Request Entitled Packing List Clause

AGENCY: Office of Acquisition Policy, GSA.

ACTION: Notice of request for an extension to a previously approved OMB Clearance (3090–0246).

SUMMARY: Under the provisions of the Paperwork Reduction Act of 1995 (44 U.S.C. Chapter 35), the Office of Acquisition Policy has submitted to the Office of Management and Budget (OMB) a request to review and approve an extension of a previously approved information collection requirement concerning Packing List clause. The information collection was previously published in the **Federal Register** on September 3, 1998 at 63 FR 47025, allowing for a 60-day comment period. No comments were received.

DATES: *Comment Due Date:* December 16, 1998.

ADDRESSES: Comments regarding this burden estimate or any other aspect of this collection of information, including suggestions for reducing this burden, should be submitted to: Edward Springer, GSA Desk Officer, Room 3235, NEOB, Washington, DC 20503, and may also be submitted to Marjorie Ashby, General Services Administration (MVP), 1800 F Street NW, Washington, DC 20405.

FOR FURTHER INFORMATION CONTACT:

Al Matera, Office of GSA Acquisition Policy (202) 501–1224.

SUPPLEMENTARY INFORMATION:

A. Purpose

The GSA is requesting the Office of Management and Budget (OMB) to review and approve information collection, 3090–0246, concerning Packing List clause. A uniquely numbered Government credit card has been authorized for making payment for orders under $25,000 placed against certain schedule contracts. Acceptance of the card is not mandatory. In order to verify receipt of orders placed orally the cardholder's name and telephone number must be included on the packing list.

B. Annual Reporting Burden

Respondents: 4,000; *annual responses:* 931,219; *average hours per response:* .02; *burden hours:* 31.

Copy of Proposal: A copy of this proposal may be obtained from the GSA Acquisition Policy Division (MVP), Room 4011, GSA Building, 1800 F Street NW, Washington, DC 20405, or by telephoning (202) 501–3822, or by faxing your request to (202) 501–3341.

Dated: November 9, 1998.

Ida M. Ustad,

Deputy Associate Administrator, Office of Acquisition Policy.

[FR Doc. 98–30572 Filed 11–13–98; 8:45 am]

BILLING CODE 6820–61–M

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Centers for Disease Control and Prevention

[30DAY–02–99]

Agency Forms Undergoing Paperwork Reduction Act Review

The Centers for Disease Control and Prevention (CDC) publishes a list of information collection requests under review by the Office of Management and Budget (OMB) in compliance with the Paperwork Reduction Act (44 U.S.C. Chapter 35). To request a copy of these requests, call the CDC Reports Clearance Officer at (404) 639–7090. Send written comments to CDC, Desk Officer; Human Resources and Housing Branch, New Executive Office Building, Room 10235; Washington, DC 20503. Written comments should be received within 30 days of this notice.

Proposed Projects

1. The Second Longitudinal Study of Aging (LSOA II)–(0920–0411)—Revision—National Center for Health Statistics (NCHS). The Second Longitudinal Study of Aging is a second-generation, longitudinal survey of a nationally representative sample of civilian, non-institutionalized persons 70 years of age and older. Participation is voluntary, and individually identified data are confidential. The LSOA II replicates portions of the first Longitudinal Study of Aging (LSOA), particularly the causes and consequences of changes in functional status. In addition, the LSOA II is designed to monitor the impact of changes in Medicare, Medicaid, and managed care on the health status of the elderly and their patterns of health care utilization. Both LSOAs are joint projects of the National Center for Health Statistics (NCHS) and the National Institute on Aging (NIA).

The Supplement on Aging (SOA), part of the 1984 National Health Interview Survey (NHIS), established a baseline on 7,527 persons who were then aged 70 and older. The first LSOA reinterviewed them in 1986, 1988 and 1990. Data from the SOA and LSOA have been widely used for research and policy analysis relevant to the older population.

In 1994, 9,447 persons aged 70 and over were interviewed as part of the National Health Interview Survey's Second Supplement on Aging (SOA II) between October of 1994 and March of 1996. The first LSOA II re-interview wave was conducted between May 1997 and March 1998. The LSOA II will re-interview the SOA II sample two

additional times: in 1999 and 2001. As in the first LSOA, these reinterviews will be conducted using computer assisted telephone interviewing (CATI). Beyond that, LSOA II will use methodological and conceptual developments of the past decade.

The LSOA II contains substantive topics on scientifically important and policy-relevant domains, including: (1) Assistance with activities of daily living, (2) chronic conditions and impairments, (3) family structure, relationships, and living arrangements, (4) health opinions and behaviors, (5) use of health, personal care and social services, (6) use of assistive devices and technologies, (7) health insurance, (8) housing and long-term care, (9) social activity, (10) employment history, (11) transportation, and (12) cognition. This new data will result in publication of new national health statistics on the elderly and the release of public use micro data files. The total annual burden hours are 6,854.

Respondent	Number of respondents	Number of responses/ respondent	Avg. burden per response (in minutes)
Practice	50	1	0.75
Telephone Locator Calls	8,472	1	0.05
Telephone Interview	8,222	1	0.75
Mailout Interview	250	1	0.90

2. 1999 National Health Interview Survey, Basic Module (0920–0214)—Revision—National Center for Health Statistics. The annual National Health Interview Survey (NHIS) is a basic source of general statistics on the health of the U.S. population. Due to the integration of health surveys in the Department of Health and Human Services, the NHIS also has become the sampling frame and first stage of data collection for other major surveys, including the Medical Expenditure Panel Survey, the National Survey of Family Growth, and the National Health and Nutrition Examination Survey. By linking to the NHIS, the analysis potential of these surveys increases. The NHIS has long been used by government, university, and private researchers to evaluate both general health and specific issues, such as cancer, AIDS, and childhood immunizations. Journalists use its data to inform the general public. It will continue to be a leading source of data for the Congressionally-mandated ''Health US'' and related publications, as well as the single most important source of statistics to track progress toward the National Health Promotion and Disease Prevention Objectives, ''Healthy People 2000.''

Because of survey integration and changes in the health and health care of the U.S. population, demands on the NHIS have changed and increased, leading to a major redesign of the annual core questionnaire, or Basic Module, and a redesign of the data collection system from paper questionnaires to computer assisted personal interviews (CAPI). Those redesigned elements were partially implemented in 1996 and fully implemented in 1997. This clearance is for the third full year of data collection using the Basic Module on CAPI, and for implementation of the first ''Periodic Module'', which include additional detail questions on conditions, access to care, and health care utilization. This data collection, planned for January–December 1999, will result in publication of new national estimates of health statistics, release of public use micro data files, and a sampling frame for other integrated surveys. The 1999 Basic Module will include a few new questions on health insurance, and program participation. The Basic Module of the new data system is expected to be in the field at least until 2006. The total annual burden hours are 48,600.

Respondents	Number of respondents	Number of responses/ respondent	Avg. burden/ responses (in hrs.)
Family Core (adult family member)	42,000	1	0.35
Adult Core (sample adult)	42,000	1	0.35
Child Core (adult family member)	18,000	1	0.25
Periodic Module (sample adult)	42,000	1	0.35

3. National Tuberculosis Surveillance Activity Form (CDC 72.9)—(0920–0026)—Extension—The National Center for HIV, STD and TB Prevention (NCHSTP)—Tuberculosis (TB) is transmitted when contagious TB patients aerosolize Mycobacterium tuberculosis and susceptible persons (i.e., ''contacts'') are exposed. Some contacts are especially endangered by TB if they become infected—children younger than 5 years old, and anyone with an illness that weakens the immune system (e.g., the acquired immunodeficiency syndrome, AIDS). The prompt evaluation of all contacts is crucial for finding early TB cases and latent infections. For latent TB infections, treatment with isoniazid preventive therapy can prevent new TB cases from developing.

Evaluation, follow-up, and preventive therapy for contacts comprise the most efficient approach for finding and treating recent TB infections and preventing future cases. Therefore, it is one of the highest priorities for the national TB control strategy, second only to finding and treating contagious cases. NCHSTP is requesting an extension of this package with a few modifications. The Program Management Reports, which was a part of this OMB submission has been separated from this request as they are undergoing significant revision. The new Program Management Reports will be submitted as a new package. The total burden hours are 400.

Report	Number of respondents	Number of responses/ respondent (in hrs.)	Avg. burden/ response (in hrs.)
Report of Verified Case of Tuberculosis	1600	1	0.25

4. Lead Exposure and Blood Pressure During Pregnancy Study (Charles Drew Medical)—(0923–0015)—EXTENSION—The Agency for Toxic Substances and Disease Registry (ATSDR) is mandated pursuant to the 1980 Comprehensive Environmental Response Compensation and Liability Act (CERCLA), and its 1986 Amendments, The Superfund Amendments and Reauthorization Act (SARA), to prevent or mitigate adverse human health effects and diminished quality of life resulting from the exposure to hazardous substances into the environment. Disadvantaged minorities in large urban areas have higher than national blood lead levels.

Some of these groups also suffer from disproportionately high rates of hypertension. Previous data shows a relationship between higher blood lead levels and higher blood pressure, even at the lowest lead exposure. To facilitate this effort, this study examines the relationship between lead exposure history in inner city minorities and blood pressure, using a group at special risk for elevated blood pressure, pregnant women. Elevated blood lead and elevated blood pressure are two problems that disproportionately affect minority groups. Establishing a link between blood pressure and lead exposure, especially utilizing two new biomarkers of lead exposure, bone lead and serum lead, can provide a new tool for dealing with elevated blood pressure nationwide.

This request is for a 3-year extension. Two previously approved questionnaires will continue to be used to collect socioeconomic data, and data pertaining to risk factors for elevated blood pressure and lead exposure. A new questionnaire assessing social stress (Scale of Chronic Social Role Stressors) and a 16 item, four response choice scale will be added to better control for social stress factors affecting blood pressure. The total annual burden hours are 838.

Type of respondent	Number of respondents per Year	Number of responses/ respondent	Avg. burden per Response (in hrs)
Screening Questionnaire	583	1	0.5
Perceived Stress Scale	583	1	0.08
Risk Questionnaire	330	2	0.75
St. Francis Medical Center Participants	292	1	0.008

5. Substance—Specific Applied Research Program Epidemiologic Studies on Lead (Morehouse School of Medicine)—New—The Agency for Toxic Substances and Disease Registry (ATSDR) is mandated pursuant to the 1980 Comprehensive Environmental Response Compensation and Liability Act (CERCLA), and its 1986 Amendments, The Superfund Amendments and Reauthorization Act (SARA), to prevent or mitigate adverse human health effects and diminished quality of life resulting from exposure to hazardous substances in the environment. Lead exposure has been associated with negative pregnancy outcomes in humans, including low birth weight, spontaneous abortion, congenital malformation, and various neurological effects in newborns and young children. The level of lead considered to be toxic has been lowered over the years by major research groups, organizations, and agencies. While lead has been shown to affect all organs, the brain or nervous system seems to be the most sensitive to lead toxicity, especially in young children. Blood lead levels as low as 10 ''µ/dL have been shown to result in delayed cognitive development, reduced IQ scores, and impaired hearing.

This study, originally approved by OMB in 1995, examines the long-term effects of low and marginal toxic blood lead levels in neonates and preschool African-American children in the Atlanta area. This study is divided into two components, (i) prevalence of lead exposure in children of preschool age and (ii) longitudinal health effects of low and marginal lead exposure. These studies are conducted concurrently.

The primary focus of the prevalence study is the evaluation of the relationship between socio-economic status, elemental blood lead levels within the home environment, and blood lead levels of preschool aged children. The objective of the longitudinal study is the evaluation of the relationship between lead levels found in maternal and cord blood and adverse health effects in the infant, including deficits in behavioral, cognitive and physical development. To correlate cognitive and behavioral development with varying blood lead levels, each newborn is to undergo a series of psychometric testing at birth, then again at 6 months, 1, and 2 years of age. Evaluations of physician development will be conducted by reviewing the medical records of each newborn within the first year after birth.

This request is for a 3-year extension of the current OMB approval; however we are requesting a new OMB authority (and number) as the old number (0923–0015) will now apply only to the Substance Specific Applied Research Program (AMHPS) [King/Drew Lead Study in-Person Interview, Lead and Hypertension Screening Questionnaire/ Risk Factor Questionnaire]. The requests for OMB approval for the two studies has been separated, with the King/Drew investigation retaining the old OMB number (0923–0015). The total annual burden hours are 882.*

Study	Respondents	Number of respondents	Number of responses/ respondent	Avg. burden/ response (in hrs.)
Prevalence	Child Questionnaire	400	1	0.333

Study	Respondents	Number of respondents	Number of responses/ respondent	Avg. burden/ response (in hrs.)
	Family Questionnaire	400	1	0.083
	Household Questionnaire	400	1	0.333
	Environmental Survey	400	1	0.25
	Day Care Center Participation	20	1	0.25
Longitudinal	Hospital/Clinic Participants	1	1	0.083
Childhood Lead Poisoning Questionnaire				
	Family Questionnaire	600	1	0.083
	Household Questionnaire	12	1	0.333
	Environmental Survey	12	1	0.166
	Home Visits	600	9	0.25
Neurobehavioral and Developmental Testing in Children				
	Brazelton Assessment	600	2	0.583
	Denver Screening	600	1	0.5
	Bayley Scales	600	2	1
	Fagan Battery	600	1	0.666

*Estimate of annualized burden was determined by taking the total burden and dividing it by 5 years.

Dated: November 4, 1998.

Charles W. Gollmar,

Acting Associate Director for Policy, Planning and Evaluation, Centers for Disease Control and Prevention (CDC).

[FR Doc. 98–30459 Filed 11–13–98; 8:45 am]

BILLING CODE 4163–18–P

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Centers for Disease Control and Prevention

Board of Scientific Counselors, National Center for Infectious Diseases: Meeting

In accordance with section 10(a)(2) of the Federal Advisory Committee Act (Pub. L. 92–463), the Centers for Disease Control and Prevention (CDC) announces the following committee meeting.

Name: Board of Scientific Counselors, National Center for Infectious Diseases (NCID).

Times and Dates: 9 a.m.–5:30 p.m., December 2, 1998. 8:30 a.m.–2:30 p.m., December 3, 1998.

Place: Holiday Inn Hotel and Conference Center, 130 Clairmont Avenue, Decatur, Georgia 30030.

Status: Open to the public, limited only by the space available.

Purpose: The Board of Scientific Counselors, NCID, provides advice and guidance to the Director, CDC, and Director, NCID, in the following areas: program goals and objectives; strategies; program organization and resources for infectious disease prevention and control; and program priorities.

Matters to be Discussed: The agenda will include:

1. NCID Update
2. EID Plan: Release and Implementation
3. Scientific Updates:
   Pandemic Influenza Preparedness
   Hepatitis C Update
4. Emergency Preparedness
5. International Outbreak Response
7. Prevention Research
8. Minority Health
9. Program Update: Hospital Infections Program
10. Late breaking scientific reports
11. Comments from CDC Director
12. Discussion and Recommendations

Other agenda items include announcements/introductions; follow-up on actions recommended by the Board April 1998; consideration of future directions, goals, and recommendations.

Agenda items are subject to change as priorities dictate.

Written comments are welcome and should be received by the contact person listed below prior to the opening of the meeting.

Contact Person for More Information: Diane S. Holley, Office of the Director, NCID, CDC, Mailstop C–20, 1600 Clifton Road, NE, Atlanta, Georgia 30333, telephone 404/639–0078.

The Director, Management Analysis and Services office has been delegated the authority to sign **Federal Register** notices pertaining to announcements of meetings and other committee management activities, for both the Centers for Disease Control and Prevention and the Agency for Toxic Substances and Disease Registry.

Dated: November 9, 1998.

Carolyn J. Russell,

Director, Management Analysis and Services Office, Centers for Disease Control and Prevention (CDC).

[FR Doc. 98–30534 Filed 11–13–98; 8:45 am]

BILLING CODE 4163–18–P

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Administration for Children and Families

Federal Allotments to States for Social Services Expenditures, Pursuant to Title XX, Block Grants to States for Social Services; Revised Promulgation for Fiscal Year 1999

AGENCY: Administration for Children and Families, Department of Health and Human Services.

ACTION: Notification of allocation of title XX—social services block grant allotments for Fiscal Year 1999.

SUMMARY: This issuance sets forth the individual revised allotments to States for Fiscal Year 1999, pursuant to title XX of the Social Security Act, as amended (Act). The initial **Federal Register** notice was published on November 21, 1997 based on the authorization level of $2.380 billion. The grant awards for Fiscal Year 1999 will be issued based upon the appropriation amount of $1.190 billion.

FOR FURTHER INFORMATION CONTACT: John J. Jolley, (202) 401–5284.

SUPPLEMENTARY INFORMATION: For Fiscal Year 1999, the allotments are based upon the Bureau of Census population statistics contained in its reports ''Estimates of the Population of U.S. Regions, and States by Selected Age Groups and Sex: 1990 and 1996 (CB97–64, released April 21, 1997), and ''1990 Census of Population and Housing'' (CPH–6–AS and CPH–6–CNMI) published April 1992, which was the most recent data available from the

Department of Commerce at the time of the Department's initial promulgation.

EFFECTIVE DATE: The allotments are effective October 1, 1998.

FISCAL YEAR 1999 FEDERAL ALLOTMENTS TO STATES FOR SOCIAL SERVICES—TITLE XX BLOCK GRANTS

	Initial FY 99 Allotment	Revised FY 99 allotment
ALABAMA	38,121,040	30,576,918
ALASKA	5,415,275	4,343,597
AMERICAN SAMOA	88,560	71,034
ARIZONA	39,503,853	31,686,074
ARKANSAS	22,392,654	17,961,167
CALIFORNIA	284,395,631	228,113,973
COLORADO	34,106,421	27,356,789
CONNECTICUT	29,208,585	23,428,231
DELAWARE	6,467,998	5,187,987
DISTRICT OF COLUMBIA	4,844,307	3,885,623
FLORIDA	128,467,816	103,044,143
GEORGIA	65,598,878	52,616,915
GUAM	410,345	329,138
HAWAII	10,562,909	8,472,518
IDAHO	10,607,516	8,508,297
ILLINOIS	105,691,543	84,775,276
INDIANA	52,109,758	41,797,281
IOWA	25,443,765	20,408,465
KANSAS	22,945,779	18,404,829
KENTUCKY	34,650,625	27,793,295
LOUISIANA	38,816,907	31,135,074
MAINE	11,089,270	8,894.713
MARYLAND	45,249,220	36,294,437
MASSACHUSETTS	54,349,023	43,593,397
MICHIGAN	85,591,682	68,653,160
MINNESOTA	41,555,770	33,331,918
MISSISSIPPI	24,230,457	19,435,270
MISSOURI	47,809,654	38,348,164
MONTANA	7,841,890	6,289,987
NEBRASKA	14,738,113	11,821,453
NEVADA	14,300,966	11,470,817
NEW HAMPSHIRE	10,366,639	8,315,090
NEW JERSEY	71,263,952	57,160,876
NEW MEXICO	15,282,317	12,257,959
NEW YORK	162,235,224	130,129,009
NORTH CAROLINA	65,331,237	52,402,240
NORTH DAKOTA	5,745,366	4,608,363
N. MARIANA ISLANDS	82,069	65,828
OHIO	99,678,535	79,952,237
OKLAHOMA	29,449,462	23,621,438
OREGON	28,584,089	22,927,322
PENNSYLVANIA	107,556,110	86,270,846
PUERTO RICO	12,310,345	9,874,138
RHODE ISLAND	8,832,162	7,084,284
SOUTH CAROLINA	33,000,170	26,469,464
SOUTH DAKOTA	6,530,447	5,238,077
TENNESSEE	47,461,721	38,069,086
TEXAS	170,648,082	136,876,970
UTAH	17,842,752	14,311,686
VERMONT	5,254,691	4,214,792
VIRGIN ISLANDS	410,345	329,138
VIRGINIA	59,550,185	47,765,253
WASHINGTON	49,361,974	39,593,281
WEST VIRGINIA	16,290,433	13,066,570
WISCONSIN	46,034,301	36,924,152
WYOMING	4,291,182	3,441,961
Total	2,380,000,000	1,909,000,000

Dated: November 4, 1998.

Donald Sykes,

Director, Office of Community Services.

[FR Doc. 98–30564 Filed 11–13–98; 8:45 am]

BILLING CODE 4184–01–P

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Food and Drug Administration

Advisory Committee; Renewals

AGENCY: Food and Drug Administration, HHS.

ACTION: Notice.

SUMMARY: The Food and Drug Administration (FDA) is announcing the renewal of certain FDA advisory committees by the Commissioner of Food and Drugs. The Commissioner has determined that it is in the public interest to renew the charters of the committees listed below for an additional 2 years beyond charter expiration date. The new charters will be in effect until the dates of expiration listed below. This notice is issued under the Federal Advisory Committee Act of October 6, 1972 (Pub. L. 92–463 (5 U.S.C. app. 2)).

DATE: Authority for these committees will expire on the dates indicated below unless the Commissioner formally determines that renewal is in the public interest.

Name of committee	Date of expiration
Advisory Committee for Pharmaceutical Science	January 22, 2000
Medical Imaging Drugs Advisory Committee	February 28, 2000
Gastrointestinal Drugs Advisory Committee	March 3, 2000
Advisory Committee for Reproductive Health Drugs	March 23, 2000
Arthritis Advisory Committee	April 5, 2000
Veterinary Medicine Advisory Committee	April 24, 2000
Anesthetic and Life Support Drugs Advisory Committee	May 1, 2000
Blood Products Advisory Committee	May 13, 2000
Pulmonary-Allergy Drugs Advisory Committee	May 30, 2000
Drug Abuse Advisory Committee	May 31, 2000
Science Advisory Board to the National Center for Toxicological and Research	June 2, 2000
Peripheral and Central Nervous System Drugs Advisory Committee	June 4, 2000
Psychopharmacologic Drugs Advisory Committee	June 4, 2000
Transmissible Spongiform Encephalopathies Advisory Committee	June 9, 2000
Science Board to the Food and Drug Administration	June 26, 2000
Allergenic Products Advisory Committee	July 9, 2000
Cardiovascular and Renal Drugs Advisory Committee	August 27, 2000
Endocrinologic and Metabolic Drugs Advisory Committee	August 27, 2000
Oncologic Drugs Advisory Committee	September 1, 2000
Anti-Infective Drugs Advisory Committee	October 7, 2000
Dermatologic and Ophthalmic Drugs Advisory Committee	October 7, 2000
Biological Response Modifiers Advisory Committee	October 28, 2000

FOR FURTHER INFORMATION CONTACT: Donna M. Combs, Committee Management Office (HFA–306), Food and Drug Administration, 5600 Fishers Lane, Rockville, MD 20857, 301–827–4820.

Dated: November 5, 1998.

Michael A. Friedman,

Deputy Commissioner for Operations.

[FR Doc. 98–30457 Filed 11–13–98; 8:45 am]

BILLING CODE 4160–01–F

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Food and Drug Administration

Veterinary Medicine 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: Veterinary Medicine 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 December 10 and 11, 1998, 8:30 a.m. to 4 p.m.

Location: Holiday Inn, Two Montgomery Village Ave., Gaithersburg, MD.

Contact: Jacquelyn L. Pace, Center for Veterinary Medicine (HFV–200), Food and Drug Administration, 7500 Standish Pl., Rockville, MD 20855, 301–827–6650, or FDA Advisory Committee Information Line, 1–800–741–8138 (301–443–0572 in the Washington, DC area), code 12546. Additional information about the meeting will be provided on the Center for Veterinary Medicine Internet Home Page (http://www.fda.gov/cvm) after November 1, 1998. Please call the Information Line for up-to-date information on this meeting.

Agenda: The committee will discuss a proposed framework on how to evaluate the potential public health hazard from resistant pathogens and resistance genes associated with the use of antimicrobials in food animals.

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 December 3, 1998. Oral presentations from the public are tentatively scheduled for the morning of December 11, 1998. Time allotted for each presentation may be limited. Those desiring to make formal oral presentations should notify the contact person before December 3, 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: November 5, 1998.

Michael A. Friedman,

Deputy Commissioner for Operations.

[FR Doc. 98–30548 Filed 11–13–98; 8:45 am]

BILLING CODE 4160–01–F

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Food and Drug Administration

Oncologic Drugs Advisory Committee; Amendment of Notice

AGENCY: Food and Drug Administration, HHS.

ACTION: Notice.

SUMMARY: The Food and Drug Administration (FDA) is announcing an amendment to the notice of meeting of the Oncologic Drugs Advisory Committee. This meeting was announced in the **Federal Register** of October 29, 1998. The meeting will be open to the public. The amendment is being made to cancel the entire session on November 17, 1998. There are no other changes.

FOR FURTHER INFORMATION CONTACT: Karen M. Templeton–Somers, Center for Drug Evaluation and Research (HFD–21), Food and Drug Administration, 5600 Fishers Lane, Rockville, MD 20857, 301–827–7001, or FDA Advisory Committee Information Line, 1–800–741–8138 (301–443–0572 in the Washington, DC area), code 12542.

SUPPLEMENTARY INFORMATION: In the **Federal Register** of October 29, 1998 (63 FR 58054), FDA announced that a meeting of the Oncologic Drugs Advisory Committee would be held on November 16 and 17, 1998. On page 58054, beginning in the second column, the *Date and Time*, *Agenda*, and *Procedure* portions of this meeting are amended and the *Closed Committee Deliberations* portion is removed to read as follows:

Date and Time: The meeting will be held on November 16, 1998, 8:30 a.m. to 5:30 p.m.

Agenda: On November 16, 1998, the committee will discuss: (1) New drug application (NDA) 20–886 Panretin® (alitretinoin) Gel 0.1%, Ligand Pharmaceuticals, Inc., indicated for the first-line topical treatment of cutaneous lesions in patients with acquired immune deficiency syndrome (AIDS)-related Kaposi's sarcoma; and (2) NDA 21–041 DepoCyt™ (cytarabine liposome injection), DepoTech Corp., indicated for the intrathecal treatment of lymphomatous meningitis.

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 November 9, 1998. Oral presentations from the public will be scheduled between approximately 8:45 a.m. and 9 a.m., and 1:45 p.m. and 2 p.m. on November 16, 1998. Time allotted for each presentation may be limited. Those desiring to make formal oral presentations should notify the contact person before November 9, 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. After the scientific presentations, an open public session will be conducted for interested persons who have submitted their request to speak by November 9, 1998, to address issues specific to the submission or topic before the committee.

Dated: November 5, 1998

Michael A. Friedman,

Deputy Commissioner for Operations.

[FR Doc. 98–30453 Filed 11–13–98; 8:45 am]

BILLING CODE 4160–01–F

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Food and Drug Administration

[Docket No. 97N–0535]

Agency Information Collection Activities; Announcement of OMB Approval; Protection of Human Subjects; Recordkeeping Requirements for Institutional Review Boards (IRB's)

AGENCY: Food and Drug Administration, HHS.

ACTION: Notice.

SUMMARY: The Food and Drug Administration (FDA) is announcing that a collection of information entitled ''Protection of Human Subjects; Recordkeeping Requirements for Institutional Review Boards (IRB's)'' has been approved by the Office of Management and Budget (OMB) under

the Paperwork Reduction Act of 1995 (the PRA).

FOR FURTHER INFORMATION CONTACT: JonnaLynn P. Capezzuto, Office of Information Resources Management (HFA–250), Food and Drug Administration, 5600 Fishers Lane, Rockville, MD 20857, 301–827–4659.

SUPPLEMENTARY INFORMATION: In the **Federal Register** of August 4, 1998 (63 FR 41577), the agency announced that the proposed information collection had been submitted to OMB for review and clearance under section 3507 of the PRA (44 U.S.C. 3507). An agency may not conduct or sponsor, and a person is not required to respond to, a collection of information unless it displays a currently valid OMB control number. OMB has now approved the information collection and has assigned OMB control number 0910–0130. The approval expires on October 31, 2001.

Dated: November 5, 1998.

William K. Hubbard,

Associate Commissioner for Policy Coordination.

[FR Doc. 98–30454 Filed 11–13–98; 8:45 am]

BILLING CODE 4160–01–F

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Food and Drug Administration

[Docket No. 98N–0268]

Agency Information Collection Activities; Announcement of OMB Approval; Patent Term Restoration

AGENCY: Food and Drug Administration, HHS.

ACTION: Notice.

SUMMARY: The Food and Drug Administration (FDA) is announcing that a collection of information entitled ''Patent Term Restoration'' has been approved by the Office of Management and Budget (OMB) under the Paperwork Reduction Act of 1995 (the PRA).

FOR FURTHER INFORMATION CONTACT: JonnaLynn P. Capezzuto, Office of Information Resources Management (HFA–250), Food and Drug Administration, 5600 Fishers Lane, Rockville, MD 20857, 301–827–4659.

SUPPLEMENTARY INFORMATION: In the **Federal Register** of August 4, 1998 (63 FR 41576), the agency announced that the proposed information collection had been submitted to OMB for review and clearance under section 3507 of the PRA (44 U.S.C. 3507). An agency may not conduct or sponsor, and a person is not required to respond to, a collection of information unless it displays a currently valid OMB control number. OMB has now approved the information collection and has assigned OMB control number 0910–0233. The approval expires on October 31, 2001.

Dated: November 5, 1998.

William K. Hubbard,

Associate Commissioner for Policy Coordination.

[FR Doc. 98–30456 Filed 11–13–98; 8:45 am]

BILLING CODE 4160–01–F

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Food and Drug Administration

[Docket No. 98D–0549]

Guidance for Industry on Advisory Committees: Implementing Section 120 of the Food and Drug Administration Modernization Act of 1997; Availability; Correction

AGENCY: Food and Drug Administration, HHS.

ACTION: Notice; correction.

SUMMARY: The Food and Drug Administration (FDA) is correcting a notice that appeared in the **Federal Register** of November 2, 1998 (63 FR 58745). The document announced the availability of a guidance for industry entitled ''Advisory Committees: Implementing Section 120 of the Food and Drug Administration Modernization Act of 1997.'' The document published with an inadvertent error. This document corrects that error.

FOR FURTHER INFORMATION CONTACT: Marcelle M. Stenbakken, Office of Policy (HF–27), Food and Drug Administration, 5600 Fishers Lane, Rockville, MD 20857, 301–443–2994.

In FR Doc. 98–29186, appearing on page 58745 in the **Federal Register** of Monday, November 2, 1998, the following correction is made:

On page 58746, in the second column, in the first paragraph, in line two, ''January 4, 1999'' is corrected to read ''February 1, 1999''.

Dated: November 4, 1998.

William K. Hubbard,

Associate Commissioner for Policy Coordination.

