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Federal Register

Tuesday
February 9, 1999

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RESERVATIONS: 202–523–4538

Contents

Federal Register

Vol. 64, No. 26

Tuesday, February 9, 1999

Agriculture Department
See Food Safety and Inspection Service
See Forest Service

Alcohol, Tobacco and Firearms Bureau
PROPOSED RULES
Alcoholic beverages:
Distilled spirits, wine, and malt beverages; labeling and advertising—
Fill standards, 6485–6489

Arts and Humanities, National Foundation
See National Foundation on the Arts and the Humanities

Census Bureau
NOTICES
Agency information collection activities:
Proposed collection; comment request, 6303–6305

Centers for Disease Control and Prevention
NOTICES
Meetings:
Disease, Disability, and Injury Prevention and Control Special Emphasis Panel, 6363
Public Health Service Activities and Research at DOE Sites Citizens Advisory Committee, 6363–6364

Children and Families Administration
RULES
Personal Responsibility and Work Opportunity Reconciliation Act of 1996; implementation:
Child support enforcement program; revision or elimination of obsolete or inconsistent provisions, 6237–6253

Coast Guard
RULES
Drawbridge operations:
Mississippi, 6220–6221
North Carolina, 6220
PROPOSED RULES
Drawbridge operations:
Florida, 6290–6292

Commerce Department
See Census Bureau
See International Trade Administration
See National Oceanic and Atmospheric Administration
NOTICES
Submission for OMB review; comment request, 6302–6303

Commodity Futures Trading Commission
NOTICES
Meetings; Sunshine Act, 6327

Comptroller of the Currency
NOTICES
Agency information collection activities:
Proposed collection; comment request, 6418–6419

Copyright Office, Library of Congress
RULES
Copyright arbitration royalty panel rules and procedures:
Mechanical and digital phonorecord delivery rate adjustment proceeding; royalty rates, 6221–6223

Corporation for National and Community Service
NOTICES
Meetings:
AmeriCorps Indian Tribes and America Reads Challenge program funds; pre-application technical assistance workshops, 6327

Defense Department
RULES
Sexually explicit material; sale or rental on DOD property; restrictions, 6218–6219
NOTICES
Meetings:
Scientific Advisory Board, 6327

Energy Department
See Federal Energy Regulatory Commission
See Southeastern Power Administration
See Southwestern Power Administration
See Western Area Power Administration
NOTICES
Grants and cooperative agreements; availability, etc.:
Energy efficiency and waste reduction for plant/crop based technology in agriculture industry, 6327–6328
Meetings:
Environmental Management Site-Specific Advisory Board—
Kirtland Area Office (Sandia), NM, 6328
Pantex Plant, TX, 6328–6329

Environmental Protection Agency
RULES
Air programs; approval and promulgation; State plans for designated facilities and pollutants:
New York, 6234–6237
Air quality implementation plans; approval and promulgation; various States:
California, 6223–6231
Colorado, 6231–6234
PROPOSED RULES
Air programs:
Fuels and fuel additives—
Methylcyclopentadienyl manganese tricarbonyl (MMT); Alternative Tier 2 health and exposure testing requirements, 6294–6296
Air programs; approval and promulgation; State plans for designated facilities and pollutants:
New York, 6294
Air quality implementation plans; approval and promulgation; various States:
California, 6292–6293
Colorado, 6293–6294
NOTICES
Pesticide, food, and feed additive petitions:
Dow AgroSciences LLC et al., 6351–6357

Executive Office of the President
See National Education Goals Panel

Federal Aviation Administration
RULES
Airworthiness directives:
Boeing, 6189–6191
PROPOSED RULES
Airworthiness directives:
McDonnell Douglas, 6259–6261
NOTICES
Advisory circulars; availability, etc.:
Emergency evacuation demonstrations, 6416–6417

Federal Communications Commission
RULES
Radio services, special:
Maritime services—
Global Maritime Distress and Safety System; waiver of rules for small passenger and fishing vessels, 6253–6255
PROPOSED RULES
Television broadcasting:
Digital Television Service Industry Coordination Committee; establishment, 6296–6300
NOTICES
Agency information collection activities:
Proposed collection; comment request, 6357–6358
Submission for OMB review; comment request, 6358
Committees; establishment, renewal, termination, etc.:
Public Safety National Coordination Committee, 6358–6359
Meetings:
Emergency Alert System National Advisory Committee, 6359–6360
Rulemaking proceedings; petitions filed, granted, denied, etc., 6360

Federal Energy Regulatory Commission
NOTICES
Electric rate and corporate regulation filings:
Western System Power Pool et al., 6334–6338
Environmental statements; availability, etc.:
Koyle, John, 6338–6339
Viking Gas Transmission Co., 6339
Environmental statements; notice of intent:
Southern California Edison, Inc., 6339–6340
Hydroelectric applications, 6340–6341
Applications, hearings, determinations, etc.:
Allegheny Power Service Corp. et al., 6329
Cabrillo Power I LLC, 6329
Cabrillo Power II LLC, 6329
Eastern Shore Natural Gas Co., 6329–6330
Edison Mission Marketing & Trading, Inc., 6330
Genesee Power Station L.P., 6330
Grayling Generating Station L.P., 6330–6331
Maritimes & Northeast Pipeline, L.L.C., 6331
National Fuel Gas Supply Corp., 6331
Natural Gas Pipeline Co. of America, 6331–6332
Northwest Pipeline Corp., 6332
Panhandle Eastern Pipe Line Co., 6332–6333
Tennessee Gas Pipeline Co., 6333
Texas Gas Transmission Corp., 6333–6334
Trunkline LNG Co., 6334
Wyoming Interstate Co., Ltd., 6334

Federal Maritime Commission
NOTICES
Freight forwarder licenses:
Surair Cargo, Inc., et al., 6360

Federal Mine Safety and Health Review Commission
NOTICES
Meetings; Sunshine Act, 6382

Federal Reserve System
NOTICES
Banks and bank holding companies:
Change in bank control, 6360–6361
Formations, acquisitions, and mergers, 6361–6362
Meetings; Sunshine Act, 6362

Fish and Wildlife Service
NOTICES
Endangered and threatened species permit applications, 6374–6375
Environmental statements; notice of intent:
Incidental take permits—
Thurston County et al., WA; marbled murrelet and bald eagle, 6325–6326

Food and Drug Administration
PROPOSED RULES
Medical devices:
Sunlamp products performance standard; recommended exposure schedule and health warnings requirements, 6288–6290
NOTICES
Agency information collection activities:
Proposed collection; comment request, 6364–6365
Reporting and recordkeeping requirements, 6365
Submission for OMB review; comment request, 6365–6367
Meetings:
Allergenic Products Advisory Committee, 6367
Anti-Infective Drugs Advisory Committee, 6367–6368

Food Safety and Inspection Service
NOTICES
Meetings:
Codex Alimentarius Commission—
Executive Committee agenda and U.S. participation, 6301

Forest Service
NOTICES
Meetings:
Scientists Committee, 6301–6302
Southwest Oregon Province Interagency Executive Committee Advisory Committee, 6302

Geological Survey
NOTICES
Federal Geographic Data Committee:
Digital geospatial metadata content standard: remote sensing metadata extensions; comment request, 6375–6376
Geospatial positioning accuracy standards (Part 4); public review; comment request, 6377–6378
Remote sensing swath data content standard; public review; comment request, 6378–6379
Grant and cooperative agreement awards:
United Technologies Corp., 6379

Health and Human Services Department
See Centers for Disease Control and Prevention
See Children and Families Administration
See Food and Drug Administration
See Health Resources and Services Administration
See Substance Abuse and Mental Health Services Administration
NOTICES
Grant and cooperative agreement awards:
Auxiliary to National Medical Association, Inc., 6362–6363
Grants and cooperative agreements; availability, etc.:
Family planning and population research program, 6491–6493

Health Resources and Services Administration
NOTICES
Agency information collection activities:
Proposed collection; comment request, 6368

Housing and Urban Development Department
RULES
HUD-owned properties:
HUD-acquired single family property disposition, 6469–6483
NOTICES
Agency information collection activities:
Submission for OMB review; comment request, 6369–6370
HUD-insured and -assisted properties; baseline review, 6370–6371
Privacy Act:
Systems of records, 6371–6374

Immigration and Naturalization Service
RULES
Immigration:
Aliens—
Employment eligibility verification; acceptable receipts, 6187–6189
NOTICES
Agency information collection activities:
Submission for OMB review; comment request, 6380–6381

Interior Department
See Fish and Wildlife Service
See Geological Survey
See Land Management Bureau
See Surface Mining Reclamation and Enforcement Office
NOTICES
Organization, functions, and authority delegations:
National Indian Gaming Commission—
Poust, Teresa E.; appointment to Commission, 6374

International Trade Administration
NOTICES
Antidumping:
Silicon metal from—
Brazil, 6305–6325

International Trade Commission
NOTICES
Meetings; Sunshine Act, 6380

Justice Department
See Immigration and Naturalization Service

Labor Department
NOTICES
Privacy Act:
Computer matching programs, 6381–6382

Land Management Bureau
PROPOSED RULES
Minerals management:
Mining claims under general mining laws; surface management, 6421–6468
NOTICES
Resource management plans, etc.:
Grand Junction Resource Area, CO, 6379–6380