[FR Doc. 98–30455 Filed 11–13–98; 8:45 am]

BILLING CODE 4160–01–F

DEPARTMENT OF HOUSING AND URBAN DEVELOPMENT

[Docket No. FR–4369–N–11]

Notice of Proposed Information Collection for Public Comment Consolidated Planning

AGENCY: Office of the Assistant Secretary for Community Planning and Development, HUD.

ACTION: Notice of proposed information collection for public comments.

SUMMARY: The proposed information collection requirements for Consolidated Planning for Community Planning and Development (CPD) programs described below will be submitted to the Office of Management and Budget (OMB) for review, as required by the Paperwork Reduction Act. The Department is soliciting public comments on the subject proposal.

DATES: Comments Due Date: January 15, 1998.

ADDRESSES: Interested persons are invited to submit comments regarding this proposal. Comments should refer to the proposal by name and/or OMB Control Number and should be sent to: Reports Liaison Officer, Sheila E. Jones, Department of Housing and Urban Development, 451 7th Street, SW, Room 7230, Washington, DC 20410.

FOR FURTHER INFORMATION CONTACT: Sal Sclafani, Acting Director, Policy Division 202–708–0614, ex. 4364.

SUPPLEMENTARY INFORMATION: The Department will submit the proposed information collection to OMB for review, as required by the Paperwork Reduction Act of 1995 (44 U.S.C. Chapter 35 as amended). As required under 5 CFR 1320.8(d)(1), HUD and OMB are seeking comments from members of the public and affected agencies concerning the proposed collection of information to: (1) Evaluate whether the proposed collection of information is necessary for the proper performance of the functions of the agency, including whether the information will have practical utility; (2) Evaluate the accuracy of the agency's estimate of the burden of the proposed collection of information; (3) Enhance the quality, utility, and clarity of the information to be collected; and (4) Minimize the burden of the collection for information on those who are to respond; including through the use of appropriate automated collection techniques or other forms of information submission of responses.

Title of Proposal: Consolidated Plan.

Description of the Need for the Information and Proposed Uses: The

information is needed to provide HUD with preliminary assessment as to the statutory and regulatory eligibility of proposed grantee projects. A secondary need is informing citizens of intended uses for program funds.

Agency Form Numbers (if applicable): The Department's collection of this information is in compliance with statutory provisions of the Cranston-Gonzalez National Affordable Housing Act of 1990 that requires participating jurisdictions submit a Comprehensive Housing Affordability Strategy (Section 216(5)), the 1974 Housing and Community Development Act, as amended, that requires states and localities to submit a Community Development Plan (Section 104(b)(4) and Section 104(b)(m)) and statutory provisions of these Acts that require states and localities to submit applications for these formula grant programs.

Members of the Affected Public: State and local governments participating in the Community Development Block Grant Program (CDBG), the HOME Investment Partnerships (HOME) program, the Emergency Shelter Grants (ESG) program, or the Housing Opportunities for Persons with AIDS/HIV (HOPWA) program.

Estimation of the total numbers of hours needed to prepare the information collection including number of respondents, frequency of response and hours of response: Since the original approval of the Consolidated Planning paperwork reduction estimate in 1995 (OMB Control Number 2506–0117), additional localities have qualified for assistance under the Community Development Block Grant (CDBG) program, thus increasing the overall burden calculation. Additionally, this submission includes paperwork estimates associated with narrative information required by the Consolidated Annual Performance and Evaluation Report. Reporting on annual performance was not included in the original Consolidated Plan paperwork estimate that was submitted to OMB. There have been several minor regulatory changes made to existing CDBG regulations and those for the HOME Investment Partnerships (HOME) program which have resulted in a slight increase in overall burden hours calculations. Each of these regulatory changes have been submitted for comment in the National Register and to OMB independently.

The revised paperwork estimates are as follows:

Task	Number of respondents	Frequency of response	Total U.S. burden hours
Consolidated Plan:			
Localities	1,000	1	332,025
States	50	1	48,900
Performance Report:			
Localities	1,000	1	150,000
States	50	1	12,000
Abbreviated Strategy			7,000
Total			549,925

Status of the proposed information collection: Reinstatement, with minor changes of a previously approved collection for which approval is near expiration and the request for OMB approval's for three years. The current OMB approval expires December 31, 1998.

Authority: Section 3506 of the Paperwork Reduction Act of 1995, 44 U.S.C. Chapter 35, as amended.

Dated: November 5, 1998.

Cardell Cooper,

Assistant Secretary for Community Planning and Development.

[FR Doc. 98–30482 Filed 11–13–98; 8:45 am]

BILLING CODE 4210–29–M

DEPARTMENT OF HOUSING AND URBAN DEVELOPMENT

[Docket No. FR–4380–N–05]

Notice of Submission of Proposed Information Collection: Comment Request

AGENCY: Office of Community Planning and Development, HUD.

ACTION: Notice.

SUMMARY: The proposed information collection requirement described below has been submitted to the Office of Management and Budget (OMB) for review and approval, as required by the Paperwork Reduction Act. The Department is soliciting public comments on the subject proposal.

DATES: Comments Due Date: January 15, 1999.

ADDRESSES: Interested persons are invited to submit comments regarding this proposal. Comments should refer to the proposal by name and/or OMB Control Number and must be received within sixty (60) days from the date of this Notice. Comments should be sent to: Ms. Shelia Jones, Reports Liaison Officer, Dept. of Housing and Urban Development, 451 7th Street, SW., Room 7230, Washington, DC 20410.

FOR FURTHER INFORMATION CONTACT: Yvette Aidara, Office of Block Grant Assistance; (202) 708–1322, ext. 4378 (this is not a toll-free number). Copies of the proposed forms and other available documents may be obtained from Mrs. Aidara.

SUPPLEMENTARY INFORMATION: This Notice informs the public that the Department of Housing and Urban Development (HUD) has submitted to OMB an information collection package with respect to a Notice of Funding Availability (NOFA) for the HUD Colonias Initiative. A request for emergency processing, essential to secure the funding appropriated October 27, 1997, was approved on July 29, 1998.

The Departments of Veterans Affairs and Housing and Urban Development, and Independent Agencies Appropriations Act, 1998 (Pub. L. 105–65, approved October 27, 1997) (FY 1998 HUD Appropriations Act) allocated $25,000,000 to test comprehensive approaches to developing a job base through economic development, developing affordable low- and moderate-income rental and homeownership housing, and increasing the investment of both private and nonprofit capital in rural and tribal areas of the U.S. Of that amount, $5 million has been targeted for the HUD Colonias NOFA to address housing and other development needs of colonia residents in the four border states where colonias are found (California, Arizona, New Mexico, and Texas). Of the $5 million, $1 million may be provided to

one or more private or nonprofit intermediary organization(s) that would provide capacity-building loans, grants, or technical assistance to local nonprofit organizations serving colonia residents. The $4 million may be used by organizations serving colonias to provide decent, safe, sanitary, and accessible affordable housing as well as to address related development needs. Examples of likely activities are: new housing construction, self-help construction training, homeownership assistance, installation of water wells or septic systems, refinancing of debt to convert contracts-for-deed, surveying or replatting of existing subdivisions, and other related activities to support housing development.

Eligible applicants are organizations (for profit and non-profit) providing assistance to and for residents of colonias in any of the four colonia States.

This Notice is soliciting comments from members of the public and affected agencies concerning the proposed collection of information to: (1) Evaluate whether the proposed collection of information is necessary for the proper performance of the functions of the agency, including whether the information will have practical utility; (2) Evaluate the accuracy of the agency's estimate of the burden of the proposed collection of information; (3) Enhance the quality, utility, and clarity of 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 collection techniques or other forms of information technology, e.g., permitting electronic submission of responses.

The Department has submitted the proposal for the collection of information, as described below, to OMB for review, as required by the Paperwork Reduction Act (44 U.S.C. Chapter 35):

Title of Proposal: NOFA: HUD Colonias Initiative.

OMB Control Number, if applicable: 2506–0167.

Description of the need for the information and proposed use: The information collection is essential so that HUD staff may determine the eligibility, qualifications and capability of applicants to carry out the HUD Colonias Initiative activities. HUD will review the information provided by the applicants against the selection criteria contained in the NOFA in order to rate and rank the applications and select the best and most qualified applications for funding. The selection criteria are:

(1) Capacity of the Applicant and Relevant Organizational Staff;

(2) Need/Extent of the Problem;

(3) Soundness of Approach; and

(4) Financial Feasibility/Leverage Resources.

Agency form numbers, if applicable: SF–424 (including a maximum 25 page application in response to the Factors for Award)

Members of affected public: Eligible applicants are organizations (for profit and nonprofit) providing assistance to and for residents of colonias in any of the four colonia States.

Estimation of the total numbers of hours needed to prepare the information collection including number of respondents, frequency of response, and hours of response: The estimated number of applicants is 25, with approximately 8 recipients. The proposed frequency of the response to the collection of information is one-time; the application need be submitted only one time. Preparation time of 80 hours per application is estimated for a total of 2000 hours. Annual recordkeeping (including electronic payments) is estimated at 2016 hours for 8 grant recipients.

Authority: The Paperwork Reduction Act of 1995, 44 U.S.C. Chapter 35, as amended.

Dated: November 5, 1998.

Cardell Cooper,

Assistant Secretary for Community Planning and Development.

[FR Doc. 98–30481 Filed 11–13–98; 8:45 am]

BILLING CODE 4210–29–M

DEPARTMENT OF HOUSING AND URBAN DEVELOPMENT

[Docket No. FR–4340–FA–06]

Announcement of Funding Awards for the Historically Black Colleges and Universities Program Fiscal Year 1998

AGENCY: Office of the Assistant Secretary for Community Planning and Development, HUD.

ACTION: Notice of funding awards.

SUMMARY: In accordance with section 102(a)(4)(C) of the Department of Housing and Urban Development Reform Act of 1989, this announcement notifies the public of funding decisions made by the Department in a competition for funding under the Notice of Funding Availability (NOFA) for the Historically Black Colleges and Universities (HBCUs) Program. This announcement contains the names and addresses of the awardees and the amount of the awards made available by HUD to provide assistance to the HBCUs.

FOR FURTHER INFORMATION CONTACT: Delores Pruden, Historically Black Colleges and Universities Program, Office of Community Planning and Development, Department of Housing and Urban Development, 451 7th St., SW, Washington, DC 20410; telephone (202) 708–1590 (this is not a toll-free number). Hearing- and speech-impaired persons may access this number via TTY by calling the Federal Information Relay Service toll-free at 1–800–877–8339. Information may also be obtained from a HUD field office, see Appendix A for names, addresses and telephone numbers, or for general information, applicants can call Community Connections at 1–800–998–9999.

SUPPLEMENTARY INFORMATION: This program is authorized under section 107(b)(3) of the Housing and Community Development Act of 1974 (the 1974 Act) (42 U.S.C. 5307(b)(3)), which was added by section 105 of the Department of Housing and Urban Development Reform Act of 1989 (Pub. L. 101–235). The program is governed by regulations contained in 24 CFR 570.400 and 570.404, and in 24 CFR part 570, subparts A, C, J, K, and O.

This notice announces FY 1998 funding of $6.5 million to HBCUs to be used to stimulate economic and community development activities in the HBCUs' locality. The FY 1998 grantees announced in this Notice were selected for funding consistent with the provisions in the NOFA published in the **Federal Register** on March 31, 1998 (63 FR 15527).

The Catalog of Federal Domestic Assistance number for this program is 14.237.

In accordance with section 102(a)(4)(C) of the Department of Housing and Urban Development Reform Act of 1989 (103 Stat. 1987, 42 U.S.C. 3545), the Department is publishing the grantees and amounts of the awards in Appendix B.

Dated: November 5, 1998.

Cardell Cooper,

Assistant Secretary for Community Planning and Development.

Appendix A—Community Planning and Development (CPD) Directors With Historically Black Colleges and Universities Located Within their Jurisdiction

Zita Blankenship, Acting, Beacon Ridge Tower, 600 Beacon Parkway West, Suite 300, Birmingham, AL 35209–3144, 205–290–7630

Bill M. Parsley, TCBY Tower, 425 West Capitol Avenue, Suite 900, Little Rock, AR 72201–3488, 501–324–6375

John Perry, Richard B. Russell Federal Building, 75 Spring Street SW, Atlanta, GA 30303–3388, 404–331–5139

Ben Cook, 601 West Broadway, PO Box 1044, Louisville, KY 40201–1044, 502–582–6142
Gregory Hamilton, Hale Boggs Federal Building, 501 Magazine Street, 9th Floor, New Orleans, LA 70130–3099, 504–589–7212
Joseph O'Connor, City Crescent Building, 10 South Howard Street, 5th Floor, Baltimore, MD 21201–2505, 410–962–2520
Jeanette Harris, Patrick V. McNamara Federal Building, 477 Michigan Avenue, Detroit, MI 48226–2592, 313–226–4343
Frank Mason, Acting, Doctor A.H. McCoy Federal Building, 100 West Capitol Street, Room 910, Jackson, MS 39269–1016, 601–965–4765
Ann Wiedl, Robert A. Young Federal Building, 1222 Spruce Street, Third Floor, St. Louis, MO 631286, 314–539–6524
Lana Vacha, 200 North High Street, Columbus, OH 43215–2499, 614–469–6743
David H. Long, 500 West Main Street, Suite 400, Oklahoma City, OK 73102, 405–553–7571
Joyce Gaskins, The Wanamaker Building, 100 Penn Square East, Philadelphia, PA 19107–3380, 215–656–0624
Louis E. Bradley, Strom Thurmond Federal Building, 1835 Assembly Street Columbia, SC 29201–2480, 803–765–5564
Virginia E. Peck, John J. Duncan Federal Building, 710 Locust Street, Third Floor, Knoxville, TN 37902–2526, 423–545–4391
Katie Worsham, 1600 Throckmorton Street, PO Box 2905, Fort Worth, TX 76113–2905, 817–885–5483
John T. Maldonado, Washington Square, 800 Dolorosa Street, San Antonio, TX 78207–4563, 210–475–6821
Joseph K. Aversano, The 3600 Centre, 3600 West Broad Street, Richmond, VA 23230–4920, 804–278–4539
Ronald J. Herbert, 820 First Street NE, Suite 450, Washington, DC 20002–4205, 202–275–0994
Charles T. Ferebee, Koger Building, 2306 West Meadowview Road, Greensboro, NC 27407–3707, 910–547–4005
Jose Cintron, Acting, Gables One Tower, 1320 South Dixie Highway, Coral Gables, FL 33146–2926, 305–662–4570
Carmen R. Caberra, New San Juan Office Building, 159 Carlos E. Chardon Avenue, San Juan, PR 00918–1804, 787–766–5576
James N. Nichol, Southern Bell Tower, 301 West Bay Street, Suite 2200, Jacksonville, FL 32202–5121, 904–232–3587
Lynn B. Daniels, 339 Sixth Avenue, Sixth Floor, Pittsburgh, PA 15222–2515, 412–644–2999

Appendix B—1998 Funding Awards for Historically Black Colleges and Universities

Alabama

1. Dr. Victor B. Ficker, President, Gadsden State Community College, Valley Street Campus, PO Box 227, Gadsden, AL 35902–0227, Phone: 256–549–8221, FAX: 256–549–8444, Grant Amount: $300,000

Arkansas

2. Dr. Trudie Kibbie Reed, President, Philander Smith College, 812 West 13th Street, Little Rock, AR 72202, Phone: 501–370–5275, FAX: 501–370–5278, Grant Amount: $275,129
3. Dr. Lawrence A. Davis, Jr., Chancellor, University of Arkansas @ Pine Bluff, 1200 North University Drive, PO Box 4008, Pine Bluff, AR 71601, Phone: 501–543–8471, FAX: 501–543–8003, Grant Amount: $365,898

District of Columbia

4. Dr. H. Patrick Swygert, President, Howard University, 2400 6th Street, NW., Washington, DC 20059, Phone: 202–806–2500, FAX: 202–806–5934, hp__swygert@capstone.howard.edu, Grant Amount: $365,898

Georgia

5. Dr. Portia Holmes Shields, President, Albany State University, 504 College Drive, Albany, GA 31705, Phone: 912–430–4604, FAX: 912–430–3836, e-mail: pshields@fld94.alsnet.peachnet.edu, Grant Amount: $365,897
6. Dr. Robert M. Franklin, Jr., President, Interdenominational Theological Center, 671 Beckwith Street, SW., Atlanta, GA 30314, Phone: 404–527–7702, FAX: 404–527–0901, Grant Amount: $330,000
7. Dr. Carlton E. Brown, President, Savannah State University, PO Box 20449, Savannah, GA 31404, Phone: 912–356–2240, FAX: 912–356–2998, e-mail: wolfej@tigerpaw.ssc.peachnet.edu, Grant Amount: $361,943

Louisiana

8. Dr. Norman C. Francis, President, Xavier University of New Orleans, 7325 Palmetto Street, New Orleans, LA 70125, Phone: 504–483–7541, FAX: 504–485–7904, e-mail: nfrancis@xula.edu, Grant Amount: $365,898

Mississippi

9. Dr. Vivian Presley, Coahoma Community College, 3240 Friars Point Road, Clarksdale, MS 38614, Phone: 601–627–2571, FAX: 601–627–9451, Grant Amount: $300,000
10. Dr. James E. Lyons, Sr., President, Jackson State University, PO Box 17390, 1400 J.R. Lynch Street, Jackson, MS 39217, Phone: 601–968–2323, Fax: 601–968–2948, e-mail: jelyons@ccaix.jsums.edu, Grant Amount: $365,897

North Carolina

11. Dr. Gloria R. Scott, President, Bennett College, 900 E. Washington Street, Greensboro, NC 27401, Phone: 336–370–8626, Fax: 336–272–7143, e-mail: gscott@bennett1.bennett.edu, Grant Amount: $365,897
12. Dr. Mickey L. Burnim, Chancellor, Elizabeth City State University, PO Box 790, Elizabeth City, NC 27909, Phone: 919–335–3230, Fax: 919–335–3731, e-mail: burnimml@alpha.ecsu.edu, Grant Amount: $365,897
13. Dr. Willis B. McLeod, Chancellor, Fayetteville State University, 1200 Murchinson Road, Fayetteville, NC 28301, Phone: 910–486–1141, Fax: 910–486–4732, Grant Amount: $365,897
14. Dr. Edward B. Fort, Chancellor, North Carolina A&T State University, 1601 E. Market Street, Greensboro, NC 27411, Phone: 336–334–7940, Fax: 336–334–7082, e-mail: fort@jade.ncat.edu, Grant Amount: $365,897

South Carolina

15. Dr. David Swinton, President, Benedict College, 600 Harden Street, Columbia, SC 29204, Phone: 803–254–7253, Fax: 803–253–5060, Grant Amount: $365,898

Texas

16. Dr. Joseph T. McMillan, Jr., President, Huston-Tillotson College, 900 Chicon Street, Austin, TX 78702, Phone: 512–505–3003, Fax: 512–505–3190, Grant Amount: $278,057
17. Dr. Lee Monroe, President, Paul Quinn College, 3837 Simpson Stuart Road, Dallas, TX 75241, Phone: 214–302–3515, Fax: 214–302–3559, Grant Amount: $250,000
18. Dr. James M. Douglas, President, Texas Southern University, 3100 Cleburne Avenue, Houston, TX 77004, Phone: 713–313–7034, Fax: 713–313–1092, e-mail: preaplwillia@china.tsu.edu, Grant Amount: $365,897

Virginia

19. Dr. Eddie N. Moore, Jr., President, Virginia State University, PO Box 9001, Petersburg, VA 23806, Phone: 804–524–5070, Fax: 804–524–6506, Grant Amount: $380,000

[FR Doc. 98–30484 Filed 11–13–98; 8:45 am]
BILLING CODE 4210–29–P

DEPARTMENT OF HOUSING AND URBAN DEVELOPMENT

[Docket No. FR–4380–FA–04]

HUD Colonias Initiative; Announcement of Funding Awards—Fiscal Year 1998

AGENCY: Office of the Assistant Secretary for Community Planning and Development, HUD.

ACTION: Notice of funding awards.

SUMMARY: In accordance with section 102(a)(4)(C) of the Department of Housing and Urban Development Reform Act of 1989, this notice announces the funding decisions made by the Department in a competition for funding under the Fiscal Year 1998 HUD Colonias Initiative (HCI). The notice contains the names of award winners and the amounts of the awards.

FOR FURTHER INFORMATION CONTACT: Yvette Aidara, State and Small Cities Division, Office of Block Grant Assistance, Department of Housing and Urban Development, Room 7182, 451 Seventh Street, SW, Washington, DC 20410, telephone (202) 708–1322. The TTY number for the hearing impaired is (202) 708–2565. (These are not toll-free numbers.) Information on the HUD Colonias Initiative, community

development and consolidated planning, and other HUD programs may also be obtained from the Community Connections information center at 1–800–998–9999 (voice) or 1–800–483–2209 (TTY); by email at amcom@aspensys.com; or by internet at gopher://amcom.aspensys.com. The HUD Home Page address on the World Wide Web is http://www.hud.gov.

SUPPLEMENTARY INFORMATION. The purpose of the competition was to award grants totalling $5 million to private organizations to administer projects to address the housing needs of colonia residents in rural areas of California, Arizona, New Mexico, and Texas. Of that amount, $4 million was targeted to private organizations already serving colonias residents to provide direct housing assistance in each of the four states, with at least one grantee to be selected in each state. The remaining $1 million was targeted to an intermediary organization that would be able to provide capacity-building loans, grants, or technical assistance to local nonprofit organizations serving colonia residents. This capacity-building grantee would have demonstrated experience in providing technical assistance in housing development to colonias or areas with similar economic and social conditions that exist in colonias and the capacity to administer a program to increase the capacity of colonia-based organizations to address housing needs.

The assistance made available in this announcement is authorized by Title II of the Department of Veterans Affairs and Housing and Urban Development, and Independent Agencies Appropriation Act, 1998 (Pub. L. 105–65, 111 Stat. 1357, approved October 27, 1997) (FY 1998 HUD Appropriations Act). The competition was announced in a Notice of Funding Availability (NOFA) published in the **Federal Register** on July 15, 1998 (63 FR 38252) and an amendment published on August 7, 1998 (63 FR 42550). Applications were rated and selected for funding on the basis of selection criteria contained in those Notices.

There was no Catalog of Federal Domestic Assistance number for this program.

A total of $5,000,000 was awarded to 7 applicants. In accordance with section 102(a)(4)(C) of the Department of Housing and Urban Development Reform Act of 1989 (103 Stat. 1987, 42 U.S.C. 3545), the Department is publishing the grantees and amounts of the awards below.

Housing Assistance Grant Awardees

SouthEastern Arizona Governments Organization, Bisbee, Arizona, $460,000
Coachella Valley Housing Coalition, Indio, California, $800,000
Tierra del Sol, Las Cruces, New Mexico, $640,000
Proyecto Azteca, San Juan, Texas, $791,000
Community Development Corporation of Brownsville, Brownsville, Texas, $800,000
Laredo-Webb County Community, Action Agency, Laredo, Texas, $509,000

Capacity Building Grant Awardee

Housing Assistance Council, Washington, D.C., $1,000,000

Dated: November 5, 1998.

Cardell Cooper,

Assistant Secretary for Community Planning and Development.

[FR Doc. 98–30483 Filed 11–13–98; 8:45 am]

BILLING CODE 4210–29–P

DEPARTMENT OF THE INTERIOR

Bureau of Land Management

[CO–930–4214–010; COC–61627]

Proposed Withdrawal: Opportunity for Public Meeting; Colorado

AGENCY: Bureau of Land Management, Interior.

ACTION: Notice.

SUMMARY: The U.S. Department of Agriculture, Forest Service, proposes to withdraw approximately 75 acres of National Forest System land for 50 years to protect the Mt. Emmons Bog natural resource and scientific research area. This notice closes this land to location and entry under the mining laws for up to two years. The land remains open to mineral leasing.

DATES: Comments on this proposed withdrawal or requests for public meeting must be received on or before February 16, 1999.

ADDRESSES: Comments and requests for a meeting should be sent to the Colorado State Director, BLM, 2850 Youngfield Street, Lakewood, Colorado 80215–7076.

FOR FURTHER INFORMATION CONTACT: Doris E. Chelius, 303–239–3706.

SUPPLEMENTARY INFORMATION: On October 28, 1998, the Department of Agriculture, Forest Service, filed an application to withdraw the following described National Forest System land from location and entry under the United States mining laws (30 U.S.C. Ch 2);

Gunnison National Forest

Sixth Principal Meridian

T. 14 S, R. 86 W.,

Sec. 6, E½ of lot 10 excluding Mineral Survey (MS) 6523, E½NW¼ of lot 10, NE¼SW¼ of lot 10, W½ of lot 11 excluding MS 6523 and 20749, SE¼NW¼SE¼, E½NE¼NW¼SE¼, W½NE¼SE¼ excluding MS 20749, N½SE¼NE¼SE¼, S½NE¼NE¼SE¼, and W½NW¼NE¼SE¼ excluding MS 20749.

The area described contains approximately 75.6 acres of National Forest System land in Gunnison County. This application is subject to valid existing rights.

The purpose of this withdrawal is to protect an unique wetland fen which is a natural biogeochemical laboratory that is vital to scientific research in the global change processes.

For a period of 90 days from the date of publication of this notice, all parties who wish to submit comments, suggestions, or objections in connection with this proposed withdrawal, may present their views in writing to the Colorado State Director. If it is determined that a public meeting should be held, the public meeting will be scheduled and conducted in accordance with 43 CFR 2310.3–1(c)(2). Notice of the meeting would be published in the **Federal Register.**

This application will be processed in accordance with the regulations set forth in 43 CFR Part 2310.

For a period of two years from the date of publication in the **Federal Register,** this land will be segregated from the mining laws as specified above unless the application is denied or cancelled or the withdrawal is approved prior to that date. During this period the Forest Service will continue to manage these lands.

Jenny L. Saunders,

Realty Officer.

[FR Doc. 98–30526 Filed 11–13–98; 8:45 am]

BILLING CODE 4310–JB–M

DEPARTMENT OF THE INTERIOR

National Park Service

General Management Plan, Final Environmental Impact Statement, Capitol Reef National Park, Utah

AGENCY: National Park Service, Department of the Interior.

ACTION: Availability of final environmental impact statement and general management plan for Capitol Reef National Park.

SUMMARY: Pursuant to section 102(2)(c) of the National Environmental Policy Act of 1969, the National Park Service (NPS) announces the availability of a final Environmental Impact Statement and General Management Plan (FEIS/

GMP) for Capitol Reef National Park, Utah.

DATES: A 30-day no-action period will follow the Environmental Protection Agency's notice of availability of the FEIS/GMP/DCP.

ADDRESSES: Public reading copies of the FEIS/GMP will be available for review at the following locations:

Office of the Superintendent, Capitol Reef National Park, Telephone: (435) 425–3791 x101.

Planning and Environmental Quality, Intermountain Support Office—Denver, National Park Service, 12795 W. Alameda Parkway, Lakewood, CO 80228, Telephone: (303) 969–2851.

Office of Public Affairs, National Park Service, Department of Interior, 18th and C Streets NW, Washington, DC 20240, Telephone: (202) 208–6843.

SUPPLEMENTARY INFORMATION: The FEIS/GMP analyzes four alternatives to future direction of park resources management, to adaptive use of the Sleeping Rainbow Ranch, to interpretation of the Fruita Rural Historic District, and to amount of visitor services. Alternative A (preferred) is designed to protect and preserve exceptional resources, the quality of visitor experience, and the wilderness characteristics of certain portions of the park. Alternative B focuses on removing many existing developments to restore and enhance natural and historic resources and the wilderness qualities of the park. Alternative C continues actions identified in the 1982 General Management Plan which emphasizes visitor services and facilities, including development in some backcountry areas. Alternative D, the No Action Plan, would maintain visitor services and resource protection at current limited levels throughout the life of the plan.

The FEIS/GMP in particular evaluates the environmental consequences of the proposed action and the other alternatives on vegetation and wildlife, endangered species, scenic values, archeological and historic resources, visitor services, and economy of adjacent communities.

FOR FURTHER INFORMATION CONTACT: Superintendent, Capitol Reef National Park, at the above address and telephone number.

Dated: October 27, 1998.

John A. King,

Director, Intermountain Region, National Park Service.

[FR Doc. 98–30488 Filed 11–13–98; 8:45 am]

BILLING CODE 4310–70–P

DEPARTMENT OF THE INTERIOR

National Park Service

Delaware Water Gap National Recreation Area Draft Environmental Assessment (EA)

AGENCY: National Park Service, Interior.

ACTION: Notice of release of draft environmental assessment.

SUMMARY: This notice announces the release of a draft environmental assessment (EA) on a proposal to repair a Portland Borough Authority waterline at Slateford Farm within the Delaware Water Gap National Recreation Area.

EA Comment Period: Comments on or before December 11, 1998.

Copies available at: Website: www.nps.gov/dewa

Park Headquarters, River Road, Bushkill, PA 18324

Warren County Library, Belvidere, NJ 07823

Kemp Library, East Stroudsburg University, E Stroudsburg PA 18301

State Library of PA, PO Box 1601, Harrisburg, PA 17105

Easton Area Public Library, 6th and Church Street, Easton, PA 18042

Sussex County Library, 125 Morris Turnpike, Newton, NJ 07860

New Jersey State Library, 185 West State Street CN 520, Trenton, NJ 08625

Eastern Monroe Public Library, 1002 North Ninth Street, Stroudsburg, PA 18360

Pike County Library, 201 Broad Street, Milford, PA 18337

This draft environmental assessment, prepared by the National Park Service, deals with the environmental consequences of allowing Portland Borough Authority (PBA) to repair a section of underground waterline which has become exposed by a storm water discharge stream. PBA is requesting permission to access the site, stabilize the eroded channel and re-cover the waterline. Once the line is covered, the channel must be stabilized upstream to where bedrock is exposed; otherwise, downcutting will continue and ultimately expose the line again.

SUPPLEMENTARY INFORMATION: PBA operates and maintains a water system that passes through DEWA properties at the southern end of the park in the area of Slateford Farm. The water system services the Borough of Portland. There is the potential for significant damage to this exposed waterline that may result from exposure to the weather, impact damage from flood debris or crushing.

The EA is available for public comment. Any member of the public may file a written comment. Comments should be addressed to the Superintendent, Delaware Water Gap National Recreation Area, River Road, Bushkill, PA 18324.

FOR FURTHER INFORMATION CONTACT: Superintendent, Delaware Water Gap National Recreation Area, Bushkill, PA 18324, 717–588–2418.

Dated: November 3, 1998.

William G. Laitner,

Superintendent.