Library of Congress
See Copyright Office, Library of Congress

Mine Safety and Health Federal Review Commission
See Federal Mine Safety and Health Review Commission

National Aeronautics and Space Administration
NOTICES
Meetings:
Advisory Council
Aeronautics and Space Transportation Technology Advisory Committee, 6382
Patent licenses; non-exclusive, exclusive, or partially exclusive:
Patterned Fiber Composites, Inc., 6382–6383
Visual Programs, Inc., 6383
Williams-Pyro, Inc., 6383

National Bipartisan Commission on Future of Medicare
NOTICES
Meetings, 6383

National Education Goals Panel
NOTICES
Meetings, 6383–6384

National Foundation on the Arts and the Humanities
NOTICES
Agency information collection activities:
Submission for OMB review; comment request, 6384

National Oceanic and Atmospheric Administration
NOTICES
Environmental statements; notice of intent:
Incidental take permits—
Thurston County et al., WA; marbled murrelet and bald eagle, 6325–6326
Permits:
Marine mammals, 6326

Northeast Dairy Compact Commission
NOTICES
Meetings, 6384

Nuclear Regulatory Commission
NOTICES
Enforcement actions; policy and procedure:
Power reactor licensees; Severity Level IV violations, treatment, 6388–6391
Meetings; Sunshine Act, 6391–6392
Applications, hearings, determinations, etc.:
Allmon, Randall W., 6384–6386
March Metalfab, Inc., 6386–6387
Cochran, Thomas B., 6386
Rogers, Brian K., 6387–6388

Public Health Service
See Centers for Disease Control and Prevention
See Food and Drug Administration
See Health Resources and Services Administration
See Substance Abuse and Mental Health Services Administration

Securities and Exchange Commission
PROPOSED RULES
Securities:
International disclosure standards; foreign private issuers conformance, 6261–6288
NOTICES
Self-regulatory organizations; proposed rule changes:
American Stock Exchange, Inc., 6405–6409
American Stock Exchange, LLC, 6404–6405
Chicago Board Options Exchange, Inc., 6410–6413
Cincinnati Stock Exchange, Inc., 6413–6415
National Association of Securities Dealers, Inc., 6415–6416
Applications, hearings, determinations, etc.:
AAL Variable Product Series Fund, Inc. et al., 6392–6397
Endeavor Series Trust et al., 6397–6402
Robertson Stephens Investment Trust, 6402–6404

Small Business Administration
PROPOSED RULES
Small business investment companies:
Low and moderate income investments (LMI investments); category establishment, 6256–6259

Southeastern Power Administration
NOTICES
Power rates:
Cumberland System of Projects, 6341–6342

Southwestern Power Administration
NOTICES
Integrated System power rates:
New power rates; rate order approved and placed in effect on interim basis, 6342–6344

Substance Abuse and Mental Health Services Administration
NOTICES
Agency information collection activities:
Submission for OMB review; comment request, 6368–6369

Surface Mining Reclamation and Enforcement Office
RULES
Permanent program and abandoned mine land reclamation plan submissions:
Illinois, 6191–6201
West Virginia, 6201–6218

Surface Transportation Board
NOTICES
Market dominance determinations; product and geographic competition; policy statement, 6417–6418

Transportation Department
See Coast Guard
See Federal Aviation Administration
See Surface Transportation Board
NOTICES
Agency information collection activities:
Submission for OMB review; comment request, 6416

Treasury Department
See Alcohol, Tobacco and Firearms Bureau
See Comptroller of the Currency
NOTICES
Organization, functions, and authority delegations:
Director, Alcohol, Tobacco and Firearms Bureau, 6418

United States Information Agency
RULES
Exchange visitor program:
Return to home country two-year requirement; waiver requests; processing fee, 6191

Western Area Power Administration
NOTICES
Power rate adjustments:
Pacific Northwest-Pacific Southwest Intertie Project, 6344–6351

Separate Parts In This Issue

Part II
Department of Interior, Bureau of Land Management, 6421–6468

Part III
Department of Housing and Urban Development, 6469–6483

Part IV
Department of the Treasury, Bureau of Alcohol, Tobacco and Firearms 6485–6489

Part V
Department of Health and Human Services, 6491–6493

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.

8 CFR
274a.....6187

13 CFR
Proposed Rules:
107.....6256

14 CFR
39.....6189
Proposed Rules:
39.....6259

17 CFR
Proposed Rules:
210.....6261
228.....6261
229.....6261
230.....6261
239.....6261
240.....6261
249.....6261
260.....6261

21 CFR
Proposed Rules:
1020.....6288

22 CFR
514.....6191

24 CFR
291.....6470

27 CFR
Proposed Rules:
4.....6486
5.....6486
7.....6486

30 CFR
913.....6191
948.....6201

32 CFR
235.....6218

33 CFR
117 (2 documents) 6220
Proposed Rules:
117.....6290

37 CFR
255.....6221

40 CFR
52 (4 documents) 6223, 6226, 6225, 6231
62.....6234
Proposed Rules:
52 (4 documents) 6292, 6293
62.....6294
79.....6294

43 CFR
Proposed Rules:
3800.....6422

45 CFR
301.....6237
302.....6237
303.....6237
304.....6237
305.....6237

47 CFR
80.....6253
Proposed Rules:
73.....6296
74.....6296

Rules and Regulations

Federal Register
Vol. 64, No. 26
Tuesday, February 9, 1999

DEPARTMENT OF JUSTICE

Immigration and Naturalization Service

8 CFR Part 274a

[INS No. 1947–98]

RIN 1115–AE94

Interim Designation of Acceptable Receipts for Employment Eligibility Verification

AGENCY: Immigration and Naturalization Service, Justice.

ACTION: Interim rule with request for comments.

SUMMARY: This interim rule amends the regulations of the Immigration and Naturalization Service (Service) relating to acceptable receipts for completion of the Employment Eligibility Verification form (Form I–9). A ''receipt'' is a document that an employee may present to his or her employer in lieu of a document listed on the Form I–9. The regulations currently provide for three types of receipts: a receipt for the application for a replacement document; the arrival portion of an Arrival-Departure Record, Form I–94, marked with a temporary I–551 stamp and affixed with the individual's picture; and the departure portion of a Form I–94 containing a refugee admission stamp. Presentation of one of these types of receipts satisfies the Form I–9 documentation requirements, but only for a temporary period. At the end of this period, the employee must present the document listed on the Form I–9 that corresponds to the receipt.

This interim rule makes two revisions to the provisions governing receipts. First, this rule revises the validity period of the second type of receipt, the Form I–94 marked with a temporary I–551 stamp and affixed with the bearer's photograph. Second, this rule adds the Employment Authorization Card, Form I–688B, to the list of documents that an individual can present before the receipt validity period expires for the third type of receipt, the Form I–94 marked with a refugee admission stamp. These changes are being made to facilitate compliance with the regulations pending completion of the Service's comprehensive document reduction effort.

DATES: *Effective date:* This interim rule is effective February 9, 1999.

Comment date: Written comments must be submitted on or before April 12, 1999.

ADDRESSES: Please submit written comments, in triplicate, to the Director, Policy Directives and Instructions Branch, Immigration and Naturalization Service, 425 I Street, NW., Room 5307, Washington, DC 20536. To ensure proper handling, please reference INS No. 1947–98 on your correspondence. Comments are available for public inspection at the above address by calling (202) 514–3048 to arrange for an appointment.

FOR FURTHER INFORMATION CONTACT: Marguerite Przybylski, Associate General Counsel, Office of the General Counsel, Immigration and Naturalization Service, 425 I Street NW., Room 6100, Washington, DC, 20536; (202) 514–2895.

SUPPLEMENTARY INFORMATION:

What are the requirements of the Illegal Immigration Reform and Immigrant Responsibility Act of 1996 (IIRIRA) as it relates to documentation of employment?

Section 412 of IIRIRA, Pub. L. 104–208, enacted on September 30, 1996, amended the employment eligibility verification provisions of section 274A of the Immigration and Nationality Act (Act) to require a reduction in the number of documents acceptable for completion of the Form I–9. The Act provides for three lists of documents: documents that establish both identity and employment eligibility (List A documents); documents that establish identity only (List B documents); and documents that establish work eligibility only (List C documents).

Which Documents were Removed on September 30, 1997?

On September 30, 1997, an interim rule was published in the **Federal Register** at 62 FR 51001 implementing the IIRIRA amendments to the list of documents. The September 30, 1997, interim rule removed four documents from List A as follows:

(1) Certificate of United States Citizenship, Form N–560 or N–561;

(2) Certificate of Naturalization, Form N–550 or N–570;

(3) Reentry Permit, Form I–327; and

(4) Refugee Travel document, Form I–571.

The interim rule also modified the List A document relating to nonimmigrants eligible to work incident to their nonimmigrant status, and revised the ''receipt rule.''

What Changes are Being Made by This Interim Rule?