Congressional Listing for Delaware Water Gap NRA

Honorable Frank Lautenburg, U.S. Senate, SH–506 Hart Senate Office Building, Washington, DC 20510–3002

Honorable Robert G. Torricelli, U.S. Senate, Washington, DC 20510–3001

Honorable Richard Santorum, U.S. Senate, SR 120 Senate Russell Office Bldg., Washington, DC 20510

Honorable Arlen Specter, U.S. Senate, SH–530 Hart Senate Office Bldg., Washington, DC 20510–3802

Honorable Paul McHale, U.S. House of Representatives, 511 Cannon House Office Bldg., Washington, DC 20515–3815

Honorable Joseph McDade, U.S. House of Representatives, 2370 Rayburn House Office Bldg., Washington, DC 20515–3810

Honorable Margaret Roukema, U.S. House of Representatives, 2244 Rayburn House Office Bldg., Washington, DC 20515–3005

Honorable Tom Ridge, State Capitol, Harrisburg, PA 17120

Honorable Christine Whitman, State House, Trenton, NJ 08625

Honorable Joe Battisto, State Representative, 206 South Capitol Building, Harrisburg, PA 17120–0028

[FR Doc. 98–30489 Filed 11–13–98; 8:45 am]

BILLING CODE 4310–70–P

DEPARTMENT OF THE INTERIOR

National Park Service

Oil and Gas Management Plan/ Environmental Impact Statement, Big Thicket National Preserve, Texas

AGENCY: National Park Service, United States Department of the Interior.

ACTION: Notice of Intent to Prepare and Oil and Gas Management Plan/ Environmental Impact Statement for Big Thicket National Preserve.

SUMMARY: In accordance with section 102(2)(C) of the National Environmental Policy Act of 1969, the National Park Service is preparing an Oil and Gas Management Plan/Environmental Impact Statement for Big Thicket National Preserve in Hardin, Jefferson, Liberty, Orange, Tyler, Jasper, and Polk Counties, Texas, and is initiating the scoping process for this document. This statement will be approved by John E. Cook, Intermoutain Regional Director, National Park Service.

The Oil and Gas Management Plan/ Environmental Impact Statement is needed to

address the issues of how the National Park Service can protect its resources and values, ensure public safety, and minimize conflicts with visitors and park management while recognizing the rights of private mineral owners to develop their oil and gas resources. In the Oil and Gas Management Plan/Environmental Impact Statement and its accompanying public involvement process, the National Park Service will formulate and evaluate the environmental impacts of a reasonable range of alternatives that will provide protection for resources and values at Big Thicket National Preserve while allowing for exploration and development of the private mineral estate. Distinct management issues include identifying which park resources and values are most sensitive to oil and gas exploration and development disturbance, defining impact mitigation requirements to protect such resources and values, establishing reasonable performance standards and providing pertinent information to oil and gas owners and operators that will facilitate operations planning.

PUBLIC INFORMATION AND COMMENTS: A public scoping newsletter will be mailed in November 1998, to invite public participation in the scoping process and to describe the planning process. The general public and affected or interested parties are encouraged to provide comments and suggestions, and to identify issues and other reasonable alternatives that should be addressed in the Oil and Gas Management Plan/Environmental Impact Statement.

An Open House meeting will be held on December 3, 1998, at the Beaumont Hilton in Beaumont, Texas. The public and affected or interested parties may request additional meetings in other Texas cities. These requests should be made no later than January 17, 1999.

FOR FURTHER INFORMATION CONTACT: If you would like to be placed on the mailing list or request a meeting in your city, please contact Linda Dansby, EIS Team Leader, P.O. Box 728, Santa Fe, New Mexico 87504, 505/988–6095 or Superintendent, Big Thicket National Preserve, at 409/839–2691, ext. 223.

Dated: November 6, 1998.

Richard R. Peterson,

Superintendent, Big Thicket National Preserve.

[FR Doc. 98–30487 Filed 11–13–98; 8:45 am]

BILLING CODE 4310–70–M

INTERNATIONAL TRADE COMMISSION

[Investigation 332–395]

Effects on U.S. Trade of the European Union's Association Agreements With Selected Central and Eastern European Partners

AGENCY: United States International Trade Commission.

ACTION: Cancellation of public hearing.

SUMMARY: November 9, 1998, the Commission received notice that the only scheduled witnesses for the hearing scheduled for November 18, 1998, in this matter were withdrawing their request to appear. Therefore, the public hearing in connection with this investigation, scheduled to be held beginning at 9:30 a.m. on November 18, 1998, at the U.S. International Trade Commission Building, 500 E Street, SW., Washington, D.C., is canceled. Notice of institution of this investigation and the scheduling of the hearing was published in the **Federal Register** of June 11, 1998 (63 FR 32030). To be assured of consideration by the Commission, written statements relating to the Commission's report should be submitted at the earliest practical date and should be received not later than COB November 25, 1998. All submissions should be addressed to the Secretary, United States International Trade Commission, 500 E Street, S.W., Washington, D.C.

EFFECTIVE DATE: November 9, 1998.

FOR FURTHER INFORMATION CONTACT: Diane Manifold, Office of Economics (202–205–3271 or e-mail to dmanifold@usitc.gov). The media should contact Margaret O'Laughlin, Office of External Relations (202–205–1819). Hearing impaired individuals are advised that information on this matter can be obtained by contacting the TDD terminal on (202) 205–1810.

List of Subjects

Eastern Europe, Association Agreements, international trade.

Issued: November 10, 1998.

By order of the Commission.

Donna R. Koehnke,

Secretary.

[FR Doc. 98–30571 Filed 11–13–98; 8:45 am]

BILLING CODE 7020–02–P

INTERNATIONAL TRADE COMMISSION

[Investigation No. AA1921–162 (Review)]

Melamine From Japan

AGENCY: United States International Trade Commission.

ACTION: Notice of Commission decision to conduct a full five-year review concerning the antidumping duty order on melamine from Japan.

SUMMARY: On November 5, 1998, the Commission determined that a full review pursuant to section 751(c)(5) of the Tariff Act of 1930 (19 U.S.C. 1675(c)(5)) should proceed in the subject five-year review.[1] The Commission ruled that interested party responses to the notice of institution (63 FR 41282, August 3, 1998) are adequate.[2] Accordingly, the Commission hereby gives notice of a full review to determine whether revocation of the antidumping duty order on melamine from Japan would be likely to lead to continuation or recurrence of material injury. A schedule for the review will be established and announced at a later date.

For further information concerning the conduct of this review and rules of general application, consult the Commission's Rules of Practice and Procedure, part 201, subparts A through E (19 CFR part 201), and part 207, subparts A, D, E, and F (19 CFR part 207). Recent amendments to the Rules of Practice and Procedure pertinent to five-year reviews, including the text of subpart F of part 207, are published at 63 FR 30599, June 5, 1998, and may be downloaded from the Commission's World Wide Web site at http://www.usitc.gov/rules.htm.

EFFECTIVE DATE: November 5, 1998.

FOR FURTHER INFORMATION CONTACT: Cynthia Trainor (202–205–3354) or Robert Eninger (202–205–3194), Office of Investigations, U.S. International Trade Commission, 500 E Street SW, Washington, DC 20436. Hearing-impaired persons can obtain information on this matter by contacting the Commission's TDD terminal on 202–205–1810. Persons with mobility impairments who will need special assistance in gaining access to the Commission should contact the Office of the Secretary at 202–205–2000. General information concerning the Commission may also be obtained by

[1] Commissioner Crawford dissenting.

[2] A record of the Commissioners' votes and statements by Chairman Bragg and Commissioner Crawford are available from the Office of the Secretary and at the Commission's web site.

accessing its internet server (http://www.usitc.gov).

Authority: This review is being conducted under authority of title VII of the Tariff Act of 1930; this notice is published pursuant to section 207.62 of the Commission's rules.

Issued: November 9, 1998.

By order of the Commission.

Donna R. Koehnke,

Secretary.

[FR Doc. 98–30461 Filed 11–13–98; 8:45 am]

BILLING CODE 7020–02–P

INTERNATIONAL TRADE COMMISSION

[Investigation No. AA1921–129 (Review)]

Polychloroprene Rubber From Japan

AGENCY: United States International Trade Commission.

ACTION: Notice of Commission decision to conduct a full five-year review concerning the antidumping duty order on polychloroprene rubber from Japan.

SUMMARY: On November 5, 1998, the Commission determined that a full review pursuant to section 751(c)(5) of the Tariff Act of 1930 (19 U.S.C. § 1675(c)(5)) should proceed in the subject five-year review. The Commission ruled that interested party responses to the notice of institution (63 FR 41284, August 3, 1998) are adequate.[1] Accordingly, the Commission hereby gives notice of a full review to determine whether revocation of the antidumping duty order on polychloroprene rubber from Japan would be likely to lead to continuation or recurrence of material injury. A schedule for the review will be established and announced at a later date.

For further information concerning the conduct of this review and rules of general application, consult the Commission's Rules of Practice and Procedure, part 201, subparts A through E (19 CFR part 201), and part 207, subparts A, D, E, and F (19 CFR part 207). Recent amendments to the Rules of Practice and Procedure pertinent to five-year reviews, including the text of subpart F of part 207, are published at 63 F.R. 30599, June 5, 1998, and may be downloaded from the Commission's World Wide Web site at http://www.usitc.gov/rules.htm.

EFFECTIVE DATE: November 5, 1998.

FOR FURTHER INFORMATION CONTACT: Gail Burns (202–205–2501) or Robert Carpenter (202–205–3172), Office of Investigations, U.S. International Trade Commission, 500 E Street SW, Washington, DC 20436. Hearing-impaired persons can obtain information on this matter by contacting the Commission's TDD terminal on 202–205–1810. Persons with mobility impairments who will need special assistance in gaining access to the Commission should contact the Office of the Secretary at 202–205–2000. General information concerning the Commission may also be obtained by accessing its internet server (http://www.usitc.gov).

Authority: This review is being conducted under authority of title VII of the Tariff Act of 1930; this notice is published pursuant to section 207.62 of the Commission's rules.

Issued: November 9, 1998.

By order of the Commission.

Donna R. Koehnke,

Secretary.

[FR Doc. 98–30460 Filed 11–13–98; 8:45 am]

BILLING CODE 7020–02–P

INTERNATIONAL TRADE COMMISSION

[Investigation No. AA1921–114 (Review)]

Stainless Steel Plate From Sweden

AGENCY: United States International Trade Commission.

ACTION: Notice of Commission decision to conduct a full five-year review concerning the antidumping duty order on stainless steel plate from Sweden.

SUMMARY: On November 5, 1998, the Commission determined that a full review pursuant to section 751(c)(5) of the Tariff Act of 1930 (19 U.S.C. § 1675(c)(5)) should proceed in the subject five-year review. The Commission ruled that interested party responses to the notice of institution (63 F.R. 41288, August 3, 1998) are adequate.[1] Accordingly, the Commission hereby gives notice of a full review to determine whether revocation of the antidumping duty order on stainless steel plate from Sweden would be likely to lead to continuation or recurrence of material injury. A schedule for the review will be established and announced at a later date.

For further information concerning the conduct of this review and rules of general application, consult the Commission's Rules of Practice and Procedure, part 201, subparts A through E (19 CFR part 201), and part 207, subparts A, D, E, and F (19 CFR part 207). Recent amendments to the Rules of Practice and Procedure pertinent to five-year reviews, including the text of subpart F of part 207, are published at 63 F.R. 30599, June 5, 1998, and may be downloaded from the Commission's World Wide Web site at http://www.usitc.gov/rules.htm.

EFFECTIVE DATE: November 5, 1998.

FOR FURTHER INFORMATION CONTACT: Pamela Luskin (202–205–3189) or Robert Carpenter (202–205–3172), Office of Investigations, U.S. International Trade Commission, 500 E Street SW, Washington, DC 20436. Hearing-impaired persons can obtain information on this matter by contacting the Commission's TDD terminal on 202–205–1810. Persons with mobility impairments who will need special assistance in gaining access to the Commission should contact the Office of the Secretary at 202–205–2000. General information concerning the Commission may also be obtained by accessing its internet server (http://www.usitc.gov).

Authority: This review is being conducted under authority of title VII of the Tariff Act of 1930; this notice is published pursuant to section 207.62 of the Commission's rules.

Issued: November 9, 1998.

By order of the Commission.

Donna R. Koehnke,

Secretary.

[FR Doc. 98–30462 Filed 11–13–98; 8:45 am]

BILLING CODE 7020–02–P

INTERNATIONAL TRADE COMMISSION

[Investigation No. AA1921–115 (Review)]

Synthetic Methionine From Japan

AGENCY: United States International Trade Commission.

ACTION: Notice of Commission decision to conduct a full five-year review concerning the antidumping duty order on synthetic methionine from Japan.

SUMMARY: On November 5, 1998, the Commission determined that a full review pursuant to section 751(c)(5) of the Tariff Act of 1930 (19 U.S.C. § 1675(c)(5)) should proceed in the subject five-year review. The Commission ruled that interested party responses to the notice of institution (63 F.R.41290, August 3, 1998) are adequate.[1] Accordingly, the

[1] A record of the Commissioners' votes and a statement by Chairman Bragg are available from the Office of the Secretary and at the Commission's web site.

[1] A record of the Commissioners' votes and statements by Chairman Bragg and Commissioners Crawford and Koplan are available from the Office of the Secretary and at the Commission's web site.

[1] A record of the Commissioners' votes and a statement by Chairman Bragg are available from the

Commission hereby gives notice of a full review to determine whether revocation of the antidumping duty order on synthetic methionine from Japan would be likely to lead to continuation or recurrence of material injury. A schedule for the review will be established and announced at a later date.

For further information concerning the conduct of this review and rules of general application, consult the Commission's Rules of Practice and Procedure, part 201, subparts A through E (19 CFR part 201), and part 207, subparts A, D, E, and F (19 CFR part 207). Recent amendments to the Rules of Practice and Procedure pertinent to five-year reviews, including the text of subpart F of part 207, are published at 63 F.R. 30599, June 5, 1998, and may be downloaded from the Commission's World Wide Web site at http://www.usitc.gov/rules.htm.

EFFECTIVE DATE: November 5, 1998.

FOR FURTHER INFORMATION CONTACT: Mary Elizabeth Sweet (202–205–3455) or George Deyman (202–205–3197), Office of Investigations, U.S. International Trade Commission, 500 E Street SW, Washington, DC 20436. Hearing-impaired persons can obtain information on this matter by contacting the Commission's TDD terminal on 202–205–1810. Persons with mobility impairments who will need special assistance in gaining access to the Commission should contact the Office of the Secretary at 202–205–2000. General information concerning the Commission may also be obtained by accessing its internet server (http://www.usitc.gov).

Authority: This review is being conducted under authority of title VII of the Tariff Act of 1930; this notice is published pursuant to section 207.62 of the Commission's rules.

Issued: November 9, 1998.

By order of the Commission.

Donna R. Koehnke,

Secretary.

[FR Doc. 98–30463 Filed 11–13–98; 8:45 am]

BILLING CODE 7020–02–P

DEPARTMENT OF LABOR

Office of the Assistant Secretary for Veterans' Employment and Training

Secretary of Labor's Advisory Committee for Veterans' Employment and Training; Notice of Open Meeting

The Secretary's Advisory Committee for Veterans' Employment and Training was established under section 4110 of title 38, United States Code, to bring to the attention of the Secretary, problems and issues relating to veterans' employment and training.

Notice is hereby given that the Secretary of Labor's Advisory Committee for Veterans' Employment and Training will meet on Tuesday and Wednesday, December 1–2, 1998, at the U.S. Department of Labor, 200 Constitution Avenue, N.W., Room S–2508, Washington, DC 20210. December 1 will be an all day meeting and December 2 will be half day, both days beginning at 9:00 a.m.

Written comments are welcome and may be submitted by addressing them to: Ms. Polin Cohanne, Designated Federal Official, Office of the Assistant Secretary for Veterans' Employment and Training, U.S. Department of Labor, 200 Constitution Avenue, N.W., Room S–1315, Washington, D.C. 20210.

The primary items on the agenda are:

- Adoption of Minutes of the Previous Meeting.
- Workforce Investment Act of 1998.
- Other Matters of Interest of the Committee.
- Veterans Employment Opportunities Act of 1998.

The meeting will be open to the public.

Persons with disabilities needing special accommodations should contact Ms. Polin Cohanne at telephone number 202–219–9116 no later than November 23, 1998.

Signed at Washington, D.C. this November 9, 1998.

Espiridion (Al) Borrego,

Assistant Secretary of Labor for Veterans' Employment and Training.

[FR Doc. 98–30569 Filed 11–13–98; 8:45 am]

BILLING CODE 4510–79–M

LIBRARY OF CONGRESS

Copyright Office

[Docket No. 98–12]

Promotion of Distance Education Through Digital Technologies

AGENCY: Copyright Office, Library of Congress.

ACTION: Notice of request for information.

SUMMARY: As required by section 403 of the Digital Millenium Copyright Act, enacted October 28, 1998, the Copyright Office is initiating its study of the promotion of distance education through digital technologies, for the purpose of making recommendations to the Congress. Presently, the Copyright Office is establishing parameters for its study of the issues. Through this preliminary notice, the Office seeks to identify all interested parties and determine what matters those parties deem relevant and important. The Office anticipates the possibility of consultations and public meetings, as well as the submission of formal statements. At this time, the Copyright Office is soliciting only the identification of any and all potentially interested parties and an identification of the issues with which they may be concerned.

DATE: Written submissions are due by December 7, 1998.

ADDRESSES: If sent by mail, an original and five copies of written submissions should be addressed to Shira Perlmutter, Associate Register for Policy and International Affairs, Copyright GC/I&R, P.O. Box 70400, Southwest Station, Washington, D.C. 20024. If hand delivered, an original and five copies of written submissions should be brought to the Office of Policy and International Affairs, Office of the Register, James Madison Memorial Building, Room LM–403, 101 Independence Avenue, S.E., Washington, D.C. 20559–6000.

FOR FURTHER INFORMATION CONTACT: Shira Perlmutter, Associate Register for Policy and International Affairs, or Sayuri Rajapakse, Attorney-Advisor, Office of Policy and International Affairs. Telephone (202) 707–8350. Fax: (202) 707–8366.

SUPPLEMENTARY INFORMATION:

Background

In April 1998, Senator Orrin G. Hatch, Chairman of the Senate Committee on the Judiciary, with Senators Patrick J. Leahy and John Ashcroft, sent a letter to the Register of Copyrights requesting the Copyright Office to facilitate a series of discussions to be held on the subject of an exemption for digital distance education to be included in the Digital Millenium Copyright Act of 1998 (''DMCA''). Senators Hatch, Leahy and Ashcroft further requested the Copyright Office to report its findings to the Committee, and to develop policy options and legislative recommendations.

On April 27–28, 1998, the Register of Copyrights and her staff held intensive discussions with certain interested parties, including representatives of copyright owners, nonprofit educational institutions, and nonprofit libraries and archives. Through the process of negotiation it was possible to identify some areas of potential agreement among the parties. It also became clear,

Office of the Secretary and at the Commission's web site.

however, that many complex and interrelated issues were involved. All of these issues could not be given appropriate consideration in the time available. On April 29, 1998, at the conclusion of the discussions, the Copyright Office submitted its recommendations to Senators Hatch, Leahy and Ashcroft in the form of statutory language for a narrow amendment to 17 U.S.C. 110(2), and a proposal for a study of the issues involved in interactive digital distance education. Rather than amending section 110(2) in the DMCA, the Senate mandated a broad study of the overall subject by the Copyright Office. Such a study was also incorporated into the version of the bill passed by the House.

On October 28, 1998, H.R. 2281, the Digital Millenium Copyright Act, was enacted into law. Section 403 requires that the Copyright Office consult with representatives of copyright owners, nonprofit educational institutions, and nonprofit libraries and archives, and thereafter to submit to Congress recommendations on how to promote distance education through digital technologies, including interactive digital networks, while maintaining an appropriate balance between the rights of copyright owners and the interests of users. Such recommendations may include legislative changes.

The Register of Copyrights has been instructed to consider:

(1) The need for an exemption from exclusive rights of copyright owners for distance education through digital networks;

(2) The categories of works to be included under any distance education exemption;

(3) The extent of appropriate quantitiative limitations on the portions of work that may be used under any distance education exemption;

(4) The parties who should be entitled to the benefits of any distance education exemption;

(5) The parties who should be designated as eligible recipients of distance education materials under any distance education exemption;

(6) Whether and what types of technological measures can or should be employed to safeguard against unauthorized access to, and use or retention of, copyrighted materials as a condition of eligibility for any distance education exemption, including, in light of developing technological capabilities, the exemption set out in section 110(2) of title 17, United States Code;

(7) The extent to which the availability of licenses for the copyrighted works in distance education through interactive digital networks should be considered in assessing eligibility for any distance education exemption; and

(8) Such other issues relating to distance education through interactive digital networks that the Register considers appropriate.

Request for Information

The Copyright Office is initiating its study of the issues related to the promotion of distance education through digital technologies. In order to assist in planning and establishing paramenters for the study, the Office is hereby seeking identification of any potentially interested parties and the issues with which they may be concerned. After this preliminary information is gathered, the Office will determine what additional activities are helpful and appropriate. Such additional activities may include consultations and public meetings, as well as the submission of formal statements.

Written submissions will be accepted from all interested parties. While there is no prescribe format for these initial informational statements, any written submission should include the interested party's name, title, organization, mailing address, telephone number, facsimile number, and e-mail address, if available, and a list and short description of any issues that he or she considers relevant and important.

Marybeth Peters,

Register of Copyrights.

[FR Doc. 98–30563 Filed 11–13–98; 8:45 am]

BILLING CODE 1410–30–M

NATIONAL CREDIT UNION ADMINISTRATION

Agency Information Collection Activities: Submission to OMB for Review; Comment Request

AGENCY: National Credit Union Administration (NCUA).

ACTION: Request for comment.

SUMMARY: The NCUA is submitting the following extension of a currently approved collection to the Office of Management and Budget (OMB) for review and clearance under the Paperwork Reduction Act of 1995 (P.L. 104–13, 44 U.S.C. Chapter 35). This information collection is published to obtain comments from the public.

DATES: Comments will be accepted until January 15, 1999.

ADDRESSES: Interested parties are invited to submit written comments to NCUA Clearance Officer or OMB Reviewer listed below:

Clearance Officer: Mr. James L. Baylen (703) 518–6411, National Credit Union Administration, 1775 Duke Street, Alexandria, Virginia 22314–3428, Fax No. 703–518–6433, E-mail: jbaylen@ncua.gov

OMB Reviewer: Alexander T. Hunt (202) 395–7860, Office of Management and Budget, Room 10226, New Executive Office Building, Washington, DC 20503

FOR FURTHER INFORMATION CONTACT: Copies of the information collection request, with applicable supporting documentation, may be obtained by calling the NCUA Clearance Officer, James L. Baylen, (703) 518–6411.

SUPPLEMENTARY INFORMATION: To ensure that federal credit unions make safe and sound investments, the rule requires that they establish written investment policies and review them annually, document details of the individual investments monthly, ensure adequate broker/dealer selection criteria and record credit decisions regarding deposits in certain financial institutions.

OMB Number: 3133–0133.

Form Number: N/A.

Type of Review: Extension of a currently approved collection.

Title: 12 CFR 703 Investment and Deposit Activities.

Respondents: 6,900.

Estimated No. of Respondents/Recordkeepers: 6,900.

Estimated Burden Hours Per Response: 42.8 hours.

Frequency of Response: Other.

Estimated Total Annual Burden Hours: 295,481.

Estimated Total Annual Cost: N/A.

By the National Credit Union Administration Board on November 1, 1998.

Becky Baker,

Secretary of the Board.

[FR Doc. 98–30490 Filed 11–13–98; 8:45 am]

BILLING CODE 7535–01–U

NATIONAL SCIENCE FOUNDATION

Special Emphasis Panel in Advanced Networking Infrastructure; Notice of Meeting

In accordance with the Federal Advisory Committee Act (Pub. L. 92–463, as amended), the National Science Foundation announces the following meeting.

Name: Special Emphasis Panel in Advanced Networking Infrastructure Research (#1207).

Date & time: December 14 and 15, 1998; 8:30 a.m.–5 p.m.

Place: Room 1120, National Science Foundation, 4201 Wilson Blvd., Arlington, VA 22230.

Type of meeting: Closed.

Contact persons: Tatsuya Suda, Division of Advanced Networking Infrastructure Research, Room 1175, National Science Foundation, 4201 Wilson Blvd., Arlington, VA 22230. Telephone (703) 306–1949.

Purpose of meeting: To provide advice and recommendations concerning proposals submitted to NSF for financial support.

Agenda: To review and evaluate proposals submitted to the Networking Research Program as part of the selection process for awards.

Reason for closing: The proposals being reviewed include information of a proprietary or confidential nature, including technical information; financial data, such as salaries; and personal information concerning individuals associated with the proposals. These matters are exempt under 5 U.S.C. 552b(c), (4) and (6) of the Government in the Sunshine Act.

Dated: November 9, 1998.

M. Rebecca Winkler,

Committee Management Officer.

[FR Doc. 98–30471 Filed 11–13–98; 8:45 am]

BILLING CODE 7555–01–M

NATIONAL SCIENCE FOUNDATION

Special Emphasis Panel in Astronomical Sciences (1186); Notice of Meetings

In accordance with the Federal Advisory Committee Act (Pub. L. 92–463, as amended), the National Science Foundation announces that the Special Emphasis Panel in Astronomical Sciences (1186) will be holding panel meetings for the purpose of reviewing proposals submitted to the Stellar Astronomy and Astrophysics Program in the area of Astronomical Sciences. In order to review the large volume of proposals, panel meetings will be held on December 1 and 2 (2) and on December 8 and 9 (3). All meetings will be closed to the public and will be held at the National Science Foundation, 4201 Wilson Boulevard, Arlington, Virginia, from 9:00 am to 5:00 pm each day.

Contact person: Dr. Terry Oswalt, Program Director, Stellar Astronomy and Astrophysics, Division of Astronomical Sciences, National Science Foundation, Room 1045, 4201 Wilson Boulevard, Arlington, VA 22230, (703) 306–1825.

Reason for closing: The proposals being reviewed include information of a proprietary or confidential nature, including technical information, financial data such as salaries, and personal information concerning individuals associated with the proposals. These matters are exempt under 5 USC 552b(c) (4) and (6) of the Government in the Sunshine Act.

Dated: November 9, 1998.

M. Rebecca Winkler,

Committee Management Officer.

[FR Doc. 98–30470 Filed 11–13–98; 8:45 am]

BILLING CODE 7555–01–M

NATIONAL SCIENCE FOUNDATION

Special Emphasis Panel in Chemistry; Notice of Meeting

In accordance with the Federal Advisory Committee Act (Pub. L. 92–463, as amended), the National Science Foundation announces the following meeting:

Date and Time: December 16, 1998 8:00 PM–9:00 PM; December 17, 1998 8:00 AM–6:00 PM; December 18, 1998 8:00 AM–6:00 PM.

Place: Argonne National Laboratory, Advanced Photon Source, 9700 Cass Avenue, Chicago, IL 60439.

Type of Meeting: Closed.

Contact Person: Donald Burland, Executive Officer, Division of Chemistry, National Science Foundation, 4201 Wilson Boulevard, Arlington, VA 22230 Telephone: (703) 306–1848.

Purpose of Meeting: To review the management and operations of the ChemMatCARS Facility.

Agenda: Review the cost, schedule, management and operations of the ChemMatCARS Facility.

Reason for Closing: The project being reviewed includes information of a proprietary or confidential nature, including technical information; information on personnel and proprietary data for present and future funding. These matters are exempt under 5 U.S.C. 552b(c), (4) and (6) of the Government in the Sunshine Act.

Dated: November 9, 1998.

M. Rebecca Winkler,

Committee Management Officer.

[FR Doc. 98–30472 Filed 11–13–98; 8:45 am]

BILLING CODE 7555–01–M

NATIONAL SCIENCE FOUNDATION

Advisory Committee for Geosciences, Committee of Visitors; Notice of Meeting

In accordance with the Federal Advisory Committee Act (Pub. L. 92–463, as amended), the National Science Foundation announces the following meeting:

Name: Advisory Committee for Geosciences (1755).

Date & time: Wednesday, December 2, 1998 8:30 am–5 p.m. Thursday, December 3, 1998 8:30 am–5 p.m.

Place: Sycamore Hall, W. Alton Jones Campus, University of Rhode Island 401 Victory Highway, West Greenwich, RI.

Type of meeting: Part-Open—(see Agenda, below).

Contact person: Dr. Donald F. Heinrichs, Section Head, National Science Foundation, 4201 Wilson Boulevard, Arlington, VA 22230. Telephone: (703) 306–1580.

Purpose of meeting: To carry out Committee of Visitors (COV) review, and evaluate the existing capabilities and services, management structure and operations including possible recompetition of elements of the research vessel fleet required for research sponsored by the National Science Foundation.

Agenda:

Closed: December 3 8:30 am to 5 p.m.

To review the merit review processes covering funding decisions made during the immediately preceding three years concerning the Academic Fleet Review Program.

Open: December 2, 8:30 am to 5 p.m.

To discuss and review academic fleet use and use-trends, specialized capabilities, research program projects, and financial and management analyses of operations including potential cost savings approaches.

Reason for closing: During the closed session, the Committee will be reviewing proposal actions that will include privileged intellectual property and personal information that could harm individuals if they were disclosed. If discussions were open to the public, these matters that are exempt under 5 U.S.C. 552b(c) (4) and (6) of the Government in the Sunshine Act would be improperly disclosed.

Dated: November 9, 1998.

M. Rebecca Winkler,

Committee Management Officer.

[FR Doc. 98–30465 Filed 11–13–98; 8:45 am]

BILLING CODE 7555–01–M

NATIONAL SCIENCE FOUNDATION

Advisory Committee for Geosciences; Notice of Meeting

In accordance with the Federal Advisory Committee Act (Pub. L. 92–463, as amended), the National Science Foundation announces the following meeting:

Name: Advisory Committee for Geosciences (1755).

Dates: November 30–December 2, 1998.

Time: 5:00 p.m.–8:30 p.m., Monday, November 30; 8:30 a.m.–5:30 p.m., Tuesday, December 1; 8:30 a.m.–2:30 p.m., Wednesday, December 2, 1998.

Place: Room 375, National Science Foundation, 4201 Wilson Boulevard, Arlington, Virginia 22230.

Type of meeting: Open.

Contact person: Dr. Richard Greenfield, Director, Division of Atmospheric Sciences, National Science Foundation, Suite 775, 4201 Wilson Boulevard, Arlington, Virginia 22230, 703–306–1520.

Minutes: May be obtained from the contact person listed above.

Purpose of meeting: To provide advice, recommendations, and oversight concerning support for research, education, and human resources development in the geosciences.

Agenda:

GEO Facilities Long-Range Planning
NSF/GEO Role in Information Technology
NSF/GEO Role in Environmental Research
NSF/GEO Role in SMET Workforce of the Future
Scientific Planning for the New Millenium (GEO Vision 2000)
COV Preparations/GPRA Considerations
EHR Program Evaluation Criteria

Note: A detailed agenda will be posted on the NSF Homepage approximately one week prior to the meeting on http://www.geo.nsf.gov/adgeo/advcomm/start.htm

Dated: November 9, 1998.

M. Rebecca Winkler,

Committee Management Officer.

[FR Doc. 98–30466 Filed 11–13–98; 8:45 am]

BILLING CODE 7555–01–M

NATIONAL SCIENCE FOUNDATION

Special Emphasis Panel in Mathematical Sciences; Notice of Meeting

In accordance with the Federal Advisory Committee Act (Pub. L. 92–463, as amended), the National Science Foundation announces the following meeting.

Name: Special Emphasis Panel in Mathematical Sciences (1204).

Date and Time: December 3–5, 1998, 8:30 a.m.–5 p.m.

Place: Room 1020 National Science Foundation, 4201 Wilson Boulevard, Arlington, VA 22230.

Type of Meeting: Closed.

Contact Person: Lloyd Douglas, Program Officer, Infrastructure Program, Room 1025 National Science Foundation, 4201 Wilson Boulevard, Arlington, VA 22230. Telephone: (703) 306–1874.

Purpose of Meeting: To provide advice and recommendations concerning applications submitted to NSF for financial support.

Agenda: To review and evaluate proposals concerning the Research Experiences for Undergraduates (REU) program as part of the selection process for awards.

Reason for Closing: The proposals being reviewed include information of a proprietary or confidential nature, including technical information; financial data, such as salaries and personal information concerning individuals associated with the proposals. These matters are exempt under 5 U.S.C. 552b(c)(4) and (6) of the Government in the Sunshine Act.

Dated: November 9, 1998.

M. Rebecca Winkler,

Committee Management Officer.

[FR Doc. 98–30464 Filed 11–13–98; 8:45 am]

BILLING CODE 7555–01–M

NATIONAL SCIENCE FOUNDATION

Special Emphasis Panel in Mathematical Sciences; Notice of Meeting

In accordance with the Federal Advisory Committee Act (Pub. L. 92–463, as amended), the National Science Foundation announces the following meeting.

Name: Special Emphasis Panel in Mathematical Sciences (1204).

Date and time: December 11, 1998, 8:30 a.m.–5 p.m.

Place: O'Hare Hilton, O'Hare International Airport, Chicago, Illinois.

Type of meeting: Closed.

Contact person: Lloyd Douglas, Program Officer, Infrastructure Program, Room 1025 National Science Foundation, 4201 Wilson Boulevard, Arlington, VA 22230. Telephone: (703) 306–1874.

Purpose of meeting: To provide advice and recommendations concerning applications submitted to NSF for financial support.

Agenda: To review and evaluate applications concerning the Mathematical Sciences Postdoctoral Research Fellowship Program as part of the selection process for awards.

Reason for closing: The proposals being reviewed include information of a proprietary or confidential nature, including technical information; financial data, such as salaries and personal information concerning individuals associated with the proposals. These matters are exempt under 5 U.S.C. 552b(c) (4) and (6) of the Government in the Sunshine Act.

Dated: November 9, 1998.

M. Rebecca Winkler,

Committee Management Officer.

[FR Doc. 98–30468 Filed 11–13–98; 8:45 am]

BILLING CODE 7555–01–M

NATIONAL SCIENCE FOUNDATION

Special Emphasis Panel in Mathematical Sciences; Notice of Meeting

In accordance with the Federal Advisory Committee Act (Pub. L. 92–463, as amended), the National Science Foundation announces the following meeting:

Name: Special Emphasis Panel in Mathematical Sciences (1204).

Date and time: December 11, 1998, 8:30 a.m.–5 p.m.

Place: O'Hare Hilton, O'Hare International Airport, Chicago, Illinois.

Type of meeting: Closed.

Contact person: Dr. Lloyd Douglas, Program Officer, Infrastructure Program, Room 1025 National Science Foundation, 4201 Wilson Boulevard, Arlington, VA 22230. Telephone: (703) 306–1874.

Purpose of meeting: To provide advice and recommendations concerning applications submitted to NSF for financial support.

Agenda: To review and evaluate applications concerning the Mathematical Sciences Postdoctoral Research Fellowship Program as part of the selection process for awards.

Reason for closing: The proposals being reviewed include information of a proprietary or confidential nature, including technical information; financial data, such as salaries and personnal information concerning individuals associated with the proposals. These matters are exempt under 5 U.S.C. 552b(c) (4) and (6) of the Government in the Sunshine Act.

Dated: November 9, 1998.

M. Rebecca Winkler,

Committee Management Officer.

[FR Doc. 98–30469 Filed 11–13–98; 8:45 am]

BILLING CODE 7555–01–M

NATIONAL SCIENCE FOUNDATION

Special Emphasis Panel in Social Behavioral and Economic Sciences; Notice of Meeting

In accordance with the Federal Advisory Committee Act (Pub. L. 92–463, as amended), the National Science Foundation announces the following meeting:

Name: Special Emphasis Panel in Social, Behavioral, and Economic Sciences (1766).

Date and time: December 8, 1998; 9 a.m. to 5 p.m., December 9, 1998; 9 a.m. to 12 p.m.

Place: Room 730, 4201 Wilson Blvd., Arlington, VA.

Type of meeting: Open.

Contact person: Ann T. Lanier, Division of Science Resources Studies; Research and Development Statistics Program; 4201 Wilson Blvd., Suite 965; Arlington, VA 22230; Telephone (703) 306–1772, ext. 6937; Fax: (703) 306–0508; Internet: alanier@nsf.gov

Minutes: Minutes may be obtained from the contact person at the above address.

Purpose of meeting: To review and comment on issues affecting the Survey of Scientific and Engineering Research Facilities at Colleges and Universities.

Agenda: The advisory panel will use the first day to review the final draft of the 1998 S&E Research Facilities Report. The morning of the second day will be used to review and discuss the proposed follow-up survey to the 1998 Survey of Scientific and Engineering Research Facilities at Colleges and Universities; the 1999 Instructional Facilities Survey—Pilot Study; and how the three data collection efforts will be integrated into the 2000 Survey of Scientific and Engineering Research Facilities.

Dated: November 9, 1998.

M. Rebecca Winkler,

Committee Management Officer.

[FR Doc. 98–30467 Filed 11–13–98; 8:45 am]

BILLING CODE 7555–01–M

NUCLEAR REGULATORY COMMISSION

Agency Information Collection Activities: Proposed Collection; Comment Request

AGENCY: U. S. Nuclear Regulatory Commission (NRC).

ACTION: Notice of pending NRC action to submit an information collection request to OMB and solicitation of public comment.

SUMMARY: The NRC is preparing a submittal to OMB for review of continued approval of information collections under the provisions of the Paperwork Reduction Act of 1995 (44 U.S.C. Chapter 35).

Information pertaining to the requirement to be submitted:

1. *The title of the information collection:* 10 CFR Part 72, Licensing Requirements for the Independent Storage of Spent Nuclear Fuel and High-Level Radioactive Waste.

2. *Current OMB Approval Number:* 3150–0132.

3. *How often the collection is required:* Required reports are collected and evaluated on a continuing basis as events occur. Applications for new licenses and amendments may be submitted at any time. Applications for renewal of licenses would be required every 20 years for an Independent Spent Fuel Storage Installation (ISFSI) and every 40 years for a Monitored Retrievable Storage (MRS) facility.

4. *Who is required or asked to report:* Vendors of casks for the storage of spent fuel, licensees and applicants for a license to possess power reactor spent fuel and other radioactive materials associated with spent fuel storage in an ISFSI, and the Department of Energy for licenses to receive, transfer, package and possess power reactor spent fuel, high-level waste, and other radioactive materials associated with spent fuel and high-level waste storage in an MRS.

5. *The number of annual responses:* 92.

6. *The number of hours needed annually to complete the requirement or request:* 21,529 (an average of approximately 167 hours per response for applications and reports, plus approximately 765 hours annually per recordkeeper).

7. *Abstract:* 10 CFR Part 72 establishes requirements, procedures, and criteria for the issuance of licenses to receive, transfer, and possess power reactor spent fuel and other radioactive materials associated with spent fuel storage in an ISFSI, and requirements for the issuance of licenses to the Department of Energy to receive, transfer, package, and possess power reactor spent fuel and high-level radioactive waste, and other associated radioactive materials, in an MRS. The information in the applications, reports and records is used by NRC to make licensing and other regulatory determinations. The revised estimate of burden reflects an increase primarily because of the addition of requirements for decommissioning funding requirements, financial assurance provisions, documentation additions for decommissioning and license termination, and notification of incidents.

Submit, by January, 1999, comments that address the following questions:

1. Is the proposed collection of information necessary for the NRC to properly perform its functions? Does the information have practical utility?

2. Is the burden estimate accurate?

3. Is there a way to enhance the quality, utility, and clarity of the information to be collected?

4. How can the burden of the information collection be minimized, including the use of automated collection techniques or other forms of information technology?

A copy of the draft supporting statement may be viewed free of charge at the NRC Public Document Room, 2120 L Street, NW, (Lower Level), Washington, DC. OMB clearance requests are available at the NRC worldwide web site (http://www.nrc.gov/NRC/NEWS/OMB/index.html) under the FedWorld collection link on the home page tool bar. The document will be available on the NRC home page site for 60 days after the signature date of this notice.

Comments and questions may be directed to the NRC Clearance Officer, Brenda Jo. Shelton, U.S. Nuclear Regulatory Commission, T–6 F33, Washington, DC, 20555–0001, or by telephone at (301) 415–7233, or by Internet electronic mail at BJS1@NRC.GOV.

Dated at Rockville, Maryland, this 6th day of November 1998.

For the U. S. Nuclear Regulatory Commission.

Brenda Jo. Shelton,

NRC Clearance Officer, Office of the Chief Information Officer.

[FR Doc. 98–30559 Filed 11–13–98; 8:45 am]

BILLING CODE 7590–01–P

NUCLEAR REGULATORY COMMISSION

[Docket Nos. 50–498 and 50–499]

Houston Lighting & Power Company, et al. (South Texas Project, Units 1 and 2); Order Approving Application Regarding Proposed Corporate Merger of Central and South West Corporation and American Electric Power Company, Inc.

I

Houston Lighting & Power Company; City Public Service Board of San Antonio; Central Power and Light Company (CPL); City of Austin, Texas; and STP Nuclear Operating Company are holders of Facility Operating Licenses Nos. NPF–76 and NPF–80, issued on March 22, 1988, and March 28, 1989, respectively. Facility Operating Licenses Nos. NPF–76 and NPF–80 authorize the holders to possess the South Texas Project, Units 1 and 2 (STP), and authorize STP Nuclear Operating Company to use and operate STP in accordance with the procedures and limitations set forth in the operating licenses. The Nuclear Regulatory Commission (NRC) issued Licenses Nos. NPF–76 and NPF–80 on March 22, 1988, and March 28, 1989, respectively, pursuant to Part 50 of Title 10 of the Code of Federal Regulations (10 CFR Part 50). The facility is located in Matagorda County, Texas.

II

Under cover of a letter dated June 19, 1998, CPL submitted an application dated June 16, 1998, for consent under 10 CFR 50.80 to allow the indirect transfer of CPL's interest in STP that would occur in connection with a proposed merger of Central and South West Corporation (CSW, the parent holding company of CPL) and American Electric Power, Inc. (AEP). Under the proposed merger, CSW would become a wholly-owned subsidiary of AEP, with CPL remaining a wholly-owned subsidiary of CSW. Houston Lighting & Power Company; City Public Service Board of San Antonio; City of Austin, Texas; and STP Nuclear Operating Company are not involved in the merger. The application was supplemented by a letter dated June 23, 1998, and enclosures thereto.

CPL and the other current licensees would continue to hold the licenses, and no direct transfer of the licenses would result from the merger. On August 5, 1998, a Notice of Consideration of Approval of Application Regarding Proposed Merger was published in the **Federal Register**

(63 FR 41876). An Environmental Assessment and Finding of No Significant Impact was published in the **Federal Register** on September 28, 1998 (63 FR 51629).

Under 10 CFR 50.80, no license shall be transferred, directly or indirectly, through transfer of control of the license, unless the Commission gives its consent in writing. Upon review of the information contained in the application dated June 16, 1998, and enclosures to the letter dated June 23, 1998, the NRC staff has determined that the proposed merger will not affect the qualifications of CPL as holder of Facility Operating Licenses Nos. NPF–76 and NPF–80, and that the transfer of control of the licenses, to the extent effected by the proposed merger, is otherwise consistent with applicable provisions of law, regulations, and orders issued by the Commission, subject to the conditions set forth herein. These findings are supported by a safety evaluation dated November 5, 1998.

III

Accordingly, pursuant to Sections 161b, 161i, 161o, and 184 of the Atomic Energy Act of 1954, as amended; 42 U.S.C. §§ 2201(b), 2201(i), 2201(o), and 2234; and 10 CFR 50.80, *it is hereby ordered* that the Commission approves the application regarding the merger agreement between CSW and AEP subject to the following: (1) CPL shall provide the Director of the Office of Nuclear Reactor Regulation with a copy of any application, at the time it is filed, to transfer (excluding grants of security interests or liens) from CPL to its proposed parents, or to any other affiliated company, facilities for the production, transmission, or distribution of electric energy having a depreciated book value exceeding 10 percent of CPL's consolidated net utility plant, as recorded on its books of account, and (2) should the merger not be completed by December 31, 1999, this Order shall become null and void, unless upon application and for good cause shown this date is extended.

This Order is effective upon issuance.

IV

By December 14, 1998, any person adversely affected by this Order may file a request for a hearing with respect to issuance of the Order. Any person requesting a hearing shall set forth with particularity how such person's interest is adversely affected by this Order and shall address the criteria set forth in 10 CFR 2.714(d).

If a hearing is to be held, the Commission will issue an order designating the time and place of such hearing.

The issue to be considered at any such hearing shall be whether this Order should be sustained.

Any request for a hearing 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 20555–0001, by the above date. Copies should also be sent to the Office of the General Counsel and to the Director, Office of Nuclear Reactor Regulation, U.S. Nuclear Regulatory Commission, Washington, DC 20555–0001, and to John O'Neill, Jr., Shaw, Pittman, Potts & Trowbridge, 2300 N Street, NW., Washington, DC 20037–1128, counsel for CPL.

For further details with respect to this action, see the application from CPL dated June 16, 1998, submitted under cover of a letter dated June 19, 1998, from Shaw, Pittman, Potts, and Trowbridge, counsel for CPL, supplemental letter dated June 23, 1998, and enclosures thereto, and the safety evaluation dated November 5, 1998, which are available for public inspection at the Commission's Public Document Room, the Gelman Building, 2120 L Street, NW., Washington, DC 20555–0001, and at the local public document room located at the Wharton County Junior College, J.M. Hodges Learning Center, 911 Boling Highway, Wharton, TX 77488.

Dated at Rockville, Maryland, this 5th day of November 1998.

For the Nuclear Regulatory Commission.

Samuel J. Collins,

Director, Office of Nuclear Reactor Regulation.

[FR Doc. 98–30558 Filed 11–13–98; 8:45 am]

BILLING CODE 7590–01–P

NUCLEAR REGULATORY COMMISSION

[Docket Nos. 50–269, 50–270, and 50–287]

Duke Energy Corporation, Oconee Nuclear Station, Units 1, 2, and 3; Environmental Assessment and Finding of No Significant Impact

The U.S. Nuclear Regulatory Commission (the Commission) is considering issuance of an exemption from the requirements of Title 10 of the *Code of Federal Regulations* (10 CFR) Section 50.46(b) to the Duke Energy Corporation (the licensee) for operation of the Oconee Nuclear Station, Units 1, 2, and 3, located in Oconee County, South Carolina.

Environmental Assessment

Identification of Proposed Action

The proposed action would exempt the licensee from the provisions in 10 CFR 50.46(b), with respect to the emergency core cooling performance requirements during the performance of the proposed Keowee Emergency Power and Engineered Safeguards Functional (KEP/ESF) Test on Unit 3.

The emergency core cooling system (ECCS) is designed to assure that the consequences of the spectrum of loss of coolant accidents (LOCAs), coincident with a loss of offsite power (LOOP), are within the performance criteria specified in 10 CFR 50.46(b). As explained in the licensee's letter dated October 21, 1998, the planned test on Unit 3 could challenge these performance criteria in the extremely unlikely event that a LOCA and LOOP occurred coincident with the test. The licensee has chosen to address this issue with an exemption request. Therefore, pursuant to 10 CFR 50.12, the licensee applied for an exemption from 10 CFR 50.46.

The Need for the Proposed Action

The proposed action is required to exempt the licensee from the requirement to maintain an ECCS that is designed to conform to the criteria in 10 CFR 50.46(b) during the 10-second time interval when the test is actually being performed during the 24-hour test period. The action is needed to allow the test to be performed.

As stated in its September 17, 1998, letter, the licensee has planned a modification that would add voltage and frequency protection for Oconee loads when supplied from a Keowee hydro unit. The protection would separate Oconee loads from a Keowee unit if that unit's voltage or frequency becomes greater than 110 percent or less than 90 percent of rated value at any time after loading. The planned design would delay the loading of Oconee loads on the underground power path until the Keowee unit reaches greater than 90 percent voltage and frequency. The existing design allows early loading of the underground path Keowee unit at approximately 60 percent voltage. As a result of considering the frequency overshoot the Keowee units experience during an emergency start, and to resolve questions that arose concerning whether the preferred loading design for the emergency power system is 60 percent loading or 90 percent loading,

the Keowee Emergency Power and Engineered Safeguards Functional Test is planned.

Environmental Impacts of the Proposed Action

The Commission has completed its evaluation of the proposed action and concludes that exemption from the requirements of 10 CFR 50.46(b) to allow the licensee to perform the Keowee Emergency Power and Engineered Safeguards Functional Test to increase the reliability of the emergency electrical power system is appropriate.

The planned test will be performed with Unit 3 at cold shutdown and its engineered safeguards (ES) loads on the Standby Bus. The other two Oconee units will be operating and should not be affected by the test. However, in the unlikely event that a real LOCA/LOOP were to occur on either of the operating units during the simulated LOCA/LOOP on Unit 3 (probability, according to the licensee, of approximately 2E–9), the Oconee emergency power system (EPS) for Oconee Units 1, 2, and 3 could be in a condition outside its design bases. The EPS may not be capable of handling the electrical loading of two instantaneous LOCA/LOOP events without some safety-related equipment being adversely affected. However, the EPS would be able to handle the electrical loading if the two events are offset in time by approximately 10 seconds to allow the first unit's load to reach a steady-state condition prior to starting of the second unit's emergency loads. Therefore, this 10-second window of vulnerability causes an infinitesimally small, but non-zero, increase in the probability of a malfunction of equipment important to safety and the potential consequences of a LOCA/LOOP event during the performance of the test.

The exemption will not significantly increase the probability or consequences of accidents, no changes are being made in the types of any effluents that may be released offsite, and there is no significant increase in the allowable individual or cumulative occupational radiation exposure. Accordingly, the Commission concludes that there are no significant radiological environmental impacts associated with the proposed action.

With regard to potential nonradiological environmental impacts, the proposed action does not affect nonradiological plant effluents and has no other environmental impacts. Accordingly, the Commission concludes that there are no significant nonradiological impacts associated with the proposed action.

Alternatives to the Proposed Action

Since the Commission has concluded there is no significant environmental impact associated with the proposed action, any alternatives with equal or greater environmental impact need not be evaluated. As an alternative to the proposed action, the staff considered denial of the proposed action (the no-action alternative). Denial of the application would result in no change in current environmental impacts. The environmental impacts of the proposed action and the alternative action are similar.

Alternative Use of Resources

This action does not involve the use of resources not previously considered in the ''Final Environmental Statement Related to the Operation of the Oconee Nuclear Station, Units 1, 2, and 3,'' dated March 1972.

Agencies and Persons Consulted

In accordance with its stated policy, on November 4, 1998, the staff consulted with the South Carolina State official, Virgil R. Autry of the Division of Radioactive Waste Management, Bureau of Land and Waste Management, Department of Health and Environmental Control, regarding the environmental impact of the proposed action. The State official had no comments.

Finding of No Significant Impact

Based on 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 letters dated October 21 and September 17, 1998, 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 Oconee County Library, 501 West South Broad Street, Walhalla, South Carolina.

Dated at Rockville, Maryland, this 9th of November 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. 98–30560 Filed 11–13–98; 8:45 am]

BILLING CODE 7590–01–P

NUCLEAR REGULATORY COMMISSION

[Docket No. 50–458]

Entergy Operations, Incorporated, River Bend Station, Unit 1; Environmental Assessment and Finding of No Significant Impact

The U.S. Nuclear Regulatory Commission (the Commission) is considering issuance of an exemption from certain requirements of its regulations to Facility Operating License No. NPF–47, issued to Entergy Operations, Incorporated [1] (the Licensee), the holder of Facility Operating License No. NPF–47, which authorizes operation of the River Bend Station, Unit 1 (RBS) (the facility) located approximately 2 miles east of the Mississippi River in West Feliciana, Parish, Louisiana, approximately 2.7 miles southeast of St. Francisville, Louisiana and approximately 18 miles northwest of the city limits of Baton Rouge, Louisiana.

Environmental Assessment

Identification of the Proposed Action

The proposed action is in accordance with the licensee's amended application for exemption dated May 15, 1997, as supplemented August 12, 1998, which requests an exemption from the criticality accident monitoring requirements of 10 CFR 70.24(a) specifically for areas containing incore detectors (which are not in use) and unirradiated fuel while it is handled, used, or stored. 10 CFR 70.24 requires in each area in which special nuclear material is handled, used, or stored a monitoring system that will energize clear audible alarms if accidental criticality occurs. RBS does not currently maintain instrumentation which provides criticality accident monitoring; however, the licensee does maintain gamma-sensitive radiation detection instrumentation which will energize clearly audible alarm signals if accidental criticality occurs.

The Need for the Proposed Action

The purpose of 10 CFR 70.24 is to ensure that if a criticality were to occur during the handling of special nuclear material, personnel would be alerted to that fact and would take appropriate action. At a commercial nuclear power plant, the inadvertent criticality with which 10 CFR 70.24 is concerned could

[1] Entergy Operations, Incorporated is authorized to act as agent for Entergy Gulf States, Inc. and has exclusive responsibility and control over the physical construction, operation and maintenance of the facility.

occur during fuel handling operations. The special nuclear material that could be assembled into a critical mass at a commercial nuclear power plant is in the form of nuclear fuel; the quantity of other forms of special nuclear material that is stored onsite in any given location is small enough to preclude achieving a critical mass. Because the fuel is not enriched beyond 5.0 weight percent uranium-235, and because commercial nuclear plant licensees have procedures and features that are designed to prevent inadvertent criticality, the staff has determined that it is unlikely that an inadvertent criticality could occur due to the handling of special nuclear material at a commercial power reactor. Therefore, the requirements of 10 CFR 70.24 are not necessary to ensure the safety of personnel during the handling of special nuclear materials at commercial power reactors.

Environmental Impacts of the Proposed Action

The Commission has completed its evaluation of the proposed action and concludes that inadvertent or accidental criticality will be precluded through compliance with the RBS TSs, the design of the fuel storage racks providing geometric spacing of fuel assemblies in their storage locations, and administrative controls imposed on fuel handling procedures.

The proposed exemption would not result in an increase in the probability or consequences of accidents, affect radiological plant effluents, or result in a change in occupational or offsite dose. Therefore, there are no radiological impacts associated with the proposed exemption.

The proposed exemption would not result in a change in nonradiological effluents and will have no other nonradiological environmental impact.

Accordingly, the Commission concludes that there are no significant environmental impacts associated with the proposed action.

Alternatives to the 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. As an alternative to the proposed exemption, the staff considered denial of the requested exemption. Denial of the request would result in no change in current environmental impacts. The environmental impacts of the proposed action and the alternative action are similar.

Alternative Use of Resources

This action does not involve the use of any resources not previously considered in the Final Environmental Statement related to the operation of RBS, NUREG–1073, dated January 1985.

Agencies and Persons Consulted

In accordance with its stated policy, on September 21, 1998, the staff consulted with the Louisiana State Official, Dr. Stan Shaw, of the Louisiana Department of Environmental Quality, Radiation Protection Division, regarding the environmental impact of the proposed action. The State official had no comments.

Finding of No Significant Impact

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 12, 1998, which is available for public inspection at the Commission's Public Document Room located at the Gelman Building, 2120 L Street, NW., Washington, DC, and at the local public document room located at the Government Documents Department, Louisiana State University, Baton Rouge, Louisiana 70803.

Dated at Rockville, Maryland, this 6th day of November 1998.

For the Nuclear Regulatory Commission.

John N. Hannon,

Director, Project Directorate IV–1, Division of Reactor Projects III/IV, Office of Nuclear Reactor Regulation.

[FR Doc. 98–30561 Filed 11–13–98; 8:45 am]

BILLING CODE 7590–01–P

NUCLEAR WASTE TECHNICAL REVIEW BOARD

Privacy Act; Systems of Records

AGENCY: Nuclear Waste Technical Review Board.

ACTION: Annual Notice of Systems of Records.

SUMMARY: Each Federal agency is required by the Privacy Act of 1974, 5 U.S.C. 552a, to publish annually a description of the systems of records it maintains containing personal information. In this notice the Board provides the required information on two systems of records.

FOR FURTHER INFORMATION CONTACT: Michael Carroll, Deputy Director, Nuclear Waste Technical Review Board, 2300 Clarendon Boulevard, Suite 1300, Arlington, VA 22201, (703) 235–4473.

SUPPLEMENTARY INFORMATION: The Board currently maintains two systems of records under the Privacy Act. Each system is described below.

NWTRB–1

SYSTEM NAME:

Administrative and Travel Files.

SECURITY CLASSIFICATION:

Unclassified.

SYSTEM LOCATION:

Nuclear Waste Technical Review Board, 2300 Clarendon Boulevard, Suite 1300, Arlington, VA 22201.

CATEGORIES OF INDIVIDUALS COVERED BY THE SYSTEM:

Employees and applicants for employment with the Board, including NWTRB contractors and consultants.

CATEGORIES OF RECORDS IN THE SYSTEM:

Records containing the following information:

(1) Time and attendance;

(2) Payroll actions and deduction information requests;

(3) Authorizations for overtime and night differential;

(4) Credit cards and telephone calling cards issued to individuals;

(5) Destination, itinerary, mode and purpose of travel;

(6) Date(s) of travel and all expenses;

(7) Passport number;

(8) Request for advance of funds and voucher with receipts;

(9) Travel authorizations;

(10) Name, address, social security number, and birth date; and,

(11) Employee public transit subsidy applications and vouchers.

AUTHORITY FOR MAINTENANCE OF THE SYSTEM:

Pub. L. 100–203, Part E.

ROUTINE USES OF RECORDS MAINTAINED IN THE SYSTEM INCLUDING CATEGORIES OF USERS AND THE PURPOSES OF SUCH USES:

Information is used ''in house.'' Notwithstanding the above, access may also be gained under the following conditions:

(a) In the event that a system of records maintained by this agency to carry out its functions indicates a violation or potential violation of law, whether civil, criminal or regulatory in nature, and whether arising by general statute or particular program statute, or by regulation, rule or order issued pursuant thereto, the relevant records in the system of records may be referred, as a routine use, to the appropriate

agency, whether federal, state, local or foreign, charged with the responsibility of investigating or prosecuting such violation or charged with enforcing or implementing the statutes, or rule, regulation or order issued pursuant thereto.

(b) A record from the system of records may be disclosed as a ''routine use'' to a federal, state or local agency maintaining civil, criminal or other relevant enforcement information or other pertinent information, such as current licenses, if necessary to obtain information relevant to an agency decision concerning the hiring or retention of an employee, the issuance of a security clearance, the letting of a contract, or the issuance of a license, grant or other benefit.

(c) A record from this system of records may be disclosed to a federal agency, in response to this request, in connection with the hiring or retention of an employee, the issuance of a security clearance, the reporting of an investigation of an employee, the letting of a contract, or the issuance of a license, grant or other benefits by the requesting agency, to the extent that the information is relevant and necessary to the requesting agency's decision on the matter.

POLICIES AND PRACTICES FOR STORING, RETRIEVING, ACCESSING, RETAINING, AND DISPOSING OF RECORDS IN THE SYSTEM:

STORAGE:

Paper records and computer disk.

RETRIEVABILITY:

By type of document, then name.

SAFEGUARDS:

Access is limited to employees having a need to know. Records are stored in locked file cabinets in a controlled access area in accordance with federal guidelines or in password protected electronic databases.

RETENTION AND DISPOSAL:

Records retention and disposal authorities are contained in the ''General Records Schedules'' published by National Archives and Records Administration, Washington, DC. Records within NWTRB are destroyed by shredding or purging.

SYSTEM MANAGER AND ADDRESS:

Nuclear Waste Technical Review Board, 12300 Clarendon Boulevard, Suite 1300, Arlington, VA 22201, Attention: Office of Administration.

NOTIFICATION PROCEDURE:

Requests by an individual to determine if NWTRB–1 contains information about him/her should be directed to the Systems Manager listed above. Required identifying information: Complete name, social security number, and date of birth.

RECORD ACCESS PROCEDURE:

Same as notification procedures above, except individual must show official photo identification before viewing records.

CONTESTING RECORD PROCEDURE:

Same as notification procedure.

RECORD SOURCE CATEGORIES:

Subject individuals, timekeepers, travel officers, official personnel records, GSA for accounting and payroll, and travel agency contract.

SYSTEM EXEMPTED FROM CERTAIN PARTS OF THE ACT:

None.

NWTRB–2

SYSTEM NAME:

Mailing Lists.

SYSTEM CLASSIFICATION:

Unclassified.

SYSTEM LOCATION:

Nuclear Waste Technical Review Board, 2300 Clarendon Boulevard, Suite 1300, Arlington, VA 22201.

CATEGORIES OF INDIVIDUALS COVERED BY THE SYSTEM:

Those who receive reports in compliance with statutory authority and those individuals who have requested Board reports, newsletters, meeting transcripts and/or press releases.

CATEGORIES OF RECORDS IN THE SYSTEM:

List of names, addresses and materials requested.

AUTHORITY FOR MAINTENANCE OF THE SYSTEM:

Public Law 100–203, Part E.