Under the current regulations at 8 CFR 274a.2(b)(1)(vi), the special rule for receipts requires an employer, or recruiter or referrer for a fee, to accept a receipt in lieu of a List A, List B, or List C document in certain circumstances for completion of the Form I–9. The current regulations authorize the use of receipts in three instances:

(1) When the individual presents a receipt for the application for a replacement document;

(2) When the individual presents the arrival portion of Form I–94 which the Service has: (a) marked with a temporary I–551 stamp indicating lawful permanent residence and (b) affixed with the alien's picture; and

(3) When the individual presents the departure portion of Form I–94 that the Service has marked with a refugee admission stamp.

This interim rule amends the receipt rule as its applies to Forms I–94 that are marked with either a temporary I–551 stamp or a refugee admission stamp. These amendments are necessary to account for procedural delays that have become apparent since publication of the September 30, 1997, interim rule.

A. Forms I–94 Marked With a Temporary I–551 Stamp

Current regulations at 8 CFR 274a.2(b)(1)(vi)(B) provide that if an individual presents to his or her employer the arrival portion of Form I–94 that the Service has marked with a temporary I–551 stamp and has affixed the alien's picture in lieu of a Permanent Resident Card, Form I–551, the individual must present the actual Form I–551 within 180 days from the date of hire or, in the case of

reverification, the date employment authorization expires even if the temporary I–551 stamp on the Form I–94 contains a later expiration date. At the time of the September 30, 1997, interim rule, when this provision was added to the regulations, the Service determined that the 180-day validity period would be a sufficient amount of time for an individual to obtain the actual Form I–551. Since the September 30, 1997, interim rule, the Service has determined that in some cases, it may take longer than 180 days to obtain the actual Form I–551. In addition, the Service determined that employers may be confused when the expiration date written on the Form I–94 itself and the regulatory validity period of the receipt are not the same. It is likely that employers will rely upon the expiration date of the stamp on Form I–94, rather than count 180 days from the date the employee presents the receipt, since the date of the stamp is more obvious. To eliminate this confusion, this interim rule amends the regulations to provide that the receipt validity period for the Form I–94 marked with a temporary I–552 stamp and affixed with a picture is to be the same as the expiration date of the temporary I–551 stamp written on Form I–94. The Service issues some Forms I–94 marked with temporary I–552 stamps with a validity period that is less than 1 year. Some are issued with a validity period that is more than 1 year. However, most are issued with a 1-year validity period. Given the Service's current card production capabilities, 1 year is a sufficient amount of time for the individual to obtain the actual Form I–551.

Some Forms I–94 marked with temporary I–551 stamps and affixed with the alien's picture do not have expiration dates. For such Forms I–94, the interim rule amends the validity period from the current 180 days from the date of hire or, in the case of reverification, the date employment authorization expires, to 1 year from the date of issuance of the Form I–94. This amendment comports with the 1-year validity period generally assigned to Forms I–94 marked with stamps and affixed with pictures that do contain expiration dates.

B. Forms I–94 Marked With a Refugee Admission Stamp

Current regulations at 8 CFR 274a.2(b)(1)(vi)(C) provide that an individual who presents to his or her employer the departure portion of Form I–94 containing a refugee admission stamp as a receipt to complete the Form I–9, must present either Form I–766 (Employment Authorization Document (EAD)) or an unrestricted social security account number card and a List B document within 90 days of the date of hire or, in the case of reverification, the date employment authorization expires. The Form I–766 was introduced as a new employment authorization document in a final rule published in the **Federal Register** at 61 FR 46534 on September 4, 1996. The Form I–766 will eventually replace Forms I–688, I–688A, and I–688B as evidence of employment authorization. However, Forms I–688B continue to be issued by the Service at this time. Because some refugees will be in possession of Forms I–688B rather than Forms I–766, this interim rule amends the current regulations to add Form I–688B to the list of documents acceptable for presentation upon expiration of the 90-day receipt period. Form I–688A is only issued to legalization applicants and does not apply to refugees. Form I–688 is the Temporary Resident Card and also does not apply to refugees.

What is the status of the Service's plan to make comprehensive revisions to the employment verification process?

On February 2, 1998, a proposed rule was published in the **Federal Register** at 63 FR 5287 proposing comprehensive changes to the employment verification process, including a reduction in the list of acceptable documents. The comment period closed on April 3, 1998. The Service received many thoughtful and detailed comments from the public. The Service is currently reviewing the comments and will issue a final rule with a revised Form I–9 once this review process is completed. Until that time, Service regulations as amended by this interim rule will remain in effect. As with the September 30, 1997, interim rule, the Service will withhold enforcement of civil money penalties for violations associated with the changes made by the interim rule committed before the effective date of a final rule containing the revised Form I–9.

Good Cause Exception

The Service's implementation of this rule as an interim rule, with provisions for post-promulgation public comment, is based on the ''good cause'' exceptions found at 5 U.S.C. 553(b)(3)(B) and (d)(3). The reason and necessity for this determination is as follows:

The interim rule adding Form I–94 to the receipt rule was issued on September 30, 1997, in order to implement the document reduction provisions of section 412(a) of IIRIRA. This rule relieves restrictions by extending the validity period of one type of receipt in order to provide adequate time for the issuance of the original document represented by the receipt. The rule also assists refugees by adding the Employment Authorization Card (Form I–688B) to the list of documents acceptable for presentation upon the expiration of the 90-day receipt period for the Form I–94 marked with a refugee admission stamp. Further, the rule makes clarifying and other changes to facilitate compliance with the regulations pending completion of the Service's comprehensive document reduction effort.

Regulatory Flexibility Act

The Commissioner of the Immigration and Naturalization Service, in accordance with 5 U.S.C. 605(b), has reviewed this interim rule and, by approving it, certifies that this rule does not have a significant economic impact on a substantial number of small entities. This rule is a short-term measure, which is limited in scope and only modifies a small portion of the entire employment verification process. It does not introduce new forms. As a result, this rule would not require small entities to significantly change established practices.

Executive Order 12866

This rule is 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. Accordingly, it has been submitted to the Office of Management and Budget for review.

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.

Executive Order 12988 Civil Justice Reform

This interim 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 it will not significantly or uniquely affect small governments. Therefore, no actions were deemed necessary under the provisions of the Unfunded Mandates Reform Act of 1995.

Small Business Regulatory Enforcement Fairness Act of 1996

This rule is not a major rule as defined by 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.

List of Subjects in 8 CFR Part 274a

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

Accordingly, part 274a of chapter I of title 8 of the Code of Federal Regulations is amended as follows:

PART 274a—CONTROL OF EMPLOYMENT OF ALIENS

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

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

2. Section 274a.2 is amended by revising paragraphs (b)(1)(vi)(B) and (b)(1)(vi)(C) to read as follows:

§ 274a.2 Verification of employment eligibility.

* * * * *

(b) * * *

(1) * * *

(vi) * * *

(B) *Form I–94 indicating temporary evidence of permanent resident status.* The individual indicates in section 1 of the Form I–9 that he or she is a lawful permanent resident and the individual:

(*1*) Presents the arrival portion of Form I–94 containing an unexpired ''Temporary I–551'' stamp and photograph of the individual, which is designated for purposes of this section as a receipt for Form I–551; and

(*2*) Presents the Form I–551 by the expiration date of the ''Temporary Form I–551'' stamp or, if the stamp has no expiration date, within 1 year from the issuance date of the arrival portion of Form I–94; or

(C) *Form I–94 indicating refugee status.* The individual indicates in section 1 of the Form I–9 that he or she is an alien authorized to work and the individual:

(*1*) Presents the departure portion of the Form I–94 containing an unexpired refugee admission stamp, which is designated for purposes of this section as a receipt for the Form I–766, Form I–688B, or a social security account number card that contains no employment restrictions; and

(*2*) Presents, within 90 days of the hire or, in the case of reverification, the date employment authorization expires, either an unexpired Form I–766 or Form I–688B, or a social security account number card that contains no employment restrictions, and a document described under paragraph (b)(1)(v)(B) of this section.

* * * * *

Dated: November 25, 1998.

Doris Meissner,

Commissioner, Immigration and Naturalization Service.

[FR Doc. 99–3021 Filed 2–8–99; 8:45 am]

BILLING CODE 4410–10–M

DEPARTMENT OF TRANSPORTATION

Federal Aviation Administration

14 CFR Part 39

[Docket No. 98–NM–144–AD; Amendment 39–11025; AD 99–04–01]

RIN 2120–AA64

Airworthiness Directives; Boeing Model 747 Series Airplanes

AGENCY: Federal Aviation Administration, DOT.

ACTION: Final rule.

SUMMARY: This amendment adopts a new airworthiness directive (AD), applicable to certain Boeing Model 747 series airplanes, that requires repetitive inspections of the outboard nacelle struts to detect fatigue cracking of the strut skin and spring beam support fittings, and to detect cracked or loose fasteners of the support fittings; and corrective actions, if necessary. This amendment also provides for optional terminating action for the repetitive inspection requirements. This amendment is prompted by reports indicating that several cracked or broken spring beam support fittings were found on the outboard nacelle struts. The actions specified by this AD are intended to detect and correct such fatigue cracking and loose fasteners, which could result in failure of the outboard nacelle struts and consequent separation of the engine.