ROUTINE USES OF THE RECORDS MAINTAINED IN THE SYSTEM, INCLUDING CATEGORIES OF USERS AND THE PURPOSES OF SUCH USE:

Distribution of Board reports, newsletters, meeting transcripts, and press releases. Information is used ''in house.'' Notwithstanding the above, access may also be gained under the following condition.

In the event that a system of records maintained by this agency to carry out its functions indicates a violation or potential violation of law, whether civil, criminal or regulatory in nature, and whether arising by general statute or particular program statute, or by regulation, rule or order issued pursuant thereto, the relevant records in the system of records may be referred, as a routine use, to the appropriate agency, whether federal, state, local or foreign, charged with the responsibility of investigating or prosecuting such violation or charged with enforcing or implementing the statutes, or rule, regulation or order issued pursuant thereto.

POLICIES AND PRACTICES FOR STORING, RETRIEVING, ACCESSING, RETAINING, AND DISPOSING OF RECORDS IN THE SYSTEM:

STORAGE:

Computer disk.

RETRIEVABILITY:

By name and type of information requested.

SAFEGUARDS:

Access is limited to employees having a need to know. Lists are kept in password protected electronic databases.

RETENTION AND DISPOSAL:

Requesters are sent periodic requests to update their records and/or remain on the mailing list. Nonrespondents and all asking to be deleted are purged from the list.

SYSTEM MANAGER AND ADDRESS:

Nuclear Waste Technical Review Board, 2300 Clarendon Boulevard, Suite 1300, Arlington, VA 22201, Attention: Office of Administration.

NOTIFICATION PROCEDURES:

Requests by an individual to determine if NWTRB–2 contains information about him/her should be directed to the System Manager (above). Required identifying information: complete name and address.

RECORD ACCESS PROCEDURE:

Same as notification procedure above, except individual must show official photo identification before viewing records.

CONTESTING RECORD PROCEDURE:

Same as notification procedure.

RECORD SOURCE CATEGORIES:

Statutory reporting authority and requests from individuals to be placed on a distribution.

SYSTEM EXEMPTED FROM CERTAIN PROVISIONS OF THE ACT:

None.

Dated: October 16, 1996.

William D. Barnard,

Executive Director.

Editorial note: This document was received in the Office of the Federal Register on November 9, 1998.

[FR Doc. 98–30525 Filed 11–13–98; 8:45 am]

BILLING CODE 6820–AM–M

PRESIDIO TRUST

Notice of Public Meeting

AGENCY: The Presidio Trust.

ACTION: Notice of public meeting.

SUMMARY: In accordance with § 103(c)(6) of the Presidio Trust Act, 16 U.S.C. § 460bb note, Title I of Pub. L. 104–333, 110 Stat. 4097, and in accordance with the Presidio Trust's bylaws, notice is hereby given that a public meeting of the Board of Directors of the Presidio Trust will be held from 10:00 a.m. to 12:00 p.m. (PST) on Wednesday, December 2, 1998, at the Presidio Golden Gate Club, Fisher Loop, Presidio of San Francisco, California. The Presidio Trust was created by Congress in 1996 to manage approximately eighty percent of the former U.S. Army base known as the Presidio, in San Francisco, California.

The purpose of this meeting is to consider future planning efforts to support the General Management Plan Amendment. Public comment on this topic will be received and memorialized in accordance with the Trust's Public Outreach Policy.

TIME: The meeting will be held from 10:00 a.m. to 12:00 p.m. (PST) on Wednesday, December 2, 1998.

ADDRESSES: The meeting will be held at the Presidio Golden Gate Club, Fisher Loop, Presidio of San Francisco.

FOR FURTHER INFORMATION CONTACT: Karen A. Cook, General Counsel, the Presidio Trust, 34 Graham Street, P.O. Box 29052, San Francisco, California 94129–0052, Telephone: 415–561–5300.

Dated: November 10, 1998.

Karen A. Cook,

General Counsel.

[FR Doc. 98–30654 Filed 11–13–98; 8:45 am]

BILLING CODE 4310–4R–U

SECURITIES AND EXCHANGE COMMISSION

Requests Under Review by Office of Management and Budget

Upon written request, copies available from: Securities and Exchange Commission, Office of Filings and Information Services, Washington, DC 20549

Extension:

Form 12b–25, SEC File No. 270–71, OMB Control No. 3235–0058

Notice is hereby given that pursuant to the Paperwork Reduction Act of 1995 (44 U.S.C. 3501 et seq.), the Securities and Exchange Commission (''Commission'') has submitted to the Office of Management and Budget a request for approval of extension on the following:

Form 12b–25 is filed pursuant to Exchange Act Rule 12b–25 by issuers who are unable to timely file all or any required portion of an annual, quarterly or transition report. Approximately 4,474 respondents file Form 12b–25 annually for a total annual burden of 11,185 hours.

An agency may not conduct or sponsor, and a person is not required to respond to, a collection of information unless it displays a currently valid control number.

Written comments regarding the above information should be directed to the following persons: (i) Desk Officer for the Securities and Exchange Commission, Office of Information and Regulatory Affairs, Office of Management and Budget, Room 10202, New Executive Office Building, Washington, DC. 20503; (ii) Michael E. Bartell, Associate Executive Director, Office of Information Technology, Securities and Exchange Commission, 450 Fifth Street, NW, Washington, DC 20549. Comments must be submitted to OMB within 30 days of this notice.

Dated: November 6, 1998.

Margaret H. McFarland,

Deputy Secretary.

[FR Doc. 98–30513 Filed 11–13–98; 8:45 am]

BILLING CODE 8010–01–M

SECURITIES AND EXCHANGE COMMISSION

[Release Nos. 33–7609; 34–40649; International Series Release No. 1168]

Frequently Asked Questions About the Statement of the Commission Regarding Disclosure of Year 2000 Issues and Consequences by Public Companies

AGENCY: Securities and Exchange Commission.

ACTION: Publication of Frequently Asked Questions.

SUMMARY: The Securities and Exchange Commission (''we'' or ''Commission'') is publishing guidance in the form of Frequently Asked Questions to clarify some recurring issues raised by the Commission's earlier guidance to public companies regarding Year 2000 disclosure obligations.

EFFECTIVE DATE: November 9, 1998.

FOR FURTHER INFORMATION CONTACT: Joseph Babits, Office of Chief Counsel, Division of Corporation Finance at 202–942-2900.

Year 2000 Disclosure Frequently Asked Questions

The Commission's earlier guidance on Year 2000 disclosure obligations is in our interpretive release entitled ''Statement of the Commission Regarding Disclosure of Year 2000 Issues and Consequences by Public Companies, Investment Advisers, Investment Companies, and Municipal Securities Issuers'' (Rel. No. 33–7558, Jul. 29, 1998) (''Release'').

Companies typically address their Year 2000 issues as part of their Management's Discussion and Analysis of Financial Condition and Results of Operation, found in Item 303 of Regulation S-K and S-B (otherwise known as ''MD&A''). The MD&A section can be found in companies' annual and quarterly reports. The Release and these FAQs primarily interpret MD&A in the Year 2000 context.

We intend to continue reviewing Year 2000 disclosures until companies no longer face material Year 2000 issues. As our Division of Corporation Finance reviews Year 2000 disclosure, companies may receive comments on their disclosure.

Since the issuance of the Release, interested persons have raised several questions. The following addresses the most frequently asked questions:

Can a Company Comply With the Release's Guidance if it Does Not Respond to Every Issue Described in the Release?

The Release should not be used as a ''checklist.'' Merely because a matter was addressed in the Release does not mean it applies to every company. The Release interprets many rules and regulations in the Year 2000 context. However, as stated in the Release, for Year 2000 disclosure to be meaningful, companies for which Year 2000 issues present a material event or uncertainty have to address four categories of information: state of readiness; costs; risks; and contingency plans. The level of detail that a company provides under each category depends on each company's facts and circumstances.

What constitutes meaningful disclosure for some of these categories may vary over time. For example, the information elicited by the risks and contingency plan categories are likely to be more important in 1999 than 1998. Accordingly, the level of detail for those categories may grow each quarter. For the cost category, disclosure is required only if historical or estimated Year 2000 costs are material. Finally, the Release suggested that companies disclose certain matters and gave examples of

situations that do not apply to every company.

Under the ''cost'' category, what should be included as a Year 2000 cost?

The Release states that companies must disclose material historical and estimated costs. The types of Year 2000 costs will vary for each public company. Typical costs include external consultants and professional advisors; purchases of software and hardware; and the direct costs (*e.g.*, compensation and fringe benefits) of internal employees working on Year 2000 projects. Companies often disclose the types and amounts of Year 2000 costs to their Board of Directors or Audit Committee. If internal costs are not known, that fact should be disclosed. If a company has records of some but not all of its internal costs, then disclosure of the type and amount of these known costs should be made, along with the types of internal costs incurred for which the company cannot determine the amount.

For example, a semiconductor manufacturer has hired outside consultants to assist its internal information systems group to address its Y2K issues. The company's plan includes upgrading existing software applications to make them Y2K compliant, replacing some hardware required by the software upgrade, fixing some internally created software code, and contacting suppliers of various services and materials regarding their readiness and plans for Y2K. The Company does not have a project tracking system that tracks the cost and time that its own internal employees spend on the Y2K project. It is expected the Company would disclose:

- The costs incurred to date and estimated remaining costs for the outside consultants, software and hardware applications.
- A statement that the company does not separately track the internal costs incurred for the Y2K project, and that such costs are principally the related payroll costs for its information systems group.

Under the ''Risks'' Category, What Level of Detail Should a Company Include in its ''Reasonably Likely Worst Case Scenario''?

Under this category, companies must describe potential consequences that they believe are reasonably likely to occur. The ''reasonably likely worst case scenario'' is intended to elicit disclosure of the impact on a company if its systems, both information technology and non-information technology, do not function and it has to implement its contingency plan. For example, if a company is uncertain about a supplier and its contingency plan is to stockpile inventory, then disclosure of this potential consequence and its costs are required. Companies need not address all possible catastrophic events, including failure of the power grid or telecommunications, unless a company becomes aware that a material disruption in these basic infrastructures is reasonably likely to occur.

However, if a company is unable to obtain assurances as to whether a material and significant relationship, such as a key supplier for raw materials, components or electrical power for a manufacturer, will be impacted by Y2K, then a statement to that effect should be made. For example, if a company buys component parts from a sole supplier, and that sole supplier is unwilling to disclose if its parts will be Y2K compliant, and as a result of that, the company is unable to determine if its products will be Y2K compliant, a statement to that effect should be made. Disclosure of the related contingency plan, in the event the supplier is not Y2K compliant, such as switching to another supplier, and the ability to make such a switch, should also be discussed.

What is an example of good Year 2000 disclosure?

This is probably the most frequently asked question. The SEC historically has not identified any particular disclosure as ''good'' disclosure for a variety of reasons. We recognize the potential value of pointing out good disclosure, but there are good reasons not to do so, including the risk of establishing a boilerplate template and the differing circumstances each company and industry faces. The best way to draft meaningful disclosure is to closely read the Release and the existing rules and regulations that the Release interprets.

Due to the importance of the Year 2000 issue, after we are able to review the quality of the Year 2000 disclosure in the third quarter Form 10–Qs which will be filed by mid-November, we may provide some sample Year 2000 disclosures. The purpose of these samples would be to illustrate how companies should be following our guidance. We would provide different types of samples to show how ''one size doesn't fit all'' for Year 2000 disclosure.

Dated: November 9, 1998.

By the Commission.

Margaret H. McFarland,

Deputy Secretary.

[FR Doc. 98–30512 Filed 11–13–98; 8:45 am]

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SECURITIES AND EXCHANGE COMMISSION

[Release No. 34–40642; File No. SR–CBOE–98–43]

Self-Regulatory Organizations; Notice of Filing and Order Granting Accelerated Approval of Proposed Rule Change by the Chicago Board Options Exchange, Inc. Relating to the Continued Listing of Options on the Nasdaq-100 Index

November 5, 1998.

Pursuant to Section 19(b)(1) of the Securities Exchange Act of 1934 (''Act''),[1] and Rule 19b–4 thereunder,[2] notice is hereby given that on October 2, 1998, the Chicago Board Options Exchange, Inc. (''CBOE'' or ''Exchange'') filed with the Securities and Exchange Commission (''Commission'') the proposed rule change as described in Items I and II below, which Items have been prepared by the CBOE. The Commission is publishing this notice to solicit comments on the proposed rule change from interested parties and to grant accelerated approved to the proposal.

I. Self-Regulatory Organization's Statement of the Terms of Substance of the Proposed Rule Change

The Exchange is filing this rule change to inform the Commission that the Nasdaq Stock Market, Inc. (''Nasdaq'') has determined to change the weighting methodology of its Nasdaq-100 Index® (''Index''). The Exchange seeks continued approval to list and trade options on the Index after Nasdaq has instituted these changes.

II. Self-Regulatory Organization's Statement of the Purpose of, and Statutory Basis for, the Proposed Rule Change

In its filing with the Commission, CBOE included statements concerning the purpose of and statutory basis for the proposed rule change and discussed any comments it received on the proposed rule change. The text of these statements may be examined at the places specified in Item III below. The CBOE has prepared summaries, set forth in sections A, B, and C below, of the most significant aspects of such statements.

[1] 15 U.S.C. 78s(b)(1).

[2] 17 CFR 240.19b–4.

A. Self-Regulatory Organization's Statement of the Purpose of, and Statutory Basis for, the Proposed Rule Change

1. Purpose

The CBOE currently lists and trades European-style, cash-settled options on the Nasdaq-100 Index (''NDX'') pursuant to approval by the Commission.[3] The Nasdaq-100 Index is a capitalization-weighted index of one hundred of the largest non-financial securities trade on the Nasdaq Stock Market[sm]. The CBOE has been informed that Nasdaq plans, as of December 18, 1998 (after the close of trading), to calculate the Index under a ''modified capitalization-weighted'' methodology, which is a hybrid between equal weighting and conventional capitalization weighting.[4] The Exchange is requesting that the Commission approve the continued listing and trading of options on the NDX after this change is instituted by Nasdaq.

The Monday following the expiration Friday when Nasdaq institutes this change, December 21, 1998, the CBOE will bring up new series of options overlying the Index under the current symbol, NDX. The outstanding series will continue to settle based on the present calculation method and will be traded under a new symbol. Nasdaq has stated that the new methodology is expected to: (1) retain in general the economic attributes of capitalization weighting; (2) promote portfolio weight diversification (thereby limiting domination of the Index by a few large stocks); (3) reduce Index performance distortion by preserving the capitalization ranking of companies; and (4) reduce market impact on the smallest component securities from necessary weight rebalancings.

Under the new methodology, the component securities will be categorized as either ''Large Stocks'' or ''Small Stocks,'' depending on whether their current percentage weights (after taking into account scheduled weight adjustments due to stock repurchases, secondary offerings, or other corporate actions) are greater than, or less than, or equal to, the average percentage weight in the Index (*i.e.*, as a 100-stock index, the average percentage weight in the Index is 1.0%). The categorization will be conducted on a quarterly basis to coincide with Nasdaq's quarterly scheduled weight adjustment procedures.

These quarterly categorizations will result in an Index rebalancing if either one or both of the following two weight distribution requirements are *not* met: (1) The current weight of the single largest market capitalization stock in the Index is less than or equal to 24.0% and (2) the ''collective weight'' of those stocks whose individual current weights exceed 4.5%, when added together, is less than or equal to 48.0%.

If either one or both of these requirements are not met upon quarterly review, a weight rebalancing will be performed in accordance with the following rules. First, relating to requirement (1) above, if the current weight of the single largest stock in the Index exceeds 24.0%, then the weights of all Large Stocks will be scaled down proportionately towards 1.0% be enough for the adjusted weight of the largest stock to be set to 20.0%. Second, relating to requirement (2) above, for those stocks whose individual current weights or adjusted weights in accordance with the preceding step are in excess of 4.5%, if their ''collective weight'' exceeds 48.0%, then the weights of all Large Stocks will be scaled down proportionately towards 1.0% by just enough for the ''collective weight,'' so adjusted, to be set to 40.0%.

The aggregate weight reduction among the Large Stocks resulting from either or both of the above rescalings will then be resdistributed to the Small Stocks in the following manner. In the first iteration, the weight of the largest Small Stock will be scaled upwards by a factor that sets it equal to the average index weight of 1.0%. The weights of each of the smaller remaining Small Stocks will be scaled up by the same factor reduced in relation to each stock's relative rank among the Small Stocks such that the smaller the stock in the ranking, the less the scale-up of its weight.

In the second iteration, the weight of the second largest Small Stock, already adjusted in the first iteration, will be scaled upwards by a factor that sets it equal to the average index weight of 1.0%. The weights of each of the smaller remaining Small Stocks will be scaled up by this same factor reduced in relation to each stock's relative ranking among the Small Stock such that, once again, the smaller the stock in the ranking, the less the scale-up of its weight.

Additional iterations will be performed until the accumulated increase in weight among the Small Stocks exactly equals the aggregated weight reduction among the Large Stocks from rebalancing in accordance with weight distribution requirement (1) and/or weight distribution requirement (2).

Then, to complete the rebalancing procedure, once the final percent weights of each stock in the Index are set, the Index share weights will be determined based upon the last sale prices and aggregate capitalization of the Index at the close of trading on the Thursday in the week immediately preceding the week of the third Friday in March, June, September, and December. Changes to the Index weights will be made effective after the close of trading on the third Friday in March, June, September, and December and an adjustment to the Index divisor will be made to ensure continuity of the Index.

The CBOE will notify market participants of the Nasdaq's decision to alter the calculation methodology through a notice to members and member firms in advance of the changeover. The Exchange believes this action will be adequate to prevent any problems because, as mentioned above, the Exchange will continue to list outstanding series under a different symbol that will settle under the old methodology; thus, there will be no change to outstanding contracts. The Exchange has employed the same system for introducing new series after a change in the calculation of the index value or settlement value of an Index in the past.[5]

2. Basis

The Exchange believes that the proposed rule change is consistent with and furthers the objectives of Section 6(b)(5) of the Act,[6] in that it is designed to perfect the mechanisms of a free and open market and to protect investors and the public interest.

B. Self-Regulatory Organization's Statement on Burden on Competition

CBOE does not believe that the proposed rule change will impose any burden on competition.

[3] Exchange Act Release No. 33428 (January 5, 1994), 59 FR 1576 (January 11, 1994).

[4] The Exchange will notify the Commission in the event Nasdaq is unable to implement this new methodology as of December 18, 1998. Telephone calls between Timothy Thompson, Director of Regulatory Affairs, Legal Department, CBOE, and Kelly McCormick, Attorney, Division of Market Regulation, Commission, on November 5, 1998.

[5] Exchange Act Release No. 30944 (July 21, 1992), 57 FR 33376 (July 28, 1992) (approving SR–CBOE–92–09, which requested to continue to list and trade NDX options after a change in the exercise settlement value of the Nasdaq–100) and Exchange Act Release No. 37089 (April 9, 1996), 61 FR 16660 (April 16, 1996) (approving SR–CBOE–96–12, which requested to allow the DBOE to continue to list and trade SPX options after a change to A.M. settlement).

[6] 15. U.S.C. 78f(b)(5).

C. Self-Regulatory Organization's Statement on Comments on the Proposed Rule Change Received From Members, Participants or Others

No written comments were solicited or received with respect to the proposed rule change.

III. Solicitation of Comments

Interested persons are invited to submit written data, views and arguments concerning the foregoing, 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 statements with respect to the proposed rule change that are filed with the Commission, and all written communications relating to the proposed rule change between the Commission and any person, other than those that may be withheld from the public in accordance with the provisions of 5 U.S.C. 552, will be available for inspection and copying in the Commission's Public Reference Room. Copies of all such filings will also be available for inspection and copying at the principal office of CBOE. All submissions should refer to File No. SR–CBOE–98–43 and should be submitted by December 7, 1998.

IV. Commission's Findings and Order Granting Accelerated Approval of the Proposed Rule Change

The Commission finds that the proposed rule change is consistent with the Act and the rules and regulations thereunder applicable to a national securities exchange,[7] and, in particular, the requirements of Section 6(b)(5) of the Act.[8] Section 6(b)(5) of the Act requires, among other things, that the rules of the Exchange be designed to prevent fraudulent and manipulative acts and practices, to promote just and equitable principles of trade and to remove impediments to and perfect the mechanism of a free and open market and a national market system and, in general to protect investors and the public interest. Specifically, the Commission finds that the proposal to modify the weighting methodology of the Nasdaq–100 Index from a capitalization-weighted index to a modified capitalization index will contribute to the maintenance of fair and orderly markets consistent with investor protection by ensuring that no one stock or group of stocks dominate the Index. Moreover, the Commission believes the proposal will have the effect of reducing the potential influence of any one stock on the movement of the Index.

The Commission believes that the proposed weighting method does not present any new or novel regulatory issues because the proposal adopts a method that is similar to one previously approved for the continued listing of options underlying the GSTI Composite Index.[9] The Index will be calculated using a modified capitalization-weighted method, which is a hybrid between equal weighting and capitalization weighting. Under the new methodology, based upon quarterly examinations, the Index will be rebalanced if either one or both of the following two weight distribution requirements are not met. The first requires the then current weight of the single largest stock in the Index to be less than or equal to 24.0%. The second requirement looks at the ''collective weight'' of the stocks whose individual current weights exceed 4.5%; these stocks when added together, must be less than or equal to 48.0%. If either one of these two requirements is not met, a weight rebalancing must be performed in accordance with defined rules. In approving this proposal, the Commission believes that the new methodology should help reduce the likelihood that one or a few stocks will dominate the Index and have an undue effect on the Index value.

The Exchange stated that Nasdaq plans to implement this new methodology as of December 18, 1998 (after the close of trading). The Exchange proposes to bring up a new series of options overlying the Index, based on the new methodology, on the Monday following the expiration Friday, December 21, 1998. The new series of options will be signified by the current symbol, NDX. Any outstanding series will continue to list under a different symbol and continue to settle under the old methodology. CBOE will notify market participants of the new calculation by a notice to members and member firms in advance of the changeover. The Commission believes that these procedures will help to ensure investors have been adequately notified about the impending change prior to its implementation, and should provide them with sufficient time to make any desired adjustments to their positions.

The Commission finds good cause to approve the proposal prior to the thirtieth day after the date of publication of notice of the filing in the **Federal Register**. By accelerating the effectiveness of the Exchange's rule proposal, the Commission will enable the continued listing and trading of options on the Index without interruption after the change in the weighting methodology. In addition, the Commission believes that the proposed weighting method does not present any new or novel regulatory issues as the proposal adopts a weighting method that will assist in ensuring that one or a few components will not dominate the Index. Accordingly, the Commission believes that it is consistent with Section 6(b)(5) of the Act[10] to approve the proposed rule change on an accelerated basis.

V. Conclusion

It is therefore ordered, pursuant to Section 19(b)(2) of the Act,[11] that the proposed change (File No. SR–CBOE–98–43) is hereby approved.

For the Commission, by the Division of Market Regulation, pursuant to delegated authority.[12]

Margaret H. McFarland,

Deputy Secretary.

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[7] In reviewing this proposal, the Commission has considered its impact on efficiency, competition, and capital formation. 15 U.S.C. 78c(f).

[8] 15 U.S.C. 78f(b)(5).

[9] Exchange Act Release No. 38852 (July 18, 1997), 62 FR 40128 (July 25, 1997).

[10] 15 U.S.C. 78f(b)(5).

[11] 15 U.S.C. 78s(b)(2).

[12] 17 CFR 200–3(a)(12).

SECURITIES AND EXCHANGE COMMISSION

[Docket No. 34–40645; File No. SR–CBOE–98–33]

Self-Regulatory Organizations; Notice of Filing of Proposed Rule Change and Amendment No. 1 Thereto by the Chicago Board Options Exchange, Inc. Relating to Exercise Advice Procedures

November 6, 1998.

Pursuant to Section 19(b)(1) of the Securities Exchange Act of 1934 (''Act''),[1] and Rule 19b–4 thereunder,[2] notice is hereby given that on July 27, 1998, the Chicago Board Options Exchange, Inc. (''CBOE'' or ''Exchange'') filed with the Securities and Exchange Commission (''Commission'') the proposed rule change as described in Items I, II, and III below, which Items have been prepared by the CBOE. The

[1] 15 U.S.C. 78s(b)(1).

[2] 17 CFR 240.19b–4.

CBOE subsequently filed an amendment to the proposed rule change on November 3, 1998.[3] The Commission is publishing this notice to solicit comments on the proposed rule change from interested persons.

I. Self-Regulatory Organization's Statement of the Terms of Substance of the Proposed Rule Change

The CBOE proposes to clarify certain existing exercise advice procedures for cash-settled and noncash-settled options, and to provide that the failure to submit an exercise advice in a timely manner will be designated as a minor rule violation subject to the summary fines set forth in Rule 17.50. The proposed rule change also makes minor, non-substantive changes to Rules 11.1 and 17.50. The text of the proposed rule change is available at the Office of the Secretary, CBOE and at the Commission.

II. Self-Regulatory Organization's Statement of the Purpose of, and Statutory Basis for, the Proposed Rule Change

In its filing with the Commission, the CBOE included statements concerning the purpose of, and basis for, the proposed rule change and discussed any comments it received on the proposed rule change. The text of these statements may be examined at the places specified in Item IV below. The CBOE has prepared summaries, set for in sections A, B, and C below, of the most significant parts of such statements.

A. Self-Regulatory Organization's Statement of the Purpose of, and Statutory Basis for, the Proposed Rule Change

1. Purpose

The purpose of the proposed rule change is to clarify certain existing exercise advice procedures for cash-settled and noncash-settled options, and to provide that the failure to submit an exercise advice in a timely manner will be designated as a minor rule violation subject to the summary fines set forth in Rule 17.50. The proposed rule change also makes minor, non-substantive changes to Rules 11.1 and 17.50. Substantive changes to Exchange rules are explained below.

Restrictions on Exercise of Index Options

It is the Exchange's policy that, with the exception of the last business day prior to expiration, exercises of cash-settled index options are prohibited when trading in such options is delayed, halted, or suspended, unless otherwise determined by the President of the Exchange or his designee. Under this policy, however, the exercise of a cash-settled index option may be processed and given effect while trading in the option is delayed, halted, or suspended if it can be documented that the decision to exercise the option was made during allowable time frames prior to the delay, halt, or suspension. This policy is currently reflected in Exchange Regulatory Circular RG91–11. The CBOE is proposing to amend rule 11.1.05 so that this policy is explicitly stated. The CBOE believes the amendment clarifies Rule 11.1.05. In addition, the Exchange proposes to reflect this policy in Rule 4.16, the Exchange's general rule regarding exercise restrictions, so that members are not required to refer to other Exchange rules and circulars. The proposed amended Rule 11.1.05 cross-references Rule 4.16.

Exercise Notice Procedures for Cash-Settled Index Options

Rule 11.1.03 requires that members notify the Exchange of certain exercise decisions concerning cash-settled index options and sets forth procedures for providing such notifications to the Exchange. The Exchange proposes to amend Rule 11.1.03 to clarify that Rule 11.1.03 is only applicable to American-style, cash-settled index options and not to European-style, cash-settled index options.

Exercise Notices Inconsistent With Just and Equitable Principles of Trade

Currently, Rule 11.1.07 provides that submitting or preparing an exercise instruction after the exercise cutoff time in any expiring option on the basis of material information released after the cutoff time is activity inconsistent with just and equitable principles of trade. This provision applies to expiring noncash-settled equality options. The Exchange has also considered it to be a violation of just and equitable principles of trade to prepare or submit an exercise advice or advice cancel after the applicable deadline in any non-expiring American-style, cash-settled index option on the basis of material information released after the deadline.

The Exchange believes that this general policy will be more effectively communicated to the membership if it is moved to proposed Rule 11.1.03(e), the procedures paragraph for American-style, cash-settled index options and if it is repeated in proposed Rule 11.1.06(f), the procedures paragraph for noncash-settled equity options. In this way, a member who refers to .03 or .06 will be made aware of the policy without referring to other interpretations of the Rule.

Therefore, the Exchange proposes to add new paragraph(e) to Rule 11.1.03 which governs the exercising of American-style, cash-settled index option contracts to specify that preparing or submitting an exercise advice or advice cancel after the applicable deadline on the basis of material information released after such deadline, in addition to constituting a violation of Rule 11.1, is activity inconsistent with just and equitable principles of trade. Similarly, proposed new paragraph (f) in Rule 11.1.06 will specify that preparing or submitting an exercise instruction, contrary exercise advice, or advice cancel after 4:30 p.m. Chicago Time on the basis of material information released after such time, in addition to constituting a violation of Rule 11.1, is activity inconsistent with just and equitable principles of trade. Accordingly, the general provision currently found in Rule 11.1.07 establishing this policy will no longer be necessary and will be deleted.

Options Not Subject to Exercise by Exception

The Exchange proposes to clarify the requirements in Exchange Rule 11.1.06(c) applicable to exercise decisions and instructions for noncash-settled equity options not subject to the exercise by exception provisions of The Options Clearing Corporation's Rule 805. Proposed new paragraph (c) of Rule 11.01.06 will clarify that a member must deliver to the Exchange, no later than 4:30 p.m. Chicago Time, each exercise instruction prepared, submitted, or accepted by the member, for all noncash-settled equity option contracts not subject to the automatic exercise procedures of exercise by exception. Proposed new paragraph 11.1.06(d) clarifies that a member is excused from compliance with the exercise instruction requirements when the exceptions enumerated in Rule 11.1(b) apply and the member complies with Interpretation .01 of the Rule. Paragraphs (c)–(e) of the Rule are thus being deleted and replaced with new paragraphs (c) and (d).

[3] Letter from Arthur B. Reinstein, Assistant General Counsel, CBOE, to Kelly McCormick, Attorney, Division of Market Regulation, Commission, dated October 27, 1998 (''Amendment No. 1''). Amendment No. 1 clarifies the Business Conduct Committee's authority to impose sanctions under proposed rules 17.50(c)(2) and (d)(2); makes technical corrections to the proposed rule language; clarifies amendments to proposed rules 11.1.05 and 11.1.07; and elaborates on the statutory basis for the proposed rule change.

Other Clarifications to Rule 11.1

The Exchange is also proposing to revise Rule 11.1.03(c) concerning the preparation of exercise advices prior to the purchase of American-style, cash-settled index option contracts to mirror the same provision applicable to noncash-settled equity options in Rule 11.1(d). In addition, the Exchange proposes to amend Rule 11.1 to more accurately reference the ''preparation, submission, or acceptance'' of exercise instructions. As amended, the proposed rule takes into account the different sources of the exercise instructions (*i.e.*, Clearing Members ''prepare'' exercise instructions for proprietary accounts, members ''submit'' exercise instructions to Clearing Members, and members ''accept'' exercise instructions from customer accounts). Finally, throughout Rules 11.1 and 17.50, the Exchange has corrected references to terms that have previously been defined in the Exchange rules. For example, reference to ''Member'' or ''Member Organization'' have been corrected to refer to the term ''member'' as previously defined in Section 1.1 of the Constitution.

Summary Fine for Failure to Submit an Exercise Advice

The Exchange proposes to make the failure to submit a contrary execise advice, advice cancel, or exercise instruction in a timely manner pursuant to Rule 11.1.06, relating to the exercise or nonexercise of a noncash-settled equity option, a minor rule violation subject to the procedure and summary fine provisions of Rule 17.50. The Exchange will add new paragraph (8) to Rule 17.50(g) to provide that the failure of any member to follow the advice procedures in Rule 11.1.06 will subject the member to the summary fines specified by Rule 17.50. In any 12-month period, the first infraction will result in a Letter of Information sent to the member. The second infraction will result in a Letter of Caution, and subsequent infractions will result in a fine of $500.

As with other summary fines imposed pursuant to Rule 17.50, a member will be permitted to contest the Exchange's determination. Rule 17.50(c)(1) permits members to seek review by the Business Conduct Committee (''BCC'') of the Exchange for fines imposed by new paragraph (8).

Calculation of Summary Fines for Failure to Submit Accurate Trade Information

Both Rule 17.50(g)(4)(b) and (5)(b) impose an escalation of the total fines for repeated violations of rule 6.51. The Exchange has modified paragraphs (4)(b) and (5)(b) of the rule regarding the calculation of the total fine to be imposed after a member incurs two fines for failure to submit or report accurate trade information in any 18-month period. If a member has incurred two fines under Rule 17.50(g)(4) or, similarly, two fines under 17.50(g)(5), in any 18 month period, any subsequent fine will be calculated by adding the amount of the fine assessed for the current violation to the amount of the next most recent fine incurred by the member under the rule.[4]

The proposed rule change also would amend Rule 17.50.03(a) to change from the fifth day of the month to the tenth day of the month the date by which the Exchange shall attempt to serve members fined pursuant to Rule 17.50(g)(4) or (g)(5) and to change from the twentieth day of the month to the twenty-fifth day of the month the date by which a member may request verification of the fine by the Exchange. These changes will provide the Exchange with more time to process these fines at the beginning of the month while preserving the current time frame in which members may request verification of these fines.

Exchange Discretion To Bring Disciplinary Action

The Exchange is also proposing to modify the summary fine appeal provisions under Rule 17.50(c)(2) and (d)(2). The Exchange proposes to clarify in these proposed sections that the BCC and the Appeals Committee must determine that the conduct serving as the basis for the action under review is in violation of an Exchange rule before a sanction may be imposed. The BCC and the Appeals Committee, however, may only review the alleged conduct to determine if it violates the rules charged.[5] If the alleged conduct would constitute a violation of the rule charged, the BCC or the Appeals Committee could determine that the conduct at issue did not rise to a level that would trigger a summary fine but nonetheless was in violation of an Exchange rule. In such a case, the BCC or the Appeals Committee could impose a disciplinary sanction for that conduct as part of its decision concerning the summary fine appeal.

The Exchange also is proposing to modify Rule 17.50(f) to conform the rule to a rule of the Chicago Stock Exchange.[6] Proposed Rule 17.50(f) has been modified to clarify that the Exchange has the discretion not to issue a summary fine under Rule 17.50 in appropriate circumstances such as when extenuating circumstances exist or no remedial purpose would be served by the issuance of the fine. In addition, the Exchange would have the discretion to commence a formal disciplinary proceeding under Rule 17.2 whenever the Exchange determines that a rule violation is not minor in nature.

The Exchange proposes to implement the proposed rule change within 45 days after its approval by the Commission. The purpose of this time interval is to give the Exchange the opportunity to inform members of the approval of the proposed rule change in the Exchange's Regulatory Bulletin before the rule change is put into effect. The Exchange will publish the effective date of the rule change in the Exchange's Regulatory Bulletin and will notify the Commission of the effective date by letter.

2. Basis

The Exchange believes the proposed rule change is consistent with section 6(b) of the Act,[7] in general, and furthers the objectives of Section 6(b)(5),[8] in particular. The Exchange believes the proposed rule change refines and enhances its rules relating to the exercise of options contracts and the procedures for minor rule violations thereby making both processes more efficient and effective. Accordingly, the Exchange believes the proposed rule change furthers the objectives of Section 6(b)(5)[9] because it is designed to promote just and equitable principles of trade, of prevent fraudulent and manipulative acts and practices, to foster cooperation and coordination with persons engaged in regulating clearing, and settling securities transactions, and to protect investors and the public interest.

[4] An example of the calculation of summary fines is as follows: In January, Member XYZ incurs a fine of $100 under Rule 17.50(g)(4) for violation of Rule 6.51 (based on the percentage of times that the members submitted inaccurate or no transaction times). In February, Member XYZ incurs a second fine under Rule 17.50(g)(4) and the appropriate fine is deemed to be $250. In March, Member XYZ incurs a third fine for $100 and, pursuant to the Rule 17.50(g)(4)(b), must pay a total of $350 calculated by adding the third fine incurred ($100) to the next most recently incurred fine ($250). In April, Member XYZ incurs a fourth fine of $250 and, pursuant to Rule 17.50(g)(4)(b), must pay a total of $600 calculated by adding the fourth fine ($250) to the total fine most recently incurred ($350).

[5] Amendment No. 1.

[6] *See* Exchange Act Release No. 37255 (May 30, 1996), 61 FR 28918 (June 6, 1996) (approving Chicago Stock Exchange Article XII, Rule 9).

[7] 15 U.S.C. 78f.

[8] 15 U.S.C. 78f(b)(5).

[9] Id.

B. Self-Regulatory Organization's Statement on Burden on Competition

The CBOE does not believe that the proposed rule change will impose any burden on competition.

C. Self-Regulatory Organization's Statement on Comments on the Proposed Rule Change Received From Members, Participants, or Others

No written comments were solicited or received with respect to the proposed rule change.

III. Date of Effectiveness of the Proposed Rule Change and Timing for Commission Action

Within 35 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 90 days of such date if it finds such longer period to be appropriate and publishes its reasons for so finding or (ii) as to which the self-regulatory organization consents, the Commission will:

(a) By order approve such proposed rule change, or

(b) Institute proceedings to determine whether the proposed rule change should be disapproved.

IV. Solicitation of Comments

Interested persons are invited to submit written data, views, and arguments concerning the foregoing, 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, NW, Washington, DC 20549. Copies of the submission, all subsequent amendments, all written statements with respect to the proposed rule change that are filed with the Commission, and all written communications relating to the proposed rule change between the Commission and any person, other than those that may be withheld from the public in accordance with the provisions of 5 U.S.C. 552, will be available for inspection and copying in the Commission's Public Reference Room, 450 Fifth Street, NW, Washington, DC 20549. Copies of such filing will also be available for inspection and copying at the principal office of the CBOE. All submissions should refer to File No. SR–CBOE–98–33 and should be submitted by December 7, 1998.

For the Commission, by the Division of Market Regulation, pursuant to delegated authority.[10]

Margaret H. McFarland,

Deputy Secretary.

[FR Doc. 98–30550 Filed 11–13–98; 8:45 am]

BILLING CODE 8010–01–M

SECURITIES AND EXCHANGE COMMISSION

[(Release No. 34–40652; File No. SR–NASD–98–78)]

Self-Regulatory Organizations; Notice of Filing of Proposed Rule Change by the National Association of Securities Dealers, Inc. Relating to the Equity Option Hedge Exemption

November 9, 1998.

Pursuant to Section 19(b)(1) of the Securities Exchange Act of 1934 (''Exchange Act'' or ''Act''),[1] notice is hereby given that on October 15, 1998, the National Association of Securities Dealers, Inc. (''NASD'' or ''Association''), through its wholly owned subsidiary, NASD Regulation (''NASD Regulation''), filed with the Securities and Exchange Commission (''Commission'') the proposed rule change as described in Items I, II, and III below, which Items have been prepared by NASD Regulation. The Commission is publishing this notice to solicit comments on the proposed rule change from interested persons.

I. Self-Regulatory Organization's Statement of the Terms of Substance of the Proposed Rule Change

NASD Regulation proposes to amend Rule 2860(B)(3)(A)(vii) of the NASD, to make permanent the Equity Option Hedge Exemption, which has been operating as a pilot program since 1990. Below is the text of the proposed rule change. Deletions are bracketed.

Rule 2860. Options.

* * * * *

(b)(3)(A)(vii) Equity Option Hedge Exemption

a. The following positions, where each option contract is ''hedged'' by 100 shares of stock or securities readily convertible into or economically equivalent to such stock, or, in the case of an adjusted option contract, the same number of shares represented by the adjusted contract, shall be exempted from established limits contained in (i) through (vi) above:

1. long call and short stock;

2. short call and long stock;

3. long put and long stock;

4. short put and short stock.

b. Except as provided under the OTC Collar Exemption contained in paragraph (b)(3)(A)(viii), in no event may the maximum allowable position, inclusive of options contracts hedged pursuant to the equity option position limit hedge exemption in subparagraph a. above, exceed three times the applicable position limit established in subparagraph (b)(3)(A)(i) through (v) with respect to standardized equity options, or subparagraph (b)(3)(A)(ix) with respect to conventional equity options.

[c. The Equity Option Hedge Exemption is a pilot program authorized by the Commission through December 31, 1998.]

II. Self-Regulatory Organization's Statement of the Purpose of, and Statutory Basis for, the Proposed Rule Change

In its filing with the Commission, NASD Regulation included statements concerning the purpose of, and basis for, the proposed rule change and discussed any comments it received on the proposed rule change. The text of these statements may be examined at the places specified in Item IV below. NASD Regulation has prepared summaries, set forth in Sections A, B, and C below, of the most significant aspects of such statements.

A. Self-Regulatory Organization's Statement of the Purpose of, and Statutory Basis for, the Proposed Rule Change

1. Purpose

Position limits impose a ceiling on the number of options contracts of each options class on the same side of the market that can be held or written by a member, an investor, or a group of investors acting in concert. NASD Rule 2860(b)(3) provides that the position limits for equity options are determined according to a five-tiered system in which more actively traded stocks with larger public floats are subject to higher position limits. Currently, the five tiers for standardized equity options[2] are 4,500, 7,500, 10,500, 20,000 and 25,000 contracts. The position limits for conventional equity options[3] are three times the limits for standardized equity

[10] 17 CFR 200.30–3(a)(12).

[1] 15 U.S.C. 78s(b)(1).

[2] Standardized equity options are exchange-traded options issued by the Options Clearing Corporation (''OCC'') that have standard terms with respect to strike prices, expiration dates and the amount of the underlying security.

[3] A conventional option is any option contact not issued, or subject to issuance by, the OCC.

options.[4] NASD rules do not specifically govern how a particular equity option falls within one of the five position limit tiers. Rather, the NASD's position limit rule provides that the position limit established by an options exchange for a particular equity option is the applicable position limit for purposes of the NASD's rule.[5]

The NASD's Equity Option Hedge Exemption (''Hedge Exemption'') provides for an automatic, limited exemption from position limits for equity options that are hedged using one of the four most commonly used hedge positions: (1) long stock and short calls; (2) long stock and long puts; (3) short stock and long calls; and (4) short stock and short puts. The Hedge Exemption applies to accounts in which the option contract is either (i) hedged by 100 shares of stock, (ii) hedged by securities that are readily convertible into, or economically equivalent to, such stock, or (iii) in the case of an adjusted options contract, hedged by the number of shares represented by the adjusted contract.

Under the Hedge Exemption, the largest standardized equity options position (combining hedged and unhedged positions) that may be established may not exceed three times the basic position limits, *i.e.*, 13,500, 22,500, 31,500, 60,000, or 75,000 contracts, depending on the basic position limits of the underlying security. Likewise, the largest conventional equity options position (combining hedged and unhedged positions) that may be established may not exceed three times the basic position limits on conventional equity options, *i.e.*, 40,500, 67,500, 94,500, 180,000, or 225,000 contracts.

The Hedge Exemption has been operating as pilot program since its inception in 1990.[6] The Commission recently extended the deadline of the pilot program until December 31, 1998, to give the NASD time to adopt it on a permanent basis.[7]

NASD Regulation believes that the Hedge Exemption is an important component of the options position limit rules and should be continued on a permanent basis. NASD Regulation staff has over eight years experience administering the Hedge Exception and has concluded that it is both an important and necessary tool for market participants to manage their market exposure by allowing them the flexibility to hold larger options positions in cases where such positions are hedged. In addition, NASD Regulation believes that the Hedge Exemption should be made permanent to achieve parity with the other options self-regulatory organizations which have in effect a permanent, substantively identical equity option hedge exemption.[8]

Finally, NASD Regulation believes that continuing the Hedge Exemption on a permanent basis will not pose any risk to the options or underlying equity market. NASD rules require each member to report options positions of any account which has established an aggregate position of 200 or more option contracts of the put class and the call class on the same side of the market covering the same underlying security.[9]

2. Statutory Basis

NASD Regulation believes that the proposed rule change is consistent with the provisions of Section 15A(b)(6) of the Act,[10] which requires, among other things, that the Association's rules must be designed to prevent fraudulent and manipulative acts and practices, to promote just and equitable principles of trade, and, in general, to protect investors and the public interest. The NASD believes that making the Hedge Exemption permanent will maintain the depth and liquidity of the options markets by permitting investors to hedge greater amounts of stock than would otherwise be permitted under NASD rules. Making the Hedge Exemption permanent also will promote consistency among the rules of the NASD and the other options self-regulatory organizations. NASD Regulation notes that the higher position limits currently available under the Hedge Exemption have not resulted in disruptions of the underlying equities market, and it will continue monitoring the market effects, if any, from the Hedge Exemption. Lastly, NASD Regulation will continue to monitor use of the Hedge Exemption to ensure that members are complying with all applicable requirements.

B. Self-Regulatory Organization's Statement on Burden on Competition

NASD Regulation does not believe that the proposed rule change will result in any burden on competition that is not necessary or appropriate in furtherance of the purposes of the Act.

C. Self-Regulatory Organization's Statement on Comments on the Proposed Rule Change Received From Members, Participants, or Others

Written comments were neither solicited nor received.

III. Date of Effectivess of the Proposed Rule Change and Timing for Commission Action

Within 35 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 90 days of such date if its finds such longer period to be appropriate and publishes its reasons for so finding or (ii) as to which the self-regulatory organization consents, the Commission will:

(A) By order approve such proposed rule change, or

(B) Institute proceedings to determine whether the proposed rule change should be disapproved.

IV. Solicitation of Comments

Interested persons are invited to submit written data, views, and arguments concerning the foregoing, including whether the proposed rule change is consistent with the Act. Persons making written submissions should file six copies there with the Secretary, Securities and Exchange Commission, 450 Fifth Street, NW, Washington, DC 20549. Copies of the submission, all subsequent amendments, all written statements with respect to the proposed rule change that are filed with the Commission, and all written communications relating to the proposed rule change between the Commission and any person, other than those that may be withheld from the public in accordance with the provisions of 5 U.S.C. 552, will be available for inspection and copying in the Commission's Public Reference Room. Copies of such filing will also be available for inspection and copying at the principal office of the NASD. All submissions should refer to File No. SR–NASD–98–78 and should be submitted by December 7, 1998.

[4] *See* Exchange Act Release No. 40087 (June 12, 1998), 63 FR 33746 (June 19, 1998).

[5] For equity options that do not trade on an options exchange, the NASD's position limit rule provides that the limit for conventional equity options shall be three times the basic limit of 4,500 contracts, such as 13,500 contracts, unless the member can demonstrate to the Association that the underlying security meets the standards for higher limits and the initial listing standards for standardized options trading.

[6] *See* Exchange Act Release No. 27697 (February 9, 1990), 55 FR 5535 (February 15, 1990).

[7] *See* Exchange Act Release No. 39865 (April 14, 1998), 63 FR 19992 (April 22, 1998).

[8] *See* American Stock Exchange Rule 904; Chicago Board Options Exchange Rule 4.11; Philadelphia Stock Exchange Rule 1001; Pacific Exchange Rule 6.8.

[9] *See* Rule 2860(b)(5).

[10] 15 U.S.C. 78*o*(b)(6).

For the Commission, by the Division of Market Regulation, pursuant to delegated authority.[11]

Margaret H. McFarland,

Deputy Secretary.

[FR Doc 98–30549 Filed 11–13–98; 8:45 am]

BILLING CODE 8010–01–M

SECURITIES AND EXCHANGE COMMISSION

[Release No. 34–40644; File No. SR–PCX–98–44]

Self-Regulatory Organizations; Notice of Filing and Immediate Effectiveness of Proposed Rule Change and Amendment No. 1 to the Proposed Rule Change by the Pacific Exchange, Inc. Relating to Fees for the Use of Exchange-Sponsored Hand Held Terminals for Options Floor Brokers

November 5, 1998.

Pursuant to Section 19(b)(1) of the Securities Exchange Act of 1934 (''Act''),[1] and Rule 19b–4 thereunder,[2] notice is hereby given that on September 11, 1998, the Pacific Exchange, Inc. (''PCX'' or ''Exchange'') filed with the Securities and Exchange Commission (''SEC'' or ''Commission'') the proposed rule change as described in Items I, II, and III below, which Items have been prepared by the Exchange. On October 29, 1998, the Exchange filed Amendment No. 1 to the proposal.[3] The Commission is publishing this notice to solicit comments on the proposed rule change from interested persons.

I. Self-Regulatory Organization's Statement of the Terms of Substance of the Proposed Rule Change

The Exchange is proposing to change its Schedule of Fees and Charges for Exchange Services by adding charges for the use of exchange-sponsored hand held terminals for options floor brokers.

The text of the proposed rule change is available at the Office of the Secretary, PCX and at the Commission.

II. Self-Regulatory Organization's Statement of the Purpose of, and Statutory Basis for, the Proposed Rule Change

In its filing with the Commission, the Exchange included statements concerning the purpose of and basis for the proposed rule change and discussed any comments it received on the proposed rule change. The text of these statements may be examined at the places specified in Item IV below. The PCX has prepared summaries, set forth in Sections A, B, and C below, of the most significant aspects of such statements.

A. Self-Regulatory Organization's Statement of the Purpose of, and Statutory Basis for, the Proposed Rule Change

1. Purpose

Background. With the use of hand held terminals, PCX Member Firms have the advantage of sending their orders electronically to either (1) a floor broker's exchange-sponsored terminal located in the trading crowd;[4] (2) a Member Firm booth located on the trading floor; or (3) to POETS,[5] where they will be automatically executed by Auto-Ex[6] or maintained in Auto-Book.[7]

Proposal. The Exchange proposes to charge a monthly equipment fee of $200 for each exchange-sponsored hand held terminal to be billed to the Floor Broker registered to use it. In addition, the Exchange proposes to charge $0.03 per contract for orders of 10 contracts or less which are not directed to POETS through a Member Firm Interface (''MFT''),[8] and are executed via the exchange-sponsored hand held terminal. This per contract charge will be billed to the order flow provider.

2. Statutory Basis

The Exchange believes the proposed rule change is consistent with Section 6(b)[9] of the Act, in general, and furthers the objectives of Section 6(b)(4),[10] in particular, because it provides for the equitable allocation of reasonable dues, fees, and other charges among its members and issuers and other persons using its facilities.

B. Self-Regulatory Organization's Statement on Burden on Competition

The Exchange does not believe that the proposed rule change will impose any inappropriate burden on competition.

C. Self-Regulatory Organization's Statement on Comments on the Proposed Rule Change Received From Members, Participants, or Others

The Exchange has neither solicited nor received written comments on the proposed rule change.

III. Date of Effectiveness of the Proposed Rule Change and Timing for Commission Action

The foregoing rule change establishes or changes a due, fee, or other charge and, therefore, has become effective pursuant to Section 19(b)(3)(A) of the Act[11] and subparagraph (e)(2) of Rule 19b–4 thereunder.[12]

At any time within 60 days of the filing of the amended proposed rule change, the Commission may summarily abrogate such rule change if it appears to the Commission that such action is necessary or appropriate in the public interest, for the protection of investors, or otherwise in furtherance of the purposes of the Act.

IV. Solicitation of Comments

Interested persons are invited to submit written data, views, and arguments concerning the foregoing; including whether the proposed rule change and Amendment No. 1 are 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 statements with respect to the proposed rule change that are filed with the Commission, and all written communications relating to the proposed rule change between the Commission and any person, other than those that may be withheld from the public in accordance with the provisions of 5 U.S.C. 552, will be available for inspection and copying at the Commission's Public Reference Room. Copies of such filing also will be available for inspection and copying at the principal office of the Exchange.

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[11] 17 CFR 200.30–3(a)(12).

[1] 15 U.S.C. 78s(b)(1).

[2] 17 CFR 240.19b–4.

[3] *See* letter from Robert Pacileo, Staff Attorney, Regulatory Policy, PCX, to David Sieradzki, Attorney, Division of Market Regulation, SEC dated October 27, 1998 (''Amendment No. 1''). In Amendment No. 1. the Exchange clarifies the proposal to indicate that these fees are for exchange-sponsored hand held terminals only.

[4] *See* Securities Exchange Act Release No. 39970 (May 7, 1998), 63 FR 26662 (May 13, 1998) (Order approving File No. SR–PCX–97–28).

[5] The Pacific Option Exchange Trading System (''POETS'') is the Exchange's automated options trading system. *See generally* Securities Exchange Act Release No. 27633 (Jan. 18, 1990), 55 FR 2466 (Jan. 24, 1990) (Order approving File No. SR–PSE–89–26).

[6] Orders executed by Auto-Ex may be automatically executed at the disseminated bid or offering price. *Id.*

[7] Auto-Book maintains non-marketable limit orders based on limit price and time of receipt. *Id.*

[8] The MFI is an electronic order delivery and reporting system that allows member firms to route orders for execution by the automatic execution feature of POETS as well as to route limit orders to the Options Public Limit Order Book. Orders that do not reach those two destinations are defaulted to a member firm booth. MFI also provides member firms with instant confirmation of transactions to their systems.

[9] 15 U.S.C. 78f(b).

[10] 15 U.S.C. 78f(b)(4).

[11] 15 U.S.C. 78s(b)(3)(A).

[12] 17 CFR 240.19b–4(e)(2).

All submissions should refer to File No. SR–PCX–98–44 and should be submitted by December 1, 1998.

For the Commission, by the Division of Market Regulation, pursuant to delegated authority.[13]

Margaret H. McFarland,

Deputy Secretary.

[FR Doc. 98–30497 Filed 11–13–98; 8:45 am]

BILLING CODE 8010–01–M

DEPARTMENT OF STATE

[Public Notice 2919]

Bureau of Political-Military Affairs; Information Collection

AGENCY: Department of State.

ACTION: 30-Day Notice of Information Collections.

DSP–9, Statement of Registration, OMB No. 1405–0002

DSP–5, Application/License for Permanent Export of Unclassified Defense Articles and Related Unclassified Technical Data, OMB No. 1405–0003

DSP–61, Application/License for Temporary Import of Unclassified Defense Articles, OMB No. 1405–0013

DSP–83, Non-Transfer and Use Certificate, OMB No. 1405–0021

DSP–85, Application/License for Permanent/ Temporary Export or Temporary Import of Classified Defense Articles and Classified Technical Data, OMB No. 1405–0022

DSP–73, Application/License for Temporary Export of Unclassified Defense Articles, OMB No. 1405–0023

Statement of Political Contributions, Fees, or Commissions in Connection with the Sale of Defense Articles or Services, OMB No. 1405–0025

DSP–94, Authority to Export Defense Articles and Services Sold under the Foreign Military Sales (FMS) Program, OMB No. 1405–0051

DSP–119, Application for Amendment to License for Export or Import of Classified or Unclassified Defense Articles and Related Technical Data, OMB No. 1405–0092

Request for Approval of Manufacturing License Agreements, Technical Assistance Agreements, and Other Agreements, OMB No. 1405–0093

SUMMARY: The Department of State has submitted the following information collection request to the Office of Management and Budget (OMB) for approval in accordance with the Paperwork Reduction Act of 1995. Comments should be submitted to OMB within 30 days of the publication of this notice.

The following summarizes the information collection proposals submitted to OMB:

[13] 17 CFR 200.30–3(a)(12).

Type of Request: Reinstatement.
Originating Office: Bureau of Political-Military Affairs, Office of Defense Trade Controls, PM/DTC.
Title of Information Collection: Statement of Registration.
Frequency: Every one to four years.
Form Number: DSP–9.
Respondents: Business and non-profit organizations.
Estimated Number of Respondents: 5,000.
Average Hours Per Response: 2 hours.
Total Estimated Burden: 10,000 hours.
(Total Estimated Burden based on number of forms received per year.)

Type of Request: Reinstatement.
Originating Office: Bureau of Political-Military Affairs, Office of Defense Trade Controls, PM/DTC.
Title of Information Collection: Application/License for Permanent Export of Unclassified Defense Articles and Related Unclassified Technical Data.
Frequency: On occasion.
Form Number: DSP–5.
Respondents: Business and non-profit organizations.
Estimated Number of Respondents: 4,500.
Average Hours Per Response: 1 hour.
Total Estimated Burden: 20,000 hours.
(Total Estimated Burden based on number of forms received per year.)

Type of Request: Reinstatement.
Originating Office: Bureau of Political-Military Affairs, Office of Defense Trade Controls, PM/DTC.
Title of Information Collection: Application/License for Temporary Import of Unclassified Defense Articles.
Frequency: On occasion.
Form Number: DSP–61.
Respondents: Business and non-profit organizations.
Estimated Number of Respondents: 4,500.
Average Hours Per Response: 30 minutes.
Total Estimated Burden: 4,500 hours.
(Total Estimated Burden based on number of forms received per year.)

Type of Request: Reinstatement.
Originating Office: Bureau of Political-Military Affairs, Office of Defense Trade Controls, PM/DTC.
Title of Information Collection: Non-Transfer and Use Certificate.
Frequency: On occasion.
Form Number: DSP–83.
Respondents: Business and non-profit organizations.
Estimated Number of Respondents: 4,500.
Average Hours Per Response: 1 hour.
Total Estimated Burden: 17,000 hours.
(Total Estimated Burden based on number of forms received per year.)

Type of Request: Reinstatement.
Originating Office: Bureau of Political-Military Affairs, Office of Defense Trade Controls, PM/DTC.
Title of Information Collection: Application/License for Permanent/ Temporary Export or Temporary Import of Classified Defense Articles and Classified Technical Data.
Frequency: On occasion.
Form Number: DSP–85.
Respondents: Business and non-profit organizations.
Estimated Number of Respondents: 1,000.
Average Hours Per Response: 1 hour.
Total Estimated Burden: 1,000 hours.
(Total Estimated Burden based on number of forms received per year.)

Type of Request: Reinstatement.
Originating Office: Bureau of Political-Military Affairs, Office of Defense Trade Controls, PM/DTC.
Title of Information Collection: Application/License for Temporary Export of Unclassified Defense Articles.
Frequency: On occasion.
Form Number: DSP–73.
Respondents: Business and non-profit organizations.
Estimated Number of Respondents: 4,500.
Average Hours Per Response: 1 hour.
Total Estimated Burden: 2,000 hours.
(Total Estimated Burden based on number of forms received per year.)

Type of Request: Reinstatement.
Originating Office: Bureau of Political-Military Affairs, Office of Defense Trade Controls, PM/DTC.
Title of Information Collection: Statement of Political Contributions, Fees, or Commissions in Connection with the Sale of Defense Articles or Services.
Frequency: On occasion.
Form Number: none.
Respondents: Business organizations.
Estimated Number of Respondents: 4,500.
Average Hours Per Response: 1 hour.
Total Estimated Burden: 12,000 hours.
(Total Estimated Burden based on number of forms received per year.)

Type of Request: Reinstatement.
Originating Office: Bureau of Political-Military Affairs, Office of Defense Trade Controls, PM/DTC.
Title of Information Collection: Authority to Export Defense Articles and Services Sold Under the Foreign Military Sales (FMS) Program.
Frequency: On occasion.

Form Number: DSP–94.
Respondents: Business and foreign government representatives.
Estimated Number of Respondents: 4,500.
Average Hours Per Response: 30 minutes.
Total Estimated Burden: 1,250 hours.
(Total Estimated Burden based on number of forms received per year.)
Type of Request: Reinstatement.
Originating Office: Bureau of Political-Military Affairs, Office of Defense Trade Controls, PM/DTC.
Title of Information Collection: Application for Amendment to License for Export or Import of Classified or Unclassified Defense Articles and Related Technical Data.
Frequency: On occasion.
Form Number: DSP–119.
Respondents: Business and non-profit organizations.
Estimated Number of Respondents: 4,500.
Average Hours Per Response: 30 minutes.
Total Estimated Burden: 1,150 hours.
(Total Estimated Burden based on number of forms received per year.)
Type of Request: Reinstatement.
Originating Office: Bureau of Political-Military Affairs, Office of Defense Trade Controls, PM/DTC.
Title of Information Collection: Request for Approval of Manufacturing License Agreements, Technical Assistance Agreements, and Other Agreements.
Frequency: On occasion.
Form Number: none.
Respondents: Business organizations.
Estimated Number of Respondents: 4,500.
Average Hours Per Response: 2 hours.
Total Estimated Burden: 3,000 hours.
(Total Estimated Burden based on number of forms received per year.)
Type of Request: Existing collection without an OMB control number.
Originating Office: Bureau of Political-Military Affairs, Office of Defense Trade Controls, PM/DTC.
Title of Information Collection: Prior Approval for Brokering Activity.
Frequency: On occasion.
Form Number: none.
Respondents: Business organizations.
Estimated Number of Respondents: 500.
Average Hours Per Response: 2 hours.
Total Estimated Burden: 2,000 hours.
(Total Estimated Burden based on number of forms received per year.)
Type of Request: Existing collection without an OMB control number.
Originating Office: Bureau of Political-Military Affairs, Office of Defense Trade Controls, PM/DTC.
Title of Information Collection: Brokering Activity Reports.
Frequency: Annual.
Form Number: none.
Respondents: Business organizations.
Estimated Number of Respondents: 500.
Average Hours Per Response: 2 hours.
Total Estimated Burden: 4,000 hours.
(Total Estimated Burden based on number of forms received per year.)

Public comments are being solicited to permit the agency to:

- Evaluate whether the proposed collection of information is necessary for the proper performance of the functions of the agency, including whether the information will have practical utility.
- Evaluate the accuracy of the agency's estimate of the burden of the collection, including the validity of the methodology and assumptions used.
- Enhance the quality, utility, and clarity of the information to be collected.
- Minimize the reporting burden on those who are to respond, including through the use of automated collection techniques or other forms of technology.