DATES: Effective March 16, 1999.

The incorporation by reference of certain publications listed in the regulations is approved by the Director of the Federal Register as of March 16, 1999.

ADDRESSES: The service information referenced in this AD may be obtained from Boeing Commercial Airplane Group, P.O. Box 3707, Seattle, Washington 98124–2207. This information may be examined at the 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: Tamara L. Anderson, Aerospace Engineer, Airframe Branch, ANM–120S, FAA, 1601 Lind Avenue, SW., Renton, Washington 98055–4056; telephone (425) 227–2771; fax (425) 227–1181.

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 Boeing Model 747 series airplanes was published in the **Federal Register** on November 24, 1998 (63 FR 64913). That action proposed to require repetitive inspections of the outboard nacelle struts to detect fatigue cracking of the strut skin and spring beam support fittings, and to detect cracked or loose fasteners of the support fittings; and corrective actions, if necessary. That action also proposed to provide for optional terminating action for the repetitive inspection requirements.

Interested persons have been afforded an opportunity to participate in the making of this amendment. Due consideration has been given to the single comment received.

The commenter supports the proposed AD.

Conclusion

After careful review of the available data, including the comment noted above, the FAA has determined that air safety and the public interest require the adoption of the rule as proposed.

Cost Impact

There are approximately 145 Model 747 series airplanes of the affected design in the worldwide fleet. The FAA estimates that 9 airplanes of U.S. registry will be affected by this AD, that it will take approximately 16 work hours per airplane to accomplish the required inspection, and that the average labor rate is $60 per work hour. Based on these figures, the cost impact

of the AD on U.S. operators is estimated to be $8,640, or $960 per airplane, per inspection cycle.

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.

Should an operator elect to accomplish the fastener hole inspection and modification, it would take approximately 20 work hours (excluding removal of the strut and spring beam) to accomplish it, at an average labor rate of $60 per hour. Based on these figures, the cost impact of this optional terminating action is estimated to be $1,200 per strut.

Should an operator elect to accomplish the replacement of the spring beam support fittings with new support fittings, it would take approximately 108 work hours (excluding removal of the strut and spring beam) to accomplish it, at an average labor rate of $60 per hour. Based on these figures, the cost impact of this optional terminating action is estimated to be $6,480 per support fitting.

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:

99–04–01 Boeing: Amendment 39–11025. Docket 98–NM–144–AD.

Applicability: Model 747 series airplanes, line numbers 202 through 886 inclusive, equipped with General Electric Model CF6–45/50 and Pratt & Whitney Model JT9D–70 series engines; on which the strut/wing modification has not been accomplished in accordance with AD 95–13–07, amendment 39–9287; 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 (h) of this AD. The request should include an assessment of the effect of the modification, alteration, or repair on the unsafe condition addressed by this AD; and, if the unsafe condition has not been eliminated, the request should include specific proposed actions to address it.

Compliance: Required as indicated, unless accomplished previously.

To detect and correct fatigue cracking of the strut skin and spring beam support fittings on the outboard nacelle struts, and cracked or loose fasteners of the support fittings, which could result in failure of the outboard nacelle struts and consequent separation of the engine, accomplish the following:

(a) Prior to the accumulation of 13,000 total flight cycles, or within 6 months after the effective date of this AD, whichever occurs later, perform a detailed visual inspection of the outboard nacelle struts, as specified by paragraphs (a)(1), (a)(2), (a)(3), and (a)(4) of this AD, in accordance with Boeing Alert Service Bulletin 747–54A2172, dated February 23, 1995, or Boeing Service Bulletin 747–54A2172, Revision 1, dated January 4, 1996.

(1) Inspect the spring beam support fittings to detect cracks of the support fittings.

(2) Inspect the spring beam support fittings at the fasteners, using a borescope to detect cracks of the support fittings.

(3) Inspect the fasteners of the outer spring beam support fittings to detect cracked or loose fasteners.

(4) Inspect the strut skin to detect cracks.

(b) If no discrepancy is found during any inspection required by paragraph (a) of this AD, perform detailed visual inspections of the outboard nacelle struts to detect any discrepancies specified in paragraphs (b)(1), (b)(2), (b)(3), and (b)(4) of this AD, in accordance with Boeing Alert Service Bulletin 747–54A2172, dated February 23, 1995; or Boeing Service Bulletin 747–54A2172, Revision 1, dated January 4, 1996. Perform the inspection at the times specified in paragraph (c) or (d) of this AD, as applicable.

(1) Perform a detailed visual inspection, using a borescope, of only the outer spring beam support fittings at the fasteners through the horizontal flange to detect cracks of the support fittings.

(2) Perform a detailed visual inspection, using a borescope, of the fasteners through the vertical flange of only the outer spring beam support fittings to detect loose collars.

(3) Perform an external detailed visual inspection of only the outer spring beam support fittings to detect cracked or loose fastener heads.

(4) Perform a detailed visual inspection of the strut skin to detect cracks.

(c) For Model 747–SR series airplanes equipped with General Electric Model CF6–45 series engines, on which no discrepancy is found during any inspection required by paragraph (a) of this AD: Perform the inspection required by paragraph (b) of this AD within 1,600 flight cycles following the accomplishment of the inspection required by paragraph (a) of this AD; and thereafter at intervals not to exceed 1,600 flight cycles until accomplishment of the optional terminating action specified in paragraph (g) of this AD.

(d) For Model 747 series airplanes other than those identified in paragraph (c) of this AD, on which no discrepancy is found during any inspection required by paragraph (a) of this AD: Perform the inspection required by paragraph (b) of this AD within 1,000 flight cycles following the accomplishment of the inspection required by paragraph (a) of this AD; and thereafter at intervals not to exceed 1,000 flight cycles until accomplishment of the optional terminating action specified in paragraph (g) of this AD.

(e) If any cracking is found in the spring beam support fittings during any inspection required by this AD, prior to further flight, replace the support fitting with a new support fitting, in accordance with the Accomplishment Instructions in Part IV. of Boeing Service Bulletin 747–54A2172, Revision 1, dated January 4, 1996. Accomplishment of this replacement constitutes terminating action for the repetitive inspection requirements of this AD for only the new support fitting. Continue the repetitive inspections required by paragraph (b) of this AD for the other support fitting locations until accomplishment of the terminating action specified by paragraph (g)(1) or (g)(2) of this AD, as applicable.

(f) If any crack is found on the strut skin, or if any cracked or loose fastener or collar

is found during any inspection required by this AD, prior to further flight, repair in accordance with a method approved by the Manager, Seattle Aircraft Certification Office (ACO), FAA, Transport Airplane Directorate; or in accordance with data meeting the type certification basis of the airplane approved by a Boeing Company Designated Engineering Representative who has been authorized by the Manager, Seattle ACO, to make such findings.

(g) Accomplishment of an open-hole high frequency eddy current (HFEC) inspection, in accordance with Boeing Alert Service Bulletin 747–54A2172, dated February 23, 1995, or Boeing Service Bulletin 747–54A2172, Revision 1, dated January 4, 1996; and either paragraph (g)(1) or (g)(2) of this AD, as applicable; constitutes terminating action for the requirements of this AD.

(1) If no discrepancy is found during the HFEC inspection, prior to further flight, rework the fastener holes and install new fasteners, in accordance with Figures 6 and 7 of Boeing Alert Service Bulletin 747–54A2172, dated February 23, 1995, or Boeing Service Bulletin 747–54A2172, Revision 1, dated January 4, 1996.

(2) If any cracking is found during the HFEC inspection, prior to further flight, replace any cracked spring beam support fitting with a new support fitting, in accordance with Part IV. of the Accomplishment Instructions specified by Boeing Service Bulletin 747–54A2172, Revision 1, dated January 4, 1996.

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

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

(i) 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.

(j) Except as provided by paragraph (f), (g), (g)(1), and (g)(2) of this AD, the actions shall be done in accordance with Boeing Alert Service Bulletin 747–54A2172, dated February 23, 1995, and Boeing Service Bulletin 747–54A2172, Revision 1, dated January 4, 1996, as applicable. This incorporation by reference was approved by the Director of the Federal Register in accordance with 5 U.S.C. 552(a) and 1 CFR part 51. Copies may be obtained from Boeing Commercial Airplane Group, P.O. Box 3707, Seattle, Washington 98124–2207. Copies may be inspected at the FAA, Transport Airplane Directorate, 1601 Lind Avenue, SW., Renton, Washington; or at the Office of the Federal Register, 800 North Capitol Street, NW., suite 700, Washington, DC.

(k) This amendment becomes effective on March 16, 1999.

Issued in Renton, Washington, on February 1, 1999.

Dorenda D. Baker,

Acting Manager, Transport Airplane Directorate, Aircraft Certification Service.

[FR Doc. 99–2723 Filed 2–8–99; 8:45 am]

BILLING CODE 4910–13–P

UNITED STATES INFORMATION AGENCY

22 CFR Part 514

Exchange Visitor Program

AGENCY: United States Information Agency.

ACTION: Final rule.

SUMMARY: By interim rule published June 26, 1998 (63 Rule 34808), the Agency adopted a fee sufficient for it to recover the full cost of its administrative processing of requests for waiver of the two-year return to the home country requirement set forth in section 212(e) of the Immigration and Naturalization Act (8 U.S.C. 1182(e)). Such interim rule is hereby adopted as final without change.

EFFECTIVE DATE: March 11, 1999.

FOR FURTHER INFORMATION CONTACT: Stanley S. Colvin, Assistant General Counsel, United States Information Agency, 301 4th Street, SW., Washington, DC 20547; telephone, (202) 619–6531.

SUPPLEMENTARY INFORMATION: The Agency has determined that its review of and recommendation regarding requests for the waiver of the two-year return to the home country requirement imposed by 8 U.S.C. 1182(e) confers a specific benefit to the requesting individual. Accordingly, a fee sufficient to recoup the costs of conferring this specific benefit is appropriate. The Agency identified all administrative tasks associated with the administrative processing of a waiver application and determined that the per unit cost of processing a waiver application is $136.

In publishing its interim rule the Agency provided a thirty day public comment period and received four comments. All comments were well reasoned and suggested that the fee should vary according to the statutory basis upon which the application was presented. The assumption underlying these comments was that significantly more or less work is involved in the review and recommendation of waiver cases depending upon the basis of the application. The Agency has examined this suggestion and determines that all waiver review and recommendations require that the Agency receive the waiver application, record the fee, input the application data, manage assorted records, adjudicate the application, prepare outgoing correspondence, and respond to various inquiries regarding the application. Accordingly, the administrative cost associated with the processing of these various requests varies little if at all and the $136 unit cost is the appropriate fee for all waiver applications.

A second common theme to the comments received regarded the segregation of the fee monies collected for use by the administrative processing unit responsible for waiver applications. As explained in the interim rule, the Government may recoup the full cost of administrative processing, but not more. Pursuant to statute and Executive Branch directive, the fee collected must be used to pay the costs of the administrative unit responsible for the processing of the applications.

Finally, the comments suggested that the Agency clarify that no fee is required for an advisory opinion request. The Agency does not anticipate imposing a fee for advisory opinions and does not consider an advisory opinion to confer a specific and identifiable benefit upon an individual for which a fee may be lawfully imposed.

List of Subjects in 22 CFR Part 514

Cultural Exchange Programs.

Les Jin,

General Counsel.

Accordingly, the interim rule amending 22 CFR Part 514, published at 63 FR 34808 on June 26, 1998 is adopted as a final rule without change.

[FR Doc. 99–3013 Filed 2–8–99; 8:45 am]

BILLING CODE 8230–01–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: Final rule; approval of amendment.

SUMMARY: OSM is approving amendments to the Illinois regulatory program (Illinois program) under the Surface Mining Control and Reclamation Act of 1977 (SMCRA). The

Illinois Department of Natural Resources (Department) sent us revisions to the Illinois statutes pertaining to definitions and areas unsuitable for surface coal mining operations. The Department also proposed revisions to and additions of regulations concerning a definition for ''previously mined area,'' areas unsuitable for surface coal mining operations, permitting, violation information, impoundments, explosives, revegetation, prime farmland, bonding, administrative and judicial review, and blasters certification. The amendments are intended to revise the Illinois program to be consistent with the corresponding Federal regulations and SMCRA, to clarify existing regulations, and to improve operational efficiency.

EFFECTIVE DATE: February 9, 1999.

FOR FURTHER INFORMATION CONTACT: Andrew R. Gilmore, Director, Indianapolis Field Office, Office of Surface Mining Reclamation and Enforcement, Minton-Capehart Federal Building, 575 North Pennsylvania Street, Room 301, Indianapolis, Indiana 46204–1521. Telephone: (317–226–6700. Internet: **INFOMAIL@indgw.osmre.gov.**

SUPPLEMENTARY INFORMATION:

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

I. Background on the 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. Submission of the Proposed Amendment

By letter dated March 28, 1996 (Administrative Record No. IL–5020), the Department notified us of revisions to the Illinois Surface Coal Mining Land Conservation and Reclamation Act (State Act) that were enacted through House Bill (HB) 965 and signed into law by the Governor of Illinois on February 7, 1996. These revisions primarily address changes brought about by the July 1, 1995, reorganization and name change of the Illinois regulatory authority. Revisions were made to 225 ILCS 720/1/.03, Definitions; 225 ILCS 720/7.03, Procedures for designation of areas unsuitable for mining operations; and 225 ILCS 720/7.04, Land Report.

By letter dated February 26, 1998 (Administrative Record No. IL–5009), the Department submitted a proposed amendment to revise its regulations at Title 62 of the Illinois Administrative Code (62 IAC). The amendment responded to letters dated January 6, 1997, and June 17, 1997 (Administrative Record Nos. IL–1951 and IL–2000, respectively), that we sent to Illinois in accordance with 30 CFR 732.17(c). It also responded to required program amendments at 30 CFR 913.16(w) and (y). In addition, the Department amended the Illinois program to clarify existing regulations and to implement the statutory changes made by HB 965.

We announced receipt of the amendments in the April 6, 1998, **Federal Register** (63 FR 16719). In the same document, we opened the public comment period and provided an opportunity for a public hearing or meeting on the adequacy of the amendment. The public comment period closed on May 6, 1998. Because no one requested a public hearing or meeting, we did not hold one.

During our review of the amendment dated February 26, 1998, 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 applications; 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(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 the Department of these concerns by fax on June 2, 1998 (Administrative Record No. IL–5019). By letter dated November 5, 1998 (Administrative Record No. IL–5025), the Department sent us additional explanatory information and revisions to its program amendment.

Based upon the additional explanatory information and revisions, we reopened the public comment period in the November 16, 1998, **Federal Register** (63 FR 63628). The public comment period closed on December 1, 1998.

III. Director's Findings

Following, under SMCRA and the Federal regulations at 30 CFR 732.15 and 732.17, are our findings concerning the amendment.

A. Revisions to Illinois' Regulations That Are Not Substantive

1. Throughout the amended regulation sections discussed below, the Department corrected typographical errors, punctuation, citation references, and other editorial-type errors; made minor wording changes; simplified its use of numbers; changed specific references of the ''Illinois Department of Mines and Minerals'' to the ''Illinois Department of Natural Resources'' to reflect a reorganization change which was effective July 1, 1995; changed its citation references of the ''Ill. Rev. Stat. 1989, ch 96½, pars. 7901.01 *et seq.*'' to ''225 ILCS 720'' to reflect recodification of the Illinois Surface Mining Land Conservation and Reclamation Act that occurred in 1992; and changed all references of the ''Soil Conservation Service'' to the ''Natural Resources Conservation Service'' to reflect that Federal agency's name change. The Department also made some of the same types of corrections and changes in 62 IAC 1764.13, 1773,11, 1774.11, 1816.117, 1817.117, 1823.14, 1840.1, and 1850.16.

The above proposed revisions do not alter the requirements of the previously approved provisions in the Illinois regulations. Therefore,we find that they will not make the Illinois regulations less effective than the Federal regulations.

2. *62IAC 1761.12, Procedures for Areas Designated by Act of Congress.* At subsection (b)(1), the Department removed the reference to section 1761.11(f) or (g). In subsection (b)(2), the Department replaced the reference to ''Section 1761.11(a), (f) or (g)'' with a reference to ''Section 1761.11(a)(6) and (7).'' At subsection (c), the Department replaced the reference to ''Section 1761.11(d)(2)'' with a reference to ''Section 1761.11(a)(4)(B).''

We find that the revised regulation references at 62 IAC 1761.12(b) and (c) are consistent with the counterpart Federal regulation references at 30 CFR 761.12(b) and (d).

3. *62 IAC 1774.13, Permit Revisions.* At subsection (b)(3), references to ''62 Ill. Adm. Code 1773.13, 1773.19(b)(1) and (3) and 1778.21'' were replaced by references to ''62 Ill. Adm. Code 1773.13, 1773.19(a)(3)(A) and (C) and 1778.21.''

We find that the revised regulation references at 62 IAC 1774.13(b)(3) are consistent with the counterpart Federal regulation references at 30 CFR 774.13(b)(2).

B. Revisions to Illinois' Regulations That Are Substantively Identical to the Corresponding Provisions of the Federal Regulations

The State regulations listed in the table below contain language that is the same as or similar to the corresponding sections of the Federal regulations. Differences between the State regulations and the Federal regulations are not substantive.

Topic	State regulation 62 IAC	Federal counterpart regulation—30 CFR
Definition of Previously Mined Area	1701.Appendix A	701.5
Violation Information	1778.14(c)	778.14(c)
Prime Farmlands	1785.17(e)(5)	785.17(e)(5)
Definition of Other Treatment Facilities	1816.46(a)(3) and 1817.46(a)(3)	701.5
Prime Farmland: Scope	1823.1	823.1
Prime Farmland: Applicability	1823.11	823.11

Because the above revised regulations are identical in meaning to the corresponding Federal regulations, we find that they are no less effective than the Federal regulations.