FOR FURTHER ADDITIONAL INFORMATION: Copies of the proposed information collection and supporting documents may be obtained from the Director, Office of Defense Trade Controls, Bureau of Political-Military Affairs, SA–6, Room 200, Department of State, Washington, DC 20522–0602, (703) 875–6644. Public comments and questions should be directed to Ms. Victoria Wassmer, Office of Information and Regulatory Affairs, Office of Management and Budget (OMB), Washington, DC 20530, (202) 395–5871.

Dated: November 3, 1998.

John P. Barker,

Deputy Assistant Secretary for Export Controls, Bureau of Political-Military Affairs.

[FR Doc. 98–30524 Filed 11–13–98; 8:45 am]

BILLING CODE 4710–25–P

TRADE AND DEVELOPMENT AGENCY

SES Performance Review Board

AGENCY: Trade and Development Agency.

ACTION: Notice.

SUMMARY: Notice is hereby given of the appointment of members of the Trade and Development Agency's Performance Review Board.

FOR FURTHER INFORMATION CONTACT: Larry P. Bevan, Assistant Director for Management Trade and Development Agency, 1621 N. Kent Street, Arlington, CA 22209–2131 (703) 875–4357.

SUPPLEMENTARY INFORMATION: Section 4314 (c)(1) through (5), U.S.C. requires each agency to establish, in accordance with regulations prescribed by the Office of Personnel Management, one or more SES performance review boards. The board shall review and evaluate the initial appraisal of a senior executive's performance by the supervisor, along with any recommendations to the appointing authority relative to the performance of the senior executive.

The following have been selected as acting members of the Performance Review Board of the Trade and Development Agency: Lois E. Hartman, Deputy Director (retired), Office of Human Resources, Agency for International Development; Theodore Carter, Senior Legal Advisor (retired), Agency for International Development; and Margaret Thome, Director of Administrative Services, Agency for International Development.

Dated: November 9, 1998.

Larry P. Bevan,

Assistant Director for Management.

[FR Doc. 98–30538 Filed 11–13–98; 8:45 am]

BILLING CODE 8040–01–M

DEPARTMENT OF TRANSPORTATION

Coast Guard

[USCG–1998–4620]

Oil Pollution Act of 1990 (OPA 90) Phase-out Requirements for Single Hull Tank Vessels

AGENCY: Coast Guard, DOT.

ACTION: Request for comments.

SUMMARY: The Coast Guard requests public comment on whether we should recognize a single hull tank vessel converted to include double sides or a double bottom as a different hull design when applying the vessel phase-out dates under the Oil Pollution Act of 1990 (OPA 90). If we recognize a converted tank vessel as a different hull design, the vessel would fall under a different category in the OPA 90 phase-out schedule and would probably have a later phase-out date. Recent inquiries by the maritime industry indicate an interest in converting single hull tank vessels to include double sides or double bottoms to increase the vessels' operational lives past their original OPA 90 phase-out dates.

DATES: Comments must reach the Docket Management Facility on or before January 15, 1999.

ADDRESSES: You may mail your comments to the Docket Management Facility, (USCG–1998–4620), U.S.

Department of Transportation, room PL–401, 400 Seventh Street SW., Washington DC 20590–0001, or deliver them to room PL–401 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 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. You may also access this docket on the Internet at http://dms.dot.gov.

FOR FURTHER INFORMATION CONTACT: For questions on this notice, please contact Mr. Bob Gauvin, Project Manager, Office of Operating and Environmental Standards, Commandant (G-MSO–2), U.S. Coast Guard Headquarters, telephone 202–267–1053. For questions on viewing material in the docket, contact Dorothy Walker, Chief, Dockets, Department of Transportation, telephone 202–366–9329.

SUPPLEMENTARY INFORMATION:

Request for Comments

The Coast Guard encourages interested persons to respond to this notice by submitting written data, views, or arguments. Persons submitting comments should include their names and addresses, identify the docket number (USCG–1998–4620) and the specific section of this notice to which each comment applies, and give the reason for each comment. Please submit all comments and attachments in an unbound format, no larger than 8½ by 11 inches, suitable for copying and electronic filing to the Docket Management Facility at the address under **ADDRESSES**. If you want acknowledgment of receipt of your comments, enclose a stamped, self-addressed postcard or envelope.

The Coast Guard is opening a 60-day comment period for your responses to this notice. Copies of this notice will be mailed to U.S.–flag tank vessel owners and posted on our Marine Safety Regulations web site at http://www.uscg.mil/hq/g-m/regs/current.html.

The Coast Guard plans no public meeting concerning this notice. Persons may request a public meeting by writing to the Docket Management Facility at the address under **ADDRESSES**. The request should include the reasons why a meeting would be beneficial. If it determines that the opportunity for oral presentations will be helpful, the Coast Guard will hold a public meeting at a time and place announced by a later notice in the **Federal Register**.

Background and Purpose:

Section 4115 of the Oil Pollution Act of 1990 (OPA 90) amended Title 46, United States Code, by adding a new section 3703a. This section contains the double hull requirements and a phase-out schedule for single hull tank vessels operating in U.S. waters. It requires an owner to remove a single hull tank vessel from bulk oil service on specific dates, depending on a vessel's gross tonnage, build date, and hull configuration. The phase-out schedule allows more years of service for single hull tank vessels configured to include double sides or double bottoms than for single hull tank vessels without these hull configurations.

The OPA 90 timetable for double hull requirements and the phase-out schedule for single hull tank vessels are implemented in Title 33 Code of Federal Regulations (CFR) part 157, Appendix G. Both OPA 90 and the implementing regulations are silent on if or when a vessel owner can convert a single hull tank vessel to include double sides or a double bottom to qualify for a later phase-out date. As a result, some vessel owners have asked the Coast Guard to clarify the types of vessel conversions permitted and their associated phase-out dates.

A 1997 inquiry to the Coast Guard asked if a single hull tank vessel with wing cargo tanks reconfigured as segregated ballast tanks or void spaces to create double sides would qualify for a different OPA 90 phase-out date. We indicated that this type of conversion and an associated later phase-out date was acceptable provided that the modified tanks meet the double side dimension requirements applied to new tank vessels in 33 CFR 157.10d(c)(1). Converted double side segregated ballast tanks must also provide protection to the full extent of a vessel's cargo tank length. In 1998, we received a similar inquiry from the same source asking if hull conversions completed after a single hull tank vessel's original phase-out date qualified the vessel to reenter bulk oil service with a later phase-out date.

Recent inquiries by the maritime industry indicate a continued interest in converting single hull tank vessels to include double sides or double bottoms to increase the vessels' operational lives past their original OPA 90 phase-out dates. The Coast Guard is using this notice to assist us in determining the full impacts of these requests.

Since OPA 90 and current regulations do not explicitly address issues such as modifications to hull designs or allowing recently converted vessels to reenter operations with new phase-out dates, the Coast Guard is interested in your feedback to help us develop a clear and detailed policy. Specifically, we are interested in your comments on the following:

1. If the Coast Guard does not allow single hull tank vessels to qualify for later OPA 90 phase-out dates by converting the single hulls to single hulls with double sides or double bottoms, what would be the effect on U.S. oil transportation and supplies?

2. If single hull tank vessels which have passed their initial phase-out date could qualify for later phase-out dates, and reenter service by converting their single hulls with double sides or double bottoms, what would be the effect on U.S. oil transportation and supplies?

3. If single hull tank vessels could qualify for later phase-out dates through these types of hull conversions, what would be the effect on the conversion of the tank vessel fleet to double hull tank vessels? Would there be an adverse impact on the marine environment?

4. Are there any other concerns regarding whether we should recognize a single hull tank vessel converted to include double sides or a double bottom as a different hull design when applying the vessel phase-out dates under OPA 90?

The Coast Guard will consider all comments submitted to this docket. We will publish our final decision regarding the effect of tank vessel hull conversions on the OPA 90 phase-out schedule in the **Federal Register**.

Dated: November 9, 1998.

Joseph J. Angelo,

Director of Standards, Acting Assistant Commandant for Maine Safety and Environmental Protection.

[FR Doc. 98–30594 Filed 11–13–98; 8:45 am]

BILLING CODE 4910–15–U

DEPARTMENT OF TRANSPORTATION

Federal Aviation Administration

Aviation Rulemaking Advisory Committee Meeting on General Aviation and Business Airplane Issues

AGENCY: Federal Aviation Administration (FAA), DOT.

ACTION: Notice of meeting.

SUMMARY: The Federal Aviation Administration (FAA) is issuing this

notice to advise the public of a meeting of the FAA Aviation Rulemaking Advisory Committee to discuss General Aviation and Business Airplane Issues.

DATES: The meeting will be held on December 17, 1998, from 9 a.m. to 1 p.m. Arrange for presentations by December 10, 1998.

ADDRESSES: The meeting will be held at the General Aviation Manufacturers Association (GAMA), 1400 K Street NW, Suite 801, Washington, DC 20005–2485.

FOR FURTHER INFORMATION CONTACT:

Carolina E. Forrester, Federal Aviation Administration, Office of Rulemaking (ARM–206), 800 Independence Avenue, SW., Washington, DC 20591, telephone (202) 267–9690; 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 be held on December 17, 1998, from 9 a.m. to 1 p.m. at GAMA.

The agenda will include:

1. Opening remarks;

2. Committee Administration;

3. Discussion of Tasks assigned by the FAA:

Airworthiness Standards for Commuter Category Airplane Seats

Airworthiness Standards for Part 23 Turbofan/Turbojet Airplanes

4. A discussion of future meeting dates, locations, activities, and plans.

Attendance is open to the interested public, but will be limited to the space available. The public must make arrangements by December 10, 1998, to present oral statements at the meeting. The public may present written statements to the committee at any time by providing 25 copies to the Executive Director, or by bringing the copies to the meeting. 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 the heading **FOR FURTHER INFORMATION CONTACT**.

Issued in Washington, DC, on November 9, 1998.

Joseph A. Hawkins,

Executive Director, Aviation Rulemaking Advisory Committee.

[FR Doc. 98–30579 Filed 11–13–98; 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 Capital City Airport, Lansing, Michigan

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 Capital City 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 December 16, 1998.

ADDRESSES: Comments on this application may be mailed or delivered in triplicate to the FAA at the following address: Federal Aviation Administration, Detroit Airports District Office, Willow Run Airport, East, 8820 Beck Road, Belleville, Michigan 48111.

In addition, one copy of any comments submitted to the FAA must be mailed or delivered to Mr. Thomas W. Schmidt, Executive Director, Capital City Airport of the Capital Region Airport Authority at the following address: Capital City Airport, Lansing, Michigan 48906.

Air carriers and foreign air carriers may submit copies of written comments previously provided to the Capital Regional Airport Authority under § 158.23 of part 158.

FOR FURTHER INFORMATION CONTACT: Mr. Jack D. Roemer, Program Manager, Federal Aviation Administration, Detroit Airports District Office, Willow Run Airport, East, 8820 Beck Road, Belleville, Michigan 48111 (734–487–7282). 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 Capital City Airport under the provisions of the Aviation Safety and Capacity Expansion Act of 1990 (Title IX of the Omnibus Budget Reconciliation Act of 1990) (Pub. L. 101–508) and part 158 of the Federal Aviation Regulations (14 CFR part 158).

On October 9, 1998, the FAA determined that the application to impose and use the revenue from a PFC submitted by the Capital Region Airport Authority was substantially complete within the requirements of § 158.25 of part 158. The FAA will approve or disapprove the application, in whole or in part, no later than January 26, 1999.

The following is a brief overview of the application.

PFC Application No.: 98–03–C–00–LAN.

Level of the PFC: $3.00.

Proposed charge effective date: June 1, 2002.

Proposed charge expiration date: June 31, 2005.

Total estimated PFC revenue: $3,306,343.00.

Brief description of proposed projects: Terminal Improvements Including Passenger Enclosed Walkways, Mutual Users Flight Information Display System (MUFIDS), Extend Existing Baggage Claim Conveyors, Baggage Claim Expansion and Ground Level Concourse. Construct Commuter Walkways, Install Landside Signage, Upgrade Security Access Control System, Rehabilitate Air Carrier Ramp, Rehabilitate Runway 10R/28L and Taxiway B, Rehabilitate and Expand ARFF Building, Acquire ARFF Vehicle, NPDES Permit and Mitigation, Acquire Land—Vector Property, Rehabilitate and Extend West Service Road, PFC Consultant Fees.

Class or classes or air carriers which the public agency has requested not be required to collect PFCs: Part 135 and Air Taxi Operations.

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 Capital Region Airport Authority.

Issued in Des Plaines, Ill., on November 6, 1998.

Benito DeLeon,

Manager, Planning/Programming Branch, Airports Division, Great Lakes Region.

[FR Doc. 98–30581 Filed 11–13–98; 8:45 am]

BILLING CODE 4910–13–M

DEPARTMENT OF TRANSPORTATION

Federal Aviation Administration

Intent To Rule on Application To Use the Revenue From a Passenger Facility Charge (PFC) at Chicago Midway Airport, Chicago, Illinois

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 use the revenue from a PFC at Chicago Midway 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 December 16, 1998.

ADDRESSES: Comments on this application may be mailed or delivered in triplicate to the FAA at the following address: Federal Aviation Administration, Chicago Airports District Office, 2300 East Devon Avenue, Room 201, Des Plaines, Illinois 60018.

In addition, one copy of any comments submitted to the FAA must be mailed or delivered to Ms. Mary Rose Loney, Commissioner, of the City of Chicago Department of Aviation at the following address: Chicago O'Hare International Airport, P.O. Box 66142, Chicago, Illinois 60666.

Air carriers and foreign air carriers may submit copies of written comments previously provided to the City of Chicago Department of Aviation under section 158.23 of Part 158.

FOR FURTHER INFORMATION CONTACT: Mr. Philip M. Smithmeyer, Manager, Chicago Airports District Office, 2300 East Devon Avenue, Des Plaines, Illinois 60018, (847) 294–7335. 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 use the revenue from a PFC at Chicago Midway Airport under the provisions of the Aviation Safety and Capacity Expansion Act of 1990 (Title IX of the Omnibus Budget Reconciliation Act of 1990) (Pub. L. 101–508) and part 158 of the Federal Aviation Regulations (14 CFR part 158).

On October 22, 1998, the FAA determined that the application to use the revenue from a PFC submitted by the City of Chicago Department of Aviation was substantially complete within the requirements of § 158.25 of part 158. The FAA will approve or disapprove the application, in whole or in part, no later than January 29, 1999.

The following is a brief overview of the application.

PFC application number: 19–06–U–00–MDW.

Level of the proposed PFD: $3.00.

Actual charge effective date: August 1, 1998.

Estimated charge expiration date: August 1, 2020.

Total estimated PFC revenue: $187,179,775.

Brief description of proposed project(s): Midway Terminal Development.

Class or classes of air carriers which the public agency has requested not be required to collect PFCs: Air Taxi operators.

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 City of Chicago Department of Aviation.

Issued in Des Planes, Illinois on November 2, 1998.

Benito De Leon,

Anager, Planning/Programming Branch, Airports Division, Great Lakes Region.

[FR Doc. 98–30582 Filed 11–13–98; 8:45 am]

BILLING CODE 4910–13–M

DEPARTMENT OF TRANSPORTATION

Federal Aviation Administration

Notice of Intent To Rule on Application (99–03–C–00–DUJ) To Impose and Use a Passenger Facility Charge (PFC) at Dubois-Jefferson County Airport, Dubois, Pennsylvania

AGENCY: Federal Aviation Administration (FAA), DOT.

ACTION: Notice of intent to rule on application.

SUMMARY: The FAA proposes to rule and invites public comment on the application to impose and use a PFC at Dubois-Jefferson County 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 December 16, 1998.

ADDRESSES: Comments on this application may be mailed or delivered in triplicate to the FAA at the following address: Mr. John Carter, Project Manager, Harrisburg, Airports District Office, 3911 Hartzdale Dr., Suite 1, Camp Hill, PA 17011.

In addition, one copy of any comments submitted to the FAA must be mailed or delivered to Mr. Robert W. Shaffer, Airport Manager of Clearfield-Jefferson Counties Regional Airport Authority at the following address: P.O. Box 299, Falls Creek, Pennsylvania 15840.

Air carriers and foreign air carriers may submit copies of written comments previously provided to the Clearfield-Jefferson Counties Regional Airport Authority under § 158.23 of part 158.

FOR FURTHER INFORMATION CONTACT: John Carter, Project Manager, Harrisburg, Airports District Office, 3911 Hartzdale Dr., Suite 1, Camp Hill, PA 17011. (717) 730–2836. 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 a PFC at DuBois-Jefferson County Airport under the provisions of the Aviation Safety and Capacity Expansion Act of 1990 (Title IX of the Omnibus Budget Reconciliation Act of 1990) (Pub. L. 101–508) and part 158 of the Federal Aviation Regulations (14 CFR part 158).

On November 5, 1998, the FAA determined that the application to impose and use a PFC submitted by the Clearfield-Jefferson Counties Regional Airport Authority was substantially complete within the requirements of § 158.25 of part 158. The FAA will approve or disapprove the application, in whole or in part, no later than March 5, 1999.

The following is a brief overview of the application.

Application number: 9–03–C–00–DUJ.

Level of the proposed PFC: $3.00.

Proposed charge effective date: May 1, 2000.

Proposed charge expiration date: November 1, 2002.

Total estimated PFC revenue: $142,511.

Brief description of proposed projects:

—Installation of a new Airport Beacon
—Terminal Building Expansion and Modification
—Runway, Taxiway, and Apron Overlays
—Cargo Apron Expansion
—Preparation of PFC Application and Administration

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** and at the FAA regional Airports office located at: Fitzgerald Federal Building, #111, John F. Kennedy International Airport, Jamaica, New York 11430.

In addition, any person may, upon request, inspect the application, notice and other documents germane to the application in person at the Clearfield-Jefferson Counties Regional Airport Authority.

Issued in Jamaica, New York on November 6, 1998.

Thomas Felix,

Manager, Planning & Programming Branch, AEA–610, Eastern Region.

[FR Doc. 98–30583 Filed 11–13–98; 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 Minot International Airport, Minot, North Dakota

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 Minot 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 December 16, 1998.

ADDRESSES: Comments on this application may be mailed or delivered in triplicate to the FAA at the following address: Federal Aviation Administration, Bismarck Airports District Office, 2000 University Drive, Bismarck, North Dakota 58504.

In addition, one copy of any comments submitted to the FAA must be mailed or delivered to Mr. Michael Ryan, Airport Director, of the Minot International Airport at the following address: City of Minot, North Dakota, 25 Airport Road, Suite 10, Minot, North Dakota 58701–1457.

Air carriers and foreign air carriers may submit copies of written comments previously provided to the City of Minot, North Dakota under section 158.23 of Part 158.

FOR FURTHER INFORMATION CONTACT: Ms. Irene R. Porter, Manager, Bismarck Airports District Office, 2000 University Drive, Bismarck, North Dakota 58504, (701) 250–4385. 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 Minot International Airport under the provisions of the Aviation Safety and Capacity Expansion Act of 1990 (Title IX of the Omnibus Budget Reconciliation Act of 1990) (Pub. L. 101–508) and part 158 of the Federal Aviation Regulations (14 CFR part 158).

On October 20, 1998, the FAA determined that the application to impose and use the revenue from a PFC submitted by the City of Minot, North Dakota was substantially complete within the requirements of § 158.25 of Part 158. The FAA will approve or disapprove the application, in whole or in part, no later than January 19, 1999.

The following is a brief overview of the application.

PFC application number: 98–03–C–00–MOT.

Level of the proposed PFC: $3.00.

Proposed charge effective date: April 1, 1999.

Proposed charge expiration date: June 30, 2000.

Total estimated PFC revenue: $228,720.00.

Brief description of proposed project(s): Runway 8/26 restoration and extension; Preparation of Passenger Facility Charge Application; Preparation of Airport Master Plan.

Class or classes of air carriers which the public agency has requested not be required to collect PFCs: Air Taxi/Commercial Operators 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 Airport Director's office at the Minot International Airport, Minot, North Dakota.

Issued in Des Plaines, Ill., on November 2, 1998.

Benito De Leon,

Manager, Planning and Programming Branch, Airports Division, Great Lakes Region.

[FR Doc. 98–30580 Filed 11–13–98; 8:45 am]

BILLING CODE 4910–13–M

DEPARTMENT OF TRANSPORTATION

Surface Transportation Board

[STB Finance Docket No. 33662 (Sub-No. 1)]

The Burlington Northern And Santa Fe Railway Company—Trackage Rights Exemption—Omaha Public Power District

AGENCY: Surface Transportation Board.

ACTION: Notice of Exemption.

SUMMARY: The Board, under 49 U.S.C. 10502, exempts the trackage rights described in STB Finance Docket No. 33662 [1] to permit the trackage rights to expire on December 31, 1998, in accordance with the agreement of the parties.[2]

DATES: This exemption is effective on December 16, 1998. Petitions to reopen must be filed by December 7, 1998.

ADDRESSES: An original and 10 copies of all pleadings referring to STB Finance Docket No. 33662 (Sub-No. 1) must be filed with the Office of the Secretary, Case Control Unit, Surface Transportation Board, 1925 K Street, N.W., Washington, DC 20423–0001. In addition, a copy of all pleadings must be served on petitioner's representative Sarah Whitley Bailiff, The Burlington Northern and Santa Fe Railway Company, 3017 Lou Menk Drive, P.O. Box 961039, Fort Worth, TX 76161–0039.

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

SUPPLEMENTARY INFORMATION: Additional information is contained in the Board's decision. To purchase a copy of the full decision, write to, call, or pick up in person from: DC NEWS & DATA, INC., Suite 210, 1925 K Street,

[1] On September 22, 1998, The Burlington Northern and Santa Fe Railway Company (BNSF) filed a notice of exemption under the Board's class exemption procedures at 49 CFR 1180.2(d)(7). The notice covered the agreement by Omaha Public Power District (OPPD) to grant local trackage rights to BNSF between milepost 56.3 in Collegeview and milepost 6.0 in Arbor, in Otoe and Lancaster Counties, NE, a distance of approximately 50.3 miles. *See The Burlington Northern and Santa Fe Railway Company—Trackage Rights Exemption—Omaha Public Power District,* STB Finance Docket No. 33662 (STB served Oct. 7, 1998). The exemption became effective on September 29, 1998, 7 days after the verified notice was filed, and the trackage rights agreement was scheduled to be consummated on October 1, 1998.

[2] Trackage rights normally remain in effect unless discontinuance authority or approval of a new agreement is obtained. *See Milford—Bennington Railroad Company, Inc.—Boston and Maine Corporation and Springfield Terminal Railway Company,* Finance Docket No. 32103 (ICC served Sept. 3, 1993).

N.W., Washington, DC 20006. Telephone: (202) 289–4357. [Assistance for the hearing impaired is available through TDD services (202) 565–1695.]

Board decisions and notices are available on our website at ''WWW.STB.DOT.GOV.''

Decided: November 5, 1998.

By the Board, Chairman Morgan and Vice Chairman Owen.

Vernon A. Williams,

Secretary.

[FR Doc. 98–30649 Filed 11–13–98; 8:45 am]

BILLING CODE 4910–00–P

DEPARTMENT OF THE TREASURY

Customs Service

Proposed Collection; Comment Request; Request for Information.

ACTION: Notice and request for comments.

SUMMARY: As part of its continuing effort to reduce paperwork and respondent burden, Customs invites the general public and other Federal agencies to comment on an information collection requirement concerning Request for Information. This request for comment is being made pursuant to the Paperwork Reduction Act of 1995 (Pub. L. 104–13; 44 U.S.C. 3505(c)(2)).

DATES: Written comments should be received on or before January 15, 1999, to be assured of consideration.

ADDRESS: Direct all written comments to U.S. Customs Service, Information Services Group, Attn.: J. Edgar Nichols, 1300 Pennsylvania Avenue, NW, Room 3.2C, Washington, D.C. 20229.

FOR FURTHER INFORMATION CONTACT: Requests for additional information should be directed to U.S. Customs Service, Attn.: J. Edgar Nichols, 1300 Pennsylvania Avenue NW, Room 3.2C, Washington, D.C. 20229, Tel. (202) 927–1426.

SUPPLEMENTARY INFORMATION: Customs invites the general public and other Federal agencies to comment on proposed and/or continuing information collections pursuant to the Paperwork Reduction Act of 1995 (Pub. L. 104–13; 44 U.S.C. 3505(c)(2)). The comments should address: (a) Whether the collection of information is necessary for the proper performance of the functions of the agency, including whether the information shall have practical utility; (b) the accuracy of the agency's estimates of the burden of the collection of information; (c) ways to enhance the quality, utility, and clarity of the information to be collected; (d) ways to minimize the burden including the use of automated collection techniques or the use of other forms of information technology; and (e) estimates of capital or start-up costs and costs of operations, maintenance, and purchase of services to provide information. The comments that are submitted will be summarized and included in the Customs request for Office of Management and Budget (OMB) approval. All comments will become a matter of public record. In this document Customs is soliciting comments concerning the following information collection:

Title: Request for Information.

OMB Number: 1515–0068.

Form Number: Customs Form 28.

Abstract: Customs Form 28 is used by Customs personnel to request additional information from importers when the invoice or other documentation provide insufficient information for Customs to carry out its responsibilities to protect revenues.

Current Actions: There are no changes to the information collection. This submission is being submitted to extend the expiration date.

Type of Review: Extension (without change).

Affected Public: Businesses, Individuals, Institutions.

Estimated Number of Respondents: 60,000.

Estimated Time Per Respondent: 30 minutes.

Estimated Total Annual Burden Hours: 30,000.

Estimated Total Annualized Cost on the Public: N/A.

Dated: November 9, 1998.

J. Edgar Nichols,

Team Leader, Information Services Group.

[FR Doc. 98–30542 Filed 11–13–98; 8:45 am]

BILLING CODE 4820–02–P

DEPARTMENT OF THE TREASURY

Customs Service

Proposed Collection; Comment Request; Certificate of Compliance for Turbine Fuel Withdrawals

ACTION: Notice and request for comments.

SUMMARY: As part of its continuing effort to reduce paperwork and respondent burden, Customs invites the general public and other Federal agencies to comment on an information collection requirement concerning the Certificate of Compliance for Turbine Fuel Withdrawals. This request for comment is being made pursuant to the Paperwork Reduction Act of 1995 (Pub. L. 104–13; 44 U.S.C. 3505(c)(2)).

DATES: Written comments should be received on or before January 15, 1999, to be assured of consideration.

ADDRESS: Direct all written comments to U.S. Customs Service, Information Services Group, Attn.: J. Edgar Nichols, 1300 Pennsylvania Avenue, NW, Room 3.2C, Washington, D.C. 20229.

FOR FURTHER INFORMATION CONTACT: Requests for additional information should be directed to U.S. Customs Service, Attn.: J. Edgar Nichols, 1300 Pennsylvania Avenue NW, Room 3.2C, Washington, D.C. 20229, Tel. (202) 927–1426.

SUPPLEMENTARY INFORMATION: Customs invites the general public and other Federal agencies to comment on proposed and/or continuing information collections pursuant to the Paperwork Reduction Act of 1995 (Pub. L. 104–13; 44 U.S.C. 3505(c)(2)). The comments should address: (a) Whether the collection of information is necessary for the proper performance of the functions of the agency, including whether the information shall have practical utility; (b) the accuracy of the agency's estimates of the burden of the collection of information; (c) ways to enhance the quality, utility, and clarity of the information to be collected; (d) ways to minimize the burden including the use of automated collection techniques or the use of other forms of information technology; and (e) estimates of capital or start-up costs and costs of operations, maintenance, and purchase of services to provide information. The comments that are submitted will be summarized and included in the Customs request for Office of Management and Budget (OMB) approval. All comments will become a matter of public record. In this document Customs is soliciting comments concerning the following information collection:

Title: Certificate of Compliance for Turbine Fuel Withdrawals.

OMB Number: 1515–0209.

Form Number: N/A.

Abstract: This information is collected to ensure regulatory compliance for Turbine Fuel Withdrawals to protect revenue collections.

Current Actions: There are no changes to the information collection. This submission is being submitted to extend the expiration date.

Type of Review: Extension (without change).

Affected Public: Businesses, Individuals, Institutions.

Estimated Number of Respondents: 20.

Estimated Time Per Respondent: 12 hours.

Estimated Total Annual Burden Hours: 240.

Estimated Total Annualized Cost on the Public: N/A.

Dated: November 2, 1998.

J. Edgar Nichols,

Team Leader, Information Services Group.

[FR Doc. 98–30543 Filed 11–13–98; 8:45 am]

BILLING CODE 4820–02–P

DEPARTMENT OF THE TREASURY

Customs Service

Proposed Collection; Comment Request; Entry of Articles for Exhibition

ACTION: Notice and request for comments.

SUMMARY: As part of its continuing effort to reduce paperwork and respondent burden, Customs invites the general public and other Federal agencies to comment on an information collection requirement concerning Entry of Articles for Exhibition. This request for comment is being made pursuant to the Paperwork Reduction Act of 1995 (Pub. L. 104–13; 44 U.S.C. 3505(c)(2)).

DATES: Written comments should be received on or before January 15, 1999, to be assured of consideration.

ADDRESSES: Direct all written comments to U.S. Customs Service, Information Services Group, Attn.: J. Edgar Nichols, 1300 Pennsylvania Avenue, NW, Room 3.2C, Washington, DC. 20229.

FOR FURTHER INFORMATION CONTACT: Requests for additional information should be directed to U.S. Customs Service, Attn.: J. Edgar Nichols, 1300 Pennsylvania Avenue NW, Room 3.2C, Washington, DC. 20229, Tel. (202) 927–1426.

SUPPLEMENTARY INFORMATION: Customs invites the general public and other Federal agencies to comment on proposed and/or continuing information collections pursuant to the Paperwork Reduction Act of 1995 (Pub. L. 104–13; 44 U.S.C. 3505(c)(2)). The comments should address: (a) Whether the collection of information is necessary for the proper performance of the functions of the agency, including whether the information shall have practical utility; (b) the accuracy of the agency's estimates of the burden of the collection of information; (c) ways to enhance the quality, utility, and clarity of the information to be collected; (d) ways to minimize the burden including the use of automated collection techniques or the use of other forms of information technology; and (e) estimates of capital or start-up costs and costs of operations, maintenance, and purchase of services to provide information. The comments that are submitted will be summarized and included in the Customs request for Office of Management and Budget (OMB) approval. All comments will become a matter of public record. In this document Customs is soliciting comments concerning the following information collection:

Title: Entry of Articles for Exhibition.

OMB Number: 1515–0106.

Form Number: N/A.

Abstract: This information is used by Customs to substantiate that the goods imported for exhibit have been approved for entry by the Department of Commerce.