C. Revisions to Illinois' Statutes and Regulations That Reflect Organizational Changes

1. *225ILCS 720/1.03, Definitions; 225 ILCS 720/7.03, Procedure For Designation; and 225 ILCS 720/7.04, Land Report.* Illinois proposed revisions to 225 ILCS 720/1.03, 7.03, and 7.04 of the Surface Coal Mining Land Conservation and Reclamation Act to reflect the merging of the Department of Energy and Natural Resources and the Department of Mines and Minerals into the Department of Natural Resources. The revisions include changes in the responsibility for preparing the Land Report that is required when processing a petition to designate an area as unsuitable for surface coal mining operations.

a. *225 ILCS 720/1.03, Definitions.* At section 1.03(a)(4), Illinois changed the definition for the term ''Department'' from the ''Department of Mines and Minerals'' to the ''Department of Natural Resources.'' At section 1.03(a)(8), Illinois removed the definition of the term ''Department of Energy.''

b. *225 ILCS 720/7.03, Procedure for designation.* At section 7.03(b), the language ''refer it to the Department of Energy for preparation of'' was replaced by the word ''prepare'' in the phrase ''the Department shall refer it to the Department of Energy for preparation of a Land Report.'' At section 7.03(c), Illinois changed the phrase ''Such a hearing shall be held not less than 30 days after the Department of Energy files a Land Report with the Department'' to the phrase ''Such a hearing shall be held not less than 30 days after the Land Report has been prepared by the Department.''

c. *225 ILCS 720/7.04, Land Report.* At section 7.04(a), Illinois replaced the term ''Department of Energy'' with the term ''Department.'' The language ''and referred by the Department to the Department of Energy for a Land Report'' was removed from the end of the first sentence. Illinois revised the last sentence to read: ''Each Land Report shall be completed not later than eight months after receipt of the petition.'' Illinois removed section 7.04(c), which required the Department of Mines and Minerals and the Department of Energy to enter into contracts for all or part of the costs of preparing land reports.

On July 11, 1995, we approved the merger of the Illinois Department of Mines and Minerals into the Illinois Department of Natural Resources (60 FR 35696). On March 1, 1995, the Governor of Illinois signed Executive Order Number 2 (1995) that authorized this organizational change. Part IV(F) of the Executive Order required the Department of Natural Resources to adopt under the Illinois Administrative Procedures Act those rules necessary to consolidate and clarify the rules that will be administered by the merged departments. We find that the revisions to the State Act are consistent with this requirement. We also find that the revised requirements of 225 ILCS 720/7.03 and 7.04 are no less stringent than the requirements of section 522 of SMCRA for designating areas as unsuitable for surface coal mining.

2. *62 IAC Part 1764, State Processes for Designating Areas Unsuitable for Surface Coal Mining Operations.* The Department proposed revisions to its regulations at 62 IAC 1764.15 to reflect the merging of the Department of Mines and Minerals and the Department of Energy and Natural Resources into the Department of Natural Resources and to implement the changes that were made to the State Act relating to the responsibility for preparing the Land Report.

In section 1764.15(a), the Department added the heading ''Processing of Petitions''; and in section 1764.15(c), the Department added the heading ''Land Report and Public Comment.'' The language in the first sentence of section 1764.15(c)(1) was replaced by the language ''After the petition is determined to be complete the Department shall prepare a Land Report.''

The Department revised section 1764.15(c)(2) as follows:

> The Land Report shall state objectively the information which the Department has, but shall not contain a recommendation with respect to whether the petition should be granted or denied. Each Land Report shall be completed not later than eight months after the petitioner has been notified the petition is complete under subsection (a)(1).

At section 1764.15(c)(3), the term ''Department'' replaced the term ''Department of Energy and Natural Resources'' and the term ''Land Reclamation Division'' replaced the term ''Department.''

We find that the types of revisions made to 62 IAC 1764.15 will not make the requirements of the Illinois regulation less effective than the requirements of the counterpart Federal regulation at 30 CFR 764.15, relating to state processes for designating areas as unsuitable for surface coal mining operations.

D. 62 IAC Part 1773.15, Review of Permit Applications

The Department 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.

In the November 27, 1995, **Federal Register** (60 FR 58489), we stated that we interpret 30 CFR 816/817.116(c)(2)(ii) and (c)(3)(ii) as requiring an existing permit to obtain a permit revision to qualify for a reduced

revegetation responsibility period. This permit revision would require a finding that the permit covers land eligible for remining. This finding is in accordance with the State's counterpart to 30 CFR 773.15(c)(13)(i). States would also need to make this permit finding for new permit applications that cover land eligible for remining. Since the Department had added reduced revegetation responsibility counterparts to its regulations at 62 IAC 1816.116(a)(2)(B) and 1817.116(a)(2)(B), this requirement would apply to the Illinois program. In a letter dated October 30, 1997 (Administrative Record No. IL–2002), we notified the Department that it needed to revise its regulation at 62 IAC 1773.15(c) to add a counterpart to 30 CFR 773.15(c)(13)(i). We find that the new provision at 62 IAC 1773.15(c)(13) meets the Federal requirement discussed by us in the November 27, 1995, **Federal Register**. Also, for the purpose specified, it is no less effective than the Federal regulation at 30 CFR 773.15(c)(13)(i).

E. 62 IAC 1800.40, Requirement to Release Performance Bonds

At subsection (b)(2), the Department is requiring the permittee, the municipality and county in which the surface coal mining operation is located, the surety, or other persons with an interest in bond collateral who have requested notification under section 1800.21(e), and the persons who either filed objections in writing or objectors who were a party to the hearing proceedings, if any, to be notified in writing of its final administrative decision to release or not to release all or part of the performance bond.

The counterpart Federal regulation at 30 CFR 800.40(b)(2) also requires the same persons, with the exception of the municipality, to be notified in writing. The Federal regulation at 30 CFR 800.40(e) requires the municipality in which the surface coal mining operation is located to be notified by certified mail. We notified the Department of this requirement on December 9, 1998 (Administrative Record No. IL–5032). By letter dated December 18, 1998, the Department stated that it will send the municipality in which the surface coal mining operation is located written notification by certified mail at least 30 days before the release of all or a portion of the bond (Administrative Record No. IL–5035).

Therefore, we find that the revised regulation, combined with the Department's letter dated December 18, 1998, is no less effective than the Federal regulations at 30 CFR 800.40(b)(2) and 800.40(e).

F. 62 IAC Parts 1816 and 1817, Permanent Program Performance Standards for Surface and Underground Mining Activities

The Illinois permanent program regulations for surface mining activities at 62 IAC Part 1816 and underground mining activities at 62 IAC Part 1817 are discussed below. Since most of the surface mining and underground mining regulations are identical, we are combining the revisions for discussion purposes, unless otherwise noted.

1. *62 IAC 1816.49 and 1817.49, Impoundments.* At sections 1816.40(a)(3)(B) and 1817.49(a)(3)(B), the Department replaced the term ''U.S. Soil Conservation Service'' with the term ''U.S. Natural Resources Conservation Service'' and changed the date of Practice Standard IL 378, ''Ponds'' from April 1987 to June 1992.

The U.S. Soil Conservation Service changed its name to the U.S. Natural Resources Conservation Service on November 9, 1994, and made revisions to Practice Standard IL 378 in June 1992. Therefore, we find that these revisions will not make the Illinois regulations less effective than the Federal regulations at 30 CFR 816.49 and 817.49.

2. *62 IAC 1817.61, Use of Explosives: General Requirements.* The Department revised section 1817.61(a) by adding the language ''that are within 50 vertical feet of the original ground surface'' to the end of the existing provision to define the extent of the initial rounds of slope and shaft development. The revised provision reads as follows:

> Section 1817.61 through 1817.68 apply only to surface blasting activities incident to underground mining, including, but not limited to, initial rounds of slopes and shafts that are within 50 vertical feet of the original ground surface.

The counterpart Federal regulation at 30 CFR 817.61(a) does not define the extent of ''initial rounds of slopes and shafts.'' We added section 817.61 to our regulations to protect the lives and property of the public, underground mines, and ground and surface waters outside of the permit areas where surface blasting is required in the development and support of underground mining operations (43 CFR 41780). We found in a technical review of the revised Illinois regulation that 62 IAC 1817.61(a) is essentially the same as the Federal counterpart at 30 CFR 817.61(a) except that the State defines the extent of the initial rounds of slope and shaft development as those ''that are within 50 vertical feet of the original ground surface.'' Neither the Federal rule nor the associated preambles (43 FR 41780 and 44 FR 15269) directly include or address the vertical extent of the initial blasting rounds in slope and shaft development. We clearly intended that section 817.61 through 817.68 apply only to surface blasting activities incident to underground mining, including construction of initial rounds of slopes and shafts. It was our ''intent not to regulate blasting performed underground, because this activity is adequately controlled by MSHA'' (44 FR 15269). Considering this intent and the generally small amount of blasting activities associated with slope and shaft development, the 50-foot vertical extent proposed by the Department is a reasonable interpretation of ''initial blasting rounds of slope and shaft development'' and is adequate to protect the public from the adverse effects of these blasts. Therefore, we find that the revised Illinois regulation at 62 IAC 1817.61(a) is no less effective than the Federal counterpart regulation at 30 CFR 817.61(a).

3. *62 IAC 1817.62, Use of Explosives: Pre-Blasting Survey.* In the first sentence of section 1817.62(d), the Department replaced the language ''published scheduled beginning'' with the language ''planned initiation.'' The revised sentence reads as follows:

> Any surveys requested more than ten calendar days prior to the planned initiation of blasting shall be completed by the operator before the start of blasting.

The revised Illinois provision at 62 IAC 1817.62(d) is substantively the same as the counterpart Federal regulation at 30 CFR 817.62(e). Therefore, we find that 62 IAC 1817.62(d) is no less effective than the counterpart Federal regulation.

4. *62 IAC 1816.64, Use of Explosives: Public Notice of Blasting Schedule.* a. The Department added the following sentence to the end of 62 IAC 1816.64(b): ''Unscheduled blasting does not include nighttime blasting, which is prohibited at all times.'' The Department proposed this language to emphasize its restriction of nighttime blasting and to clarify that blasting is not allowed after sunset.

The counterpart Federal regulation at 30 CFR 816.64(a)(3) does not contain this clarification, but 30 CFR 816.64(a)(2) allows discretionary authority to the regulatory authority relating to nighttime blasting and time periods for blasting. Therefore, we find that the revised Illinois regulation at 62 IAC 1816.64(b) is no less effective than the counterpart Federal regulation.

b. At 62 IAC 1816.64(c)(1), the Department requires publication of a blasting schedule at least ten days, but

not more than 30 days, before beginning a blasting program in which blasts that use more than five pounds of explosive or blasting agent are detonated. The currently approved language requires that operators publish the blasting schedule at least 30 days but not more than 60 days before blasting starts.

We find that the revised regulation requirements at 62 IAC 1816.64(c)(1) are consistent with and no less effective than the 10-day and 30-day requirements at 30 CFR 816.64(b)(1).

c. At 62 IAC 1816.64(c)(3), the Department requires operators to revise and republish blasting schedules at least 10 days, but not more than 30 days, before blasting in areas not covered in the current schedule or if the actual blasting times differ from the time periods listed in the current schedule for more than 20 percent of the blasts fired. The currently approved language requires that operators republish the blasting schedule at least 30 days but not more than 60 days before blasting in the specified areas.

We find that the revised regulation requirements at 62 IAC 1816.64(c)(3) are consistent with and no less effective than the 10-day and 30-day requirements at 30 CFR 816.64(b)(3).

d. The Department revised 62 IAC 1816.64(d) by changing the subsection introductory sentence to ''The blasting schedule shall contain at a minimum''; removing existing paragraphs (1) and (2); and redesignating paragraphs (2)(A) through (2)(E) as paragraphs (1) through (5).

We find that the revised Illinois regulation at 62 IAC 1816.64(d) is consistent with and no less effective than the counterpart Federal regulation at 30 CFR 816.64(c).

5. *62 IAC 1816.66 and 1817.66, Use of Explosives: Blasting Signs, Warnings, and Access Control.* a. In the second sentence of 62 IAC 1817.66(b), the Department replaced the language ''blasting schedule'' with the language ''blasting notification required in Section 1817.64.'' The Department proposed this revision in order to ensure consistent terminology and wording throughout its regulations.

We find that the revised regulation language at 62 IAC 1817.66(b) is consistent with and no less effective than the counterpart Federal language at 30 CFR 817.66(b).

b. At sections 1816.66(d)(2) and 1817.66(d)(2), concerning blasting prohibitions, the Department added the language ''unless a waiver is obtained from the owner of the facility and submitted to the Department prior to blasting within 100 feet'' at the end of these provisions. The revised provisions read as follows:

> Blasting shall not be conducted within 100 feet of facilities including, but not limited to, disposal wells, petroleum or gas storage facilities, municipal water storage facilities, fluid-transmission pipelines, or water and sewage lines unless a waiver is obtained from the owner of the facility and submitted to the Department prior to blasting within 100 feet.

The proposed revisions allow the owner of a utility to waive the set-back distance of 100 feet. There are no Federal counterparts to the previously approved blasting prohibitions at 62 IAC 1816.66(d)(2) and 1817.66(d)(2). However, the Federal regulations at 30 CFR 816.64(a) and 817.64(a) allow the regulatory authority to limit the area covered, timing, and sequence of blasting as listed in the schedule, if such limitations are necessary and reasonable in order to protect the public health and safety or welfare. We find that the addition of a waiver clause to the Illinois regulations at 62 IAC 1816.66(d)(2) and 1817.66(d)(2) will not make them less effective than the Federal requirements for blasting.

6. *62 IAC 1816.67 and 1817.67, Use of Explosives: Control of Adverse Effects.* a. The Department restructured the provisions of 62 IAC 1816.67(c)(1) and 1817.67(c)(1), concerning air blast monitoring, by moving the language of paragraphs (1)(A) and (1)(B) to paragraph (1).

The revised provision at section 1816.67(c)(1) reads as follows:

> When the cube root scaled distance, as defined in subsection (c)(2), to the nearest dwelling, public building, school, church, or commercial or institutional structure has a value less than 350 and when the burden to hole depth ratio is greater than 1.0, or the top stemming height is less than 70% of the burden dimension, the air blast produced by that blast shall be measured, recorded, analyzed, and reported pursuant to subsection (g) and section 1816.68(b). This subsection shall not apply to horizontal blast holes drilled from the floor of the pit.

The revised provision at section 1817.67(c)(1) reads as follows:

> When the cube root scaled distance, as defined in subsection (c)(2), to the nearest dwelling, public building, school, church, or commercial or institutional structure has a value less than 350 and when the burden to hole depth ratio is greater than 1.0, or the top stemming height is less than 70% of the burden dimension, the air blast produced by that blast shall be measured, recorded, analyzed, and reported pursuant to subsection (g) and section 1817.68(b).

We find that the proposed revisions to 62 IAC 1816.67(c)(1) and 1817.67(c)(1) are editorial in nature and do not change the meaning of the previously approved language.

b. At 62 IAC 1816.67(e) through (h) and 1817.67(e) through (h), concerning ground vibrations, the Department numbered the existing provision in subsection (e) as subsection (e)(1); redesignated subsection (f) as subsection (e)(2); redesignated subsections (f)(1) and (f)(2) as subsections (e)(2)(A) and (e)(2)(B); and redesignated existing paragraphs (g) and (h) as paragraphs (f) and (g). Minor wording changes were made to redesignated subsection (e)(2), and the revised provision reads as follows:

> Blasting shall be conducted to prevent adverse impacts on any underground mine and changes in the course, channel, or availability of ground or surface water outside the permit area. Ground vibration limits, including the maximum peak particle velocity limitation of subsection (e)(1), shall not apply at the following locations:

We find that the reformatting of 62 IAC 1816.67(e), (f), and (g) and 1817.67(e), (f), and (g), is editorial in nature. The proposed language changes to redesignated subsection (e)(2) clarify the intent of this previously approved provision. Therefore, we find that the revised provisions at 62 IAC 1816.67(e)(2) and 1817.67(e)(2) are no less effective than the counterpart Federal provisions at 30 CFR 816.67(a) and (e) and 817.67(a) and (e).

7. *62 IAC 1816.83 and 1817.83, Coal Mine Waste: Refuse Piles.* The Department revised 62 IAC 1816.83(c)(4) and 1817.83(c)(4) by adding the following new provision at the end of each:

> The Department shall require the addition of neutralization material to be added to the coal mine waste if, based on physical and chemical analyses, this material is needed to prevent acid mine drainage. This subsection is also applicable to the reclamation of fine coal waste (slurry) not meeting the definition of refuse piles.

The new provision was added to clarify that the Department has the authority to require acid neutralization before the waste is covered with four feet of the best available material and that coal waste deposited in slurry ponds is subject to treatment and/or coverage requirements. The counterpart Federal regulations at 30 CFR 816.83(c)(4) and 817.83(c)(4) do not contain the proposed language. However, we determined that the requirement to add neutralization material for the prevention of acid mine drainage is consistent with the Federal regulation requirements at 30 CFR 816.81(a)(1) and 817.81(a)(1) to minimize adverse effects of leachates on surface and ground water quality. Therefore, we are approving the new

provision at 62 IAC 1816.83(c)(4) and 1817.83(c)(4).

8. *62 IAC 1816.116 and 1817.116, Revegetation: Standards for Success.*

a. *62 IAC 1816.116(a)(2)(F) and 1817.116(a)(2)(F), Success of Revegetation: Augmentation.*

In response to the required amendment at 30 CFR 913.16(w), the Department deleted its provisions at 62 IAC 1816.116(a)(2)(F)(i) and 1817.116(a)(2)(F)(i) that allowed deep tillage without restarting the five-year period of responsibility on pasture, hayland, and grazing land areas where the operator had met the revegetation success standards.

We disapproved these provisions and required the Department to remove them from the Illinois regulations on May 29, 1996 (61 FR 26801). We find that the removal of these provisions is a satisfactory response to the required amendment codified at 30 CFR 913.16(w), and we are removing the required amendment from the Illinois program.

b. *62 IAC 1816.116(a)(2)(G) and 1817.116(a)(2)(G), Success of Revegetation: Other Management Practices.*

The Department added the following new revegetation provisions 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 5 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.