Current Actions: There are no changes to the information collection. This submission is being submitted to extend the expiration date.

Type of Review: Extension (without change).

Affected Public: Businesses, Individuals, Institutions.

Estimated Number of Respondents: 40.

Estimated Time Per Respondent: 20 minutes.

Estimated Total Annual Burden Hours: 530.

Estimated Total Annualized Cost on the Public: N/A.

Dated: October 27, 1998.

J. Edgar Nichols,

Team Leader, Information Services Group.

[FR Doc. 98–30544 Filed 11–13–98; 8:45 am]

BILLING CODE 4820–02–P

DEPARTMENT OF THE TREASURY

Customs Service

Quarterly IRS Interest Rates Used in Calculating Interest on Overdue Accounts and Refunds on Customs Duties

AGENCY: Customs Service, Treasury.

ACTION: General notice.

SUMMARY: This notice advises the public of the quarterly Internal Revenue Service interest rates used to calculate interest on overdue accounts and refunds of Customs duties. For the quarter beginning October 1, 1998, the rates will be 7 percent for overpayments and 8 percent for underpayments. This notice is published for the convenience of the importing public and Customs personnel.

EFFECTIVE DATE: October 1, 1998.

FOR FURTHER INFORMATION CONTACT: Ronald Wyman, Accounting Services Division, Accounts Receivable Group, 6026 Lakeside Boulevard, Indianapolis, Indiana 46278, (317) 298–1200, extension 1349.

SUPPLEMENTARY INFORMATION:

Background

Pursuant to 19 U.S.C. 1505 and Treasury Decision 85–93, published in the **Federal Register** on May 29, 1985 (50 FR 21832), the interest rate paid on applicable overpayments or underpayments of Customs duties shall be in accordance with the Internal Revenue Code rate established under 26 U.S.C. 6621 and 6622. Interest rates are determined based on the short-term Federal rate. The interest rate that Treasury pays on overpayments will be the short-term Federal rate plus two percentage points. The interest rate paid to the Treasury for underpayments will be the short-term Federal rate plus three percentage points. The rates will be rounded to the nearest full percentage.

The interest rates are determined by the Internal Revenue Service (IRS) on behalf of the Secretary of the Treasury based on the average market yield on outstanding marketable obligations of the U.S. with remaining periods to maturity of 3 years or less, and fluctuate quarterly. The rates effective for a quarter are determined during the first-month period of the previous quarter.

In Revenue Ruling 98–46 (*see,* 1998–39 IRB 10, dated September 28, 1998), the IRS determined that the rates of interest for the first quarter of fiscal year (FY) 1999 (the period of October 1—December 31, 1998) will be 7 percent for overpayments and 8 percent for underpayments. These interest rates are subject to change for the second quarter of FY–1999 (the period of January 1—March 31, 1999).

For the convenience of the importing public and Customs personnel the following list of Internal Revenue Service interest rates used, covering the period from before July of 1974 to date, to calculate interest on overdue accounts and refunds of Customs duties, is published in summary format.

Beginning date	Ending date	Under-payments (percent)	Overpay-ments (percent)
Prior to 070174	063075	6	6
070175	013176	9	9
020176	013178	7	7
020178	013180	6	6
020180	013182	12	12
020182	123182	20	20
010183	063083	16	16

Beginning date	Ending date	Under-payments (percent)	Overpay-ments (percent)
070183	123184	11	11
010185	063085	13	13
070185	123185	11	11
010186	063086	10	10
070186	123186	9	9
010187	093087	9	8
100187	123187	10	9
010188	033188	11	10
040188	093088	10	9
100188	033189	11	10
040189	093089	12	11
100189	033191	11	10
040191	123191	10	9
010192	033192	9	8
040192	093092	8	7
100192	063094	7	6
070194	093094	8	7
100194	033195	9	8
040195	063095	10	9
070195	033196	9	8
040196	063096	8	7
070196	033198	9	8
040198	123198	8	7

Dated: November 10, 1998.

Raymond W. Kelly,

Commissioner of Customs.

[FR Doc. 98–30570 Filed 11–13–98; 8:45 am]

BILLING CODE 4820–02–P

Federal Register

Monday
November 16, 1998

Part II

Department of Defense
General Services Administration
National Aeronautics and Space Administration

48 CFR Parts 11 and 52

Federal Acquisition Regulation: Use of Brand Name Item Descriptions; Proposed Rule

DEPARTMENT OF DEFENSE

GENERAL SERVICES ADMINISTRATION

NATIONAL AERONAUTICS AND SPACE ADMINISTRATION

48 CFR Parts 11 and 52

[FAR Case 96–018]

RIN 9000–AH85

Federal Acquisition Regulation; Use of Brand Name Item Descriptions

AGENCIES: Department of Defense (DOD), General Services Administration (GSA), and National Aeronautics and Space Administration (NASA).

ACTION: Proposed rule.

SUMMARY: The Civilian Agency Acquisition Council and the Defense Acquisition Regulations Council are proposing to amend the Federal Acquisition Regulation (FAR) to provide for the use of brand name purchase descriptions, including ''brand name or equal,'' ''brand name—no substitute,'' and ''brand name as target''; and to add two new related solicitation provisions.

DATES: Comments should be submitted on or before January 15, 1999 to be considered in the formulation of a final rule.

ADDRESSES: Interested parties should submit written comments to: General Services Administration, FAR Secretariat (MVRS), Attn: Laurie Duarte, 1800 F Street, NW, Room 4035, Washington, DC 20405.

E-mail comments submitted over Internet should be addressed to: farcase.96–018@gsa.gov. Please cite FAR case 96–018 in all correspondence related to this case.

FOR FURTHER INFORMATION CONTACT: The FAR Secretariat, Room 4035, GS Building, Washington, DC 20405 (202) 501–4755 for information pertaining to status or publication schedules. For clarification of content, contact Ms. Victoria Moss, Procurement Analyst, at (202) 501–4764. Please cite FAR case 96–018.

SUPPLEMENTARY INFORMATION:

A. Background

While indicating that performance specifications are the preferred method for describing the Governments needs, the proposed rule provides three types of brand name purchase descriptions, ''brand name or equal,'' ''brand name no substitute,'' and ''brand name as target,'' for use based on the degree of flexibility of the Government's requirement. The rule also proposes two solicitation provisions providing guidance to offerors responding to ''brand name or equal'' and ''brand name as target'' purchase descriptions.

The proposed guidance at FAR 11.104–3 permits contracting officers to describe their needs by identifying brand names as targets rather than as ''brand name or equal.'' The rule would permit solicitations to include salient physical, functional, or performance characteristics of the brand name. However, since needs would be described as targets, offerors could propose alternatives for consideration by the Government that are not identical to the brand name. In addition to looking at alternatives exceeding the target's characteristics, agencies could consider alternatives that were not fully compliant with the salient characteristics of the brand name target (*i.e.,* that were ''less than equal'' to the brand name but represented a better overall value for the intended use). This will allow contracting officers a simple way to describe needs and enhance their flexibility to make tradeoffs between price and quality to achieve a best value decision. Public comment is sought regarding whether the rule should speak in terms of ''desired'' characteristics rather than ''salient'' characteristics, since the latter term is generally associated with the brand name or equal approach, where requirements are fixed and agencies are denied the opportunity to consider offers that fall below the ''or equal'' level.

This regulatory action was not subject to Office of Management and Budget review under Executive Order 12866, dated September 30, 1993. This is not a major rule under 5 U.S.C. 804.

B. Regulatory Flexibility Act

The proposed changes may have a significant economic impact on a substantial number of small entities within the meaning of the Regulatory Flexibility Act, 5 U.S.C. 601, *et seq.*, because the rule affects how purchase descriptions may be written for competitive procurements. An Initial Regulatory Flexibility Analysis (IRFA) has been prepared and will be provided to the Chief Counsel for Advocacy for the Small Business Administration. The IRFA is summarized as follows:

The objective of the proposed rule is to provide more comprehensive, uniform FAR guidance on the appropriate use of brand name purchase descriptions, as there are currently many differing interpretations of this issue. Application of the proposed guidance should result in more consistent use of such purchase descriptions in Federal acquisitions. The rule will apply to all large and small entities that offer supplies to the Government that are brand name items or are comparable to such items. It is anticipated that the selected approach will be the most advantageous to small entities, while achieving the objective of the rule, because this approach best enables the Government to express its requirements clearly and describe the degree of flexibility with which offered supplies or services will be evaluated as ''equals.''

A copy of the IRFA may be obtained from the FAR Secretariat. Comments are invited. Comments from small entities concerning the affected FAR subpart will be considered in accordance with 5 U.S.C. 610. Such comments must be submitted separately and should cite 5 U.S.C. 601, *et seq.* (FAR Case 96–018), in correspondence.

C. Paperwork Reduction Act

The Paperwork Reduction Act does not apply because the proposed changes to the FAR do not impose recordkeeping or information collection requirements, or collections of information from offerors, contractors, or members of the public which require the approval of the Office of Management and Budget under 44 U.S.C. 3501, *et seq.*

List of Subjects in 48 CFR Parts 11 and 52

Government procurement.

Dated: November 9, 1998.

Edward C. Loeb,

Director, Federal Acquisition Policy Division.

Therefore, it is proposed that 48 CFR Parts 11 and 52 be amended as set forth below:

1. The authority citation for 48 CFR Parts 11 and 52 continues to read as follows:

Authority: 40 U.S.C. 486(c); 10 U.S.C. chapter 137; and 42 U.S.C. 2473(c).

PART 11—DESCRIBING AGENCY NEEDS

2. Section 11.104 is revised and sections 11.104–1, 11.104–2, and 11.104–3 are added to read as follows:

11.104 Use of brand name purchase descriptions.

While the use of performance specifications is preferred to encourage offerors to propose innovative solutions, the use of a brand name purchase description may be advantageous under certain circumstances.

11.104–1 Brand name or equal.

Brand name or equal purchase descriptions shall include, in addition to the brand name, a general description of those salient physical, functional, or performance characteristics of the brand name item that an ''equal'' item must meet to be acceptable for award. Use

brand name or equal descriptions when the salient characteristics are firm requirements.

11.104–2 Brand name—no substitute.

Brand name—no substitute purchase descriptions may be used when—

(a) A particular brand name product has a feature or features essential to the Government's requirements, and market research indicates that other companies' similar products do not meet or cannot be modified to meet the agency's legitimate needs; and

(b)(1) The authority to contract without providing for full and open competition is supported by the required justifications and approvals (see 6.302–1); or

(2) The basis for not providing for maximum practicable competition is documented in the file when the acquisition is awarded using simplified acquisition procedures and the amount does not exceed the simplified acquisition threshold.

11.104–3 Brand name as target.

To the extent authorized by agency regulations, for other than sealed bidding acquisitions, contracting officers may identify one or more brand name products as targets for addressing agency needs. The solicitation shall identify the items intended use and may, but need not, include salient physical, functional, or performance characteristics. Use brand name as target purchase descriptions when there are desirable, but not firm, requirements.

3. Section 11.106 is added to read as follows:

11.106 Solicitation provisions.

(a) The contracting officer shall insert the provision at 52.211–X1, Brand Name or Equal, when brand name or equal purchase descriptions are included in a solicitation.

(b) The contracting officer shall insert the provision at 52.211–X2, Brand Name as Target, when brand name as target purchase descriptions are included in a solicitation.

PART 52—SOLICITATION PROVISIONS AND CONTRACT CLAUSES

5. Sections 52.211–X1 and 52.211–X2 are added to read as follows:

52.211–X1 Brand name or equal.

As prescribed in 11.106(a), insert the following provision:

Brand Name or Equal (Date)

(a) If items in this solicitation are identified as ''brand name or equal,'' the purchase description reflects the characteristics and level of quality that will satisfy the Government's needs. The salient physical, functional, or performance characteristics that ''equal'' products must meet are specified in the solicitation.

(b) To be considered for award, offers of ''equal'' products, including ''equal'' products of the brand name manufacturer, must—

(1) Meet the salient physical, functional, or performance characteristic specified in this solicitation;

(2) Clearly identify the item by—

(i) Brand name, if any; and

(ii) Make or model number;

(3) Include descriptive literature such as cuts, illustrations, drawings, or a clear reference to previously furnished descriptive data or information available to the Contracting Officer; and

(4) Clearly describe any modifications the offeror plans to make in a product to make it conform to the solicitation requirements. Mark any descriptive material to clearly show the modifications.

(c) The Contracting Officer will evaluate ''equal'' products on the basis of information furnished by the offeror or identified in the offer and reasonably available to the Contracting Officer. The Contracting Officer is not responsible for locating or obtaining any information not identified in the offer.

(d) Unless the offeror clearly indicates in its offer that the product being offered is an ''equal'' product, the offeror shall provide the brand name product referenced in the solicitation.

(End of provision)

52.211–X2 Brand Name as Target.

As prescribed in 11.106(b), insert the following provision:

Brand Name as Target (Date)

(a) If items in this solicitation are identified as ''brand name as target'', the specified brand name item(s) reflects the characteristics and level of quality that will satisfy the Government's needs. Offerors are encouraged to offer these or similar items that will provide comparable performance and quality at a reasonable price.

(b) To be considered for award, offers of substitute products, including other products of the brand name manufacturer, must—

(1) Identify the salient physical, functional, or performance characteristics of the offered item; and

(2) Include descriptive literature, or a clear reference to previously furnished descriptive data or information available to the Contracting Officer.

(c) The Contracting Officer will evaluate offered substitute products on the basis of information furnished by the offeror or identified in the offer and reasonably available to the Contracting Officer. The Contracting Officer is not responsible for locating or obtaining any information not identified in the offer.

(d) Unless the offeror clearly indicates in its offer that a substitute product is being offered, the offeror shall provide the target brand name product referenced in the solicitation.

(End of provision)

[FR Doc. 98–30438 Filed 11–13–98; 8:45 am]

BILLING CODE 6820–EP–P

Reader Aids

Federal Register

Vol. 63, No. 220

Monday, November 16, 1998

CUSTOMER SERVICE AND INFORMATION

Federal Register/Code of Federal Regulations

General Information, indexes and other finding aids — **202–523–5227**

Laws — **523–5227**

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The United States Government Manual — **523–5227**

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Public Laws Update Service (numbers, dates, etc.) — **523–6641**

TTY for the deaf-and-hard-of-hearing — **523–5229**

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REMINDERS

The items in this list were editorially compiled as an aid to Federal Register users. Inclusion or exclusion from this list has no legal significance.

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  - National priorities list update; comments due by 11-19-98; published 10-20-98

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- Massachusetts; comments due by 11-16-98; published 10-2-98

LIST OF PUBLIC LAWS

Note: No public bills which have become law were received by the Office of the Federal Register for inclusion in today's **List of Public Laws**

In the **List of Public Laws** printed in the *Federal Register* on November 13, 1998, H.R. 4110, Public Law 105-368, was printed incorrectly. It should read as follows:

H.R. 4110/P.L. 105–368

Veterans Programs Enhancement Act of 1998 (Nov. 11, 1998; 112 Stat. 3315)

Last List November 13, 1998

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CFR CHECKLIST

This checklist, prepared by the Office of the Federal Register, is published weekly. It is arranged in the order of CFR titles, stock numbers, prices, and revision dates.

An asterisk (*) precedes each entry that has been issued since last week and which is now available for sale at the Government Printing Office.

A checklist of current CFR volumes comprising a complete CFR set, also appears in the latest issue of the LSA (List of CFR Sections Affected), which is revised monthly.

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Title	Stock Number	Price	Revision Date
1, 2 (2 Reserved)	(869–034–00001–1)	5.00	[5] Jan. 1, 1998
3 (1997 Compilation and Parts 100 and 101)	(869–034–00002–9)	19.00	[1] Jan. 1, 1998
4	(869–034–00003–7)	7.00	[5] Jan. 1, 1998
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1–699	(869–034–00004–5)	35.00	Jan. 1, 1998
700–1199	(869–034–00005–3)	26.00	Jan. 1, 1998
1200–End, 6 (6 Reserved)	(869–034–00006–1)	39.00	Jan. 1, 1998
7 Parts:			
1–26	(869–034–00007–0)	24.00	Jan. 1, 1998
27–52	(869–034–00008–8)	30.00	Jan. 1, 1998
53–209	(869–034–00009–6)	20.00	Jan. 1, 1998
210–299	(869–034–00010–0)	44.00	Jan. 1, 1998
300–399	(869–034–00011–8)	24.00	Jan. 1, 1998
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700–899	(869–034–00013–4)	30.00	Jan. 1, 1998
900–999	(869–034–00014–2)	39.00	Jan. 1, 1998
1000–1199	(869–034–00015–1)	44.00	Jan. 1, 1998
1200–1599	(869–034–00016–9)	34.00	Jan. 1, 1998
1600–1899	(869–034–00017–7)	58.00	Jan. 1, 1998
1900–1939	(869–034–00018–5)	18.00	Jan. 1, 1998
1940–1949	(869–034–00019–3)	33.00	Jan. 1, 1998
1950–1999	(869–034–00020–7)	40.00	Jan. 1, 1998
2000–End	(869–034–00021–5)	24.00	Jan. 1, 1998
8	(869–034–00022–3)	33.00	Jan. 1, 1998
9 Parts:			
1–199	(869–034–00023–1)	40.00	Jan. 1, 1998
200–End	(869–034–00024–0)	33.00	Jan. 1, 1998
10 Parts:			
0–50	(869–034–00025–8)	39.00	Jan. 1, 1998
51–199	(869–034–00026–6)	32.00	Jan. 1, 1998
200–499	(869–034–00027–4)	31.00	Jan. 1, 1998
500–End	(869–034–00028–2)	43.00	Jan. 1, 1998
11	(869–034–00029–1)	19.00	Jan. 1, 1998
12 Parts:			
1–199	(869–034–00030–4)	17.00	Jan. 1, 1998
200–219	(869–034–00031–2)	21.00	Jan. 1, 1998
220–299	(869–034–00032–1)	39.00	Jan. 1, 1998
300–499	(869–034–00033–9)	23.00	Jan. 1, 1998
500–599	(869–034–00034–7)	24.00	Jan. 1, 1998
600–End	(869–034–00035–5)	44.00	Jan. 1, 1998
13	(869–034–00036–3)	23.00	Jan. 1, 1998
14 Parts:			
1–59	(869–034–00037–1)	47.00	Jan. 1, 1998
60–139	(869–034–00038–0)	40.00	Jan. 1, 1998
140–199	(869–034–00039–8)	16.00	Jan. 1, 1998
200–1199	(869–034–00040–1)	29.00	Jan. 1, 1998
1200–End	(869–034–00041–0)	23.00	Jan. 1, 1998
15 Parts:			
0–299	(869–034–00042–8)	22.00	Jan. 1, 1998
300–799	(869–034–00043–6)	33.00	Jan. 1, 1998
800–End	(869–034–00044–4)	23.00	Jan. 1, 1998
16 Parts:			
0–999	(869–034–00045–2)	30.00	Jan. 1, 1998
1000–End	(869–034–00046–1)	33.00	Jan. 1, 1998
17 Parts:			
1–199	(869–034–00048–7)	27.00	Apr. 1, 1998
200–239	(869–034–00049–5)	32.00	Apr. 1, 1998
240–End	(869–034–00050–9)	40.00	Apr. 1, 1998
18 Parts:			
1–399	(869–034–00051–7)	45.00	Apr. 1, 1998
400–End	(869–034–00052–5)	13.00	Apr. 1, 1998
19 Parts:			
1–140	(869–034–00053–3)	34.00	Apr. 1, 1998
141–199	(869–034–00054–1)	33.00	Apr. 1, 1998
200–End	(869–034–00055–0)	15.00	Apr. 1, 1998
20 Parts:			
1–399	(869–034–00056–8)	29.00	Apr. 1, 1998
400–499	(869–034–00057–6)	28.00	Apr. 1, 1998
500–End	(869–034–00058–4)	44.00	Apr. 1, 1998
21 Parts:			
1–99	(869–034–00059–2)	21.00	Apr. 1, 1998
100–169	(869–034–00060–6)	27.00	Apr. 1, 1998
170–199	(869–034–00061–4)	28.00	Apr. 1, 1998
200–299	(869–034–00062–2)	9.00	Apr. 1, 1998
300–499	(869–034–00063–1)	50.00	Apr. 1, 1998
500–599	(869–034–00064–9)	28.00	Apr. 1, 1998
600–799	(869–034–00065–7)	9.00	Apr. 1, 1998
800–1299	(869–034–00066–5)	32.00	Apr. 1, 1998
1300–End	(869–034–00067–3)	12.00	Apr. 1, 1998
22 Parts:			
1–299	(869–034–00068–1)	41.00	Apr. 1, 1998
300–End	(869–034–00069–0)	31.00	Apr. 1, 1998
23	(869–034–00070–3)	25.00	Apr. 1, 1998
24 Parts:			
0–199	(869–034–00071–1)	32.00	Apr. 1, 1998
200–499	(869–034–00072–0)	28.00	Apr. 1, 1998
500–699	(869–034–00073–8)	17.00	Apr. 1, 1998
700–1699	(869–034–00074–6)	45.00	Apr. 1, 1998
1700–End	(869–034–00075–4)	17.00	Apr. 1, 1998
25	(869–034–00076–2)	42.00	Apr. 1, 1998
26 Parts:			
§§ 1.0-1–1.60	(869–034–00077–1)	26.00	Apr. 1, 1998
§§ 1.61–1.169	(869–034–00078–9)	48.00	Apr. 1, 1998
§§ 1.170–1.300	(869–034–00079–7)	31.00	Apr. 1, 1998
§§ 1.301–1.400	(869–034–00080–1)	23.00	Apr. 1, 1998
§§ 1.401–1.440	(869–034–00081–9)	39.00	Apr. 1, 1998
§§ 1.441-1.500	(869-034-00082-7)	29.00	Apr. 1, 1998
§§ 1.501–1.640	(869–034–00083–5)	27.00	Apr. 1, 1998
§§ 1.641–1.850	(869–034–00084–3)	32.00	Apr. 1, 1998
§§ 1.851–1.907	(869–034–00085–1)	36.00	Apr. 1, 1998
§§ 1.908–1.1000	(869–034–00086–0)	35.00	Apr. 1, 1998
§§ 1.1001–1.1400	(869–034–00087–8)	38.00	Apr. 1, 1998
§§ 1.1401–End	(869–034–00088–6)	51.00	Apr. 1, 1998
2–29	(869–034–00089–4)	36.00	Apr. 1, 1998
30–39	(869–034–00090–8)	25.00	Apr. 1, 1998
40–49	(869–034–00091–6)	16.00	Apr. 1, 1998
50–299	(869–034–00092–4)	19.00	Apr. 1, 1998
300–499	(869–034–00093–2)	34.00	Apr. 1, 1998
500–599	(869–034–00094–1)	10.00	Apr. 1, 1998
600–End	(869–034–00095–9)	9.00	Apr. 1, 1998
27 Parts:			
1–199	(869–034–00096–7)	49.00	Apr. 1, 1998

Title	Stock Number	Price	Revision Date
200–End	(869–034–00097–5)	17.00	[6] Apr. 1, 1997
28 Parts:			
0-42	(869–034–00098–3)	36.00	July 1, 1998
43-end	(869-034-00099-1)	30.00	July 1, 1998
29 Parts:			
0–99	(869–034–00100–9)	26.00	July 1, 1998
100–499	(869–034–00101–7)	12.00	July 1, 1998
500–899	(869–034–00102–5)	40.00	July 1, 1998
900–1899	(869–034–00103–3)	20.00	July 1, 1998
1900–1910 (§§ 1900 to 1910.999)	(869–034–00104–1)	44.00	July 1, 1998
1910 (§§ 1910.1000 to end)	(869–034–00105–0)	27.00	July 1, 1998
1911–1925	(869–034–00106–8)	17.00	July 1, 1998
1926	(869–034–00107–6)	30.00	July 1, 1998
1927–End	(869–034–00108–4)	41.00	July 1, 1998
30 Parts:			
1–199	(869–034–00109–2)	33.00	July 1, 1998
200–699	(869–034–00110–6)	29.00	July 1, 1998
700–End	(869–034–00111–4)	33.00	July 1, 1998
31 Parts:			
0–199	(869–034–00112–2)	20.00	July 1, 1998
200–End	(869–032–00113–8)	42.00	July 1, 1997
32 Parts:			
1–39, Vol. I		15.00	[2] July 1, 1984
1–39, Vol. II		19.00	[2] July 1, 1984
1–39, Vol. III		18.00	[2] July 1, 1984
1–190	(869–034–00114–9)	47.00	July 1, 1998
191–399	(869–032–00115–4)	51.00	July 1, 1997
400–629	(869–034–00116–5)	33.00	July 1, 1998
630–699	(869–034–00117–3)	22.00	July 1, 1998
700–799	(869–034–00118–1)	26.00	July 1, 1998
800–End	(869–034–00119–0)	27.00	July 1, 1998
33 Parts:			
*1–124	(869–034–00120–3)	29.00	July 1, 1998
125–199	(869–034–00121–1)	38.00	July 1, 1998
200–End	(869–034–00122–0)	30.00	July 1, 1998
34 Parts:			
1–299	(869–034–00123–8)	27.00	July 1, 1998
300–399	(869–034–00124–6)	25.00	July 1, 1998
400–End	(869–034–00125–4)	44.00	July 1, 1998
35	(869–034–00126–2)	14.00	July 1, 1998
36 Parts			
1–199	(869–034–00127–1)	20.00	July 1, 1998
200–299	(869–034–00128–9)	21.00	July 1, 1998
300–End	(869–034–00129–7)	35.00	July 1, 1998
37	(869–034–00130–1)	27.00	July 1, 1998
38 Parts:			
0–17	(869–034–00131–9)	34.00	July 1, 1998
18–End	(869–034–00132–7)	39.00	July 1, 1998
39	(869–034–00133–5)	23.00	July 1, 1998
40 Parts:			
1–49	(869–034–00134–3)	31.00	July 1, 1998
50–51	(869–034–00135–1)	24.00	July 1, 1998
52 (52.01–52.1018)	(869–034–00136–0)	28.00	July 1, 1998
52 (52.1019–End)	(869–034–00137–8)	33.00	July 1, 1998
53–59	(869–034–00138–6)	17.00	July 1, 1998
60	(869–032–00139–1)	52.00	July 1, 1997
61–62	(869–034–00140–8)	18.00	July 1, 1998
63	(869–034–00141–6)	57.00	July 1, 1998
64–71	(869–034–00142–4)	11.00	July 1, 1998
72–80	(869–034–00143–2)	36.00	July 1, 1998
81–85	(869–034–00144–1)	31.00	July 1, 1998
86	(869–034–00144–9)	53.00	July 1, 1998
87-135	(869–034–00146–7)	47.00	July 1, 1998
136–149	(869–032–00146–4)	35.00	July 1, 1997
150–189	(869–034–00148–3)	34.00	July 1, 1998
190–259	(869–034–00149–1)	23.00	July 1, 1998
260–265	(869–034–00150–9)	29.00	July 1, 1998
*266–299	(869–034–00151–3)	33.00	July 1, 1998
300–399	(869–034–00152–1)	26.00	July 1, 1998
*400–424	(869–034–00153–0)	33.00	July 1, 1998
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
19–100		13.00	[3] July 1, 1984
1–100	(869–034–00157–2)	13.00	July 1, 1998
101	(869–034–00158–1)	37.00	July 1, 1998
102–200	(869–034–00158–9)	15.00	July 1, 1998
201–End	(869–032–00159–6)	15.00	July 1, 1997
42 Parts:			
1–399	(869–032–00160–0)	32.00	Oct. 1, 1997
400–429	(869–032–00161–8)	35.00	Oct. 1, 1997
430–End	(869–032–00162–6)	50.00	Oct. 1, 1997
43 Parts:			
1–999	(869–032–00163–4)	31.00	Oct. 1, 1997
1000–end	(869–032–00164–2)	50.00	Oct. 1, 1997
44	(869–032–00165–1)	31.00	Oct. 1, 1997
45 Parts:			
1–199	(869–032–00166–9)	30.00	Oct. 1, 1997
200–499	(869–032–00167–7)	18.00	Oct. 1, 1997
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
90–139	(869–032–00173–1)	27.00	Oct. 1, 1997
140–155	(869–032–00174–0)	15.00	Oct. 1, 1997
156–165	(869–032–00175–8)	20.00	Oct. 1, 1997
166–199	(869–032–00176–6)	26.00	Oct. 1, 1997
200–499	(869–032–00177–4)	21.00	Oct. 1, 1997
500–End	(869–032–00178–2)	17.00	Oct. 1, 1997
47 Parts:			
0–19	(869–032–00179–1)	34.00	Oct. 1, 1997
20–39	(869–032–00180–4)	27.00	Oct. 1, 1997
40–69	(869–032–00181–2)	23.00	Oct. 1, 1997
70–79	(869–032–00182–1)	33.00	Oct. 1, 1997
80–End	(869–032–00183–9)	43.00	Oct. 1, 1997
48 Chapters:			
1 (Parts 1–51)	(869–032–00184–7)	53.00	Oct. 1, 1997
1 (Parts 52–99)	(869–032–00185–5)	29.00	Oct. 1, 1997
2 (Parts 201–299)	(869–032–00186–3)	35.00	Oct. 1, 1997
3–6	(869–032–00187–1)	29.00	Oct. 1, 1997
7–14	(869–032–00188–0)	32.00	Oct. 1, 1997
15–28	(869–032–00189–8)	33.00	Oct. 1, 1997
29–End	(869–032–00190–1)	25.00	Oct. 1, 1997
49 Parts:			
1–99	(869–032–00191–0)	31.00	Oct. 1, 1997
100–185	(869–032–00192–8)	50.00	Oct. 1, 1997
186–199	(869–032–00193–6)	11.00	Oct. 1, 1997
200–399	(869–032–00194–4)	43.00	Oct. 1, 1997
400–999	(869–032–00195–2)	49.00	Oct. 1, 1997
1000–1199	(869–032–00196–1)	19.00	Oct. 1, 1997
1200–End	(869–032–00197–9)	14.00	Oct. 1, 1997
50 Parts:			
1–199	(869–032–00198–7)	41.00	Oct. 1, 1997
200–599	(869–032–00199–5)	22.00	Oct. 1, 1997
600–End	(869–032–00200–2)	29.00	Oct. 1, 1997

Title	Stock Number	Price	Revision Date
CFR Index and Findings Aids	(869–034–00049–6)	46.00	Jan. 1, 1998
Complete 1998 CFR set		951.00	1998
Microfiche CFR Edition:			
Subscription (mailed as issued)		247.00	1998
Individual copies		1.00	1998
Complete set (one-time mailing)		247.00	1997
Complete set (one-time mailing)		264.00	1996

[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.