By letter dated June 15, 1998 (Administrative Record No. IL–5024), the Department submitted both legal rationale explaining why the Department believes the amendment is approvable and technical rationale, with supporting documentation, explaining why the amendment would promote better reclamation by encouraging a beneficial practice at optimum timing. The technical rationale will be discussed first.

The technical rationale addresses two aspects, the beneficial nature of deep tillage with long lasting benefits and the timing of deep tillage. The Department provided the following explanation of why it believes that deep tillage is a beneficial practice with long lasting results.

In Illinois, in areas of a cropland postmining land use, the normal practice after topsoil replacement is to plant the land into wheat then hay or directly into hay. This practice is the initial planting of areas of long-term intensive agriculture which also includes crop rotations with corn and soybeans, and historically has been considered the beginning of the responsibility period.

The Department believes that the enclosed technical data demonstrates that deep tillage is a beneficial practice, its benefits are increased after one or more hay crops, and its benefits are long lasting. Deep tillage is universally accepted within the scientific and mining community as beneficial for soil structure. Also, these benefits are long lasting beyond any responsibility period. In the event that an operator has made successful yield(s) prior to deep tillage, the operator and landowner should not be penalized for going beyond the performance standards and improving the soil within the responsibility period. The Department is submitting a publication ''Deep Tillage Effects on Compacted Surface-Mined Land,'' Soil Sci., Soc. Am. J. 59:192–199 (1995) and supplemental information ''Long Term Effects of Deep Tillage'' (Second Annual Report, SIU, U of I Cooperative Reclamation Research Station, March 1996, used with permission from the author). The data reveals that the positive effects of deep tillage, reduced soil strength and improved yields, have persisted up to eight years to date. The data also revealed no disproportionate increase in yield the first year after deep tillage compared to the following years. A tour of the study area this year, indicates this trend will likely continue. A second report ''Profile Modification of a Fragiudalf to Increase Production'' Soil Sci. Soc. Am. J. Vol 41, 1997, pp 127–131, concluded that even after 16 years there was no reformation of the original soil density or soil strength problems which had been removed by a form of deep tillage and mixing.

The technical documents that the Department submitted successfully demonstrate that a one-time application of deep tillage is beneficial to reconstructed mined soils by increasing water movement and aeration and eliminating high soil strength, with a resulting increase in crop yields. We agree with the Department's assessment that the publication ''Deep Tillage Effects on Compacted Surface-Mined Land,'' Soil Sci., Soc. Am. J. 59:192–199 (1995) and supplemental information ''Long Term Effects of Deep Tillage'' (Second Annual Report, SIU, U of I Cooperative Reclamation Research Station, March 1996) prove that the positive effects of deep tillage, reduced soil strength and improved yields, persisted through the first eight years of the study. We also find that the data show no unusual increase in yield the first year after deep tillage compared to the following years. This study showed that deep tillage significantly affected crop yield, soil strength, and net water extracted by growing crops. It showed that average soil strength decreased with increasing tillage depth and that corn and soybean yields increased with increasing tillage depth within and across years. The 1995 publication documented that crop yields comparable to the undisturbed site were achieved on the deepest tilled sites in 5 out of 6 years for corn and 4 out of 4 years for soybeans for the years 1988 through 1993.

The Department provided further explanation of why the benefits are maximized if soils are deep tilled after one or more hay crops, or other acceptable row crops, are grown.

The practice of hay cropping the cropland in advance of deep tillage is a typical management practice on most mined ground. This practice is promoted in ''Deep Tillage Effects on Mine Soils and Row Crop Yields,'' Proc. 1987, Lexington, Dec. 7–11, 1987, p. 181. An additional citation on this issue includes ''Compaction Related to Prime Farmland Reclamation,'' AMC conference April 29–May 3, 1984, by D.S. Ralston. The initial hay cropping helps to dry the subsoil down in order to increase the effectiveness of the shattering effect of the deep tillage. In addition, this concept was promoted at the 1998 Prime Farmland Interactive Forum, in Evansville, Indiana.

The referenced technical publications document that planting and managing hay crops, or other acceptable row crops, after reclamation to allow some initial settling and to obtain a drier subsoil should be done before deep tilling the soils. One publication considered it essential that the reclaimed soil be dry for good shattering action of the rooting media. On the study areas referenced in the 1995 publication, alfalfa was seeded and managed during 1986 and 1987 before tilling the various test plots in the late summer of 1987.

The Department provided the following legal rationale to support its belief that the proposed provision is approvable under SMCRA:

Section 515(b)(20) outlines the initiation of the responsibility period as ''after the last year of augmented seeding, fertilizing, irrigation, or other work: Provided, that when the regulatory authority approves a long-term intensive agricultural postmining land use, the applicable five- or ten-year period of responsibility for revegetation shall commence at the date of initial planting for

such long-term intensive agricultural postmining land use.''

A reading of the above wording leads us to conclude that under a cropland postmining land use, the responsibility period starts at the time of initial planting and is independent of any augmentative seeding, irrigation, etc., use to facilitate the establishment of the permanent vegetative cover required under section 515(b)(19).

This interpretation is further clarified by a reading of the Illinois statute, Surface Coal Mining Land Conservation and Reclamation Act, which was approved by the Secretary as no less stringent than the Federal statute, SMCRA. In the Illinois statute, Section 3.15(b) identifies the start of the responsibility period as after the last year of augmented seeding, fertilizing, irrigation, or other work. A separate Section 3.15(c) clarifies the responsibility period for long-term intensive agricultural areas starts at the date of initial planting for the agricultural use.

Historically, deep tillage has been considered an augmentative practice. Under 30 CFR 816.116(c) and counterpart state regulations, augmentative practices restart the liability period for cropland. With the above explanation, the Department is taking the position that the question of whether or not deep tillage is augmentative is irrelevant because the limitation on augmentative practices in SMCRA and State law does not apply to lands with a long-term intensive agricultural postmining land use. In its letter, the Department did state that it ''will ensure that all other management, e.g., seeding, fertilizing, etc., are at comparable levels as the surrounding agricultural lands.'' This statement is consistent with the Illinois regulations at 62 IAC 1823.15(b)(3), 62 IAC 1816.116(a)(3)(C), and 1817.116(a)(3)(C).

The criteria for judging proposed state regulations is that they be no less effective than the Federal regulations and no less stringent that SMCRA. Based on the Department's technical rationale discussed above, we find that the proposed rule is no less effective than the Federal regulations and no less stringent than SMCRA. The Department has provided clear rationale for why deep tillage is a beneficial practice and why it is best to delay deep tillage until after one or more crops have been harvested. Therefore, we agree that the issue of augmentation is not relevant to the deep tillage provision proposed in this rulemaking. The Department has provided sufficient technical documentation to support the practice of deep tillage when implemented under the conditions imposed in the proposed regulations at 62 IAC 1816.116(a)(2)(G) and 1817.116(a)(2)(G).

The Department's expressed purpose for the proposed provision is ''the allowance for the use of productivity data which was obtained prior to deep tillage on cropland.'' The Department explained why it believes that operators should be allowed to use productivity data that was obtained before deep tillage on cropland:

> The existing concept of deep tillage restarting the responsibility period is a significant deterrent to this universally beneficial reclamation practice in that it discourages operators from implementing it at the most efficient time, or from implementing it at all, if they are successful in achieving productivity on one or more crops and don't want to start over.
>
> The Department believes the above proposal provides the maximum benefit toward reclaiming the land as soon as practical, and is in fact more effective than the Federal regulations and no less stringent than the Federal statute because it will encourage rather than impede a beneficial practice. The above also meets the intent that long-term probability of productivity on cropland is being achieved and that land is reclaimed as contemporaneously as possible.

We have historically recognized that deep tillage alleviates compaction (30 CFR 823.14(d); 48 FR 21452, 21457, May 12, 1983). The Department has now demonstrated and we agree that deep tillage of the reclaimed soils of Illinois, under the conditions discussed above, is a beneficial practice that should not restart the responsibility period.

Because it will not restart the responsibility period, deep tillage will not affect the collection of crop production data. Therefore, successful yields of hay crops or other acceptable row crops that are obtained during the responsibility period, even when they are obtained before deep tillage, may be counted toward achieving productivity on prime farmland and high capability land.

OSM has always maintained that the primary responsibility for regulating surface coal mining and reclamation operations should rest with the States. The Federal regulations for revegetation were specifically written to allow States to account for regional diversity in terrain, climate, soils, and other conditions where mining occurs.

Based on the above discussions, we find that the proposed revegetation requirements at 62 IAC 1816.116(a)(3)(G) and 1817.116(a)(3)(G) will not make the Illinois regulations less stringent than the requirements of section 515 of SMCRA or less effective than the requirements of 30 CFR Parts 823, 816, and 817 of the Federal regulations for revegetation of mined lands. Therefore, we are approving the Department's proposed regulations.

c. *62 IAC 1817.116(a)(3)(E), Success of Revegetation: Pasture and/or Hayland or Grazing Land.*

At 62 IAC 1817.116(a)(3)(E), the Department removed the language ''Production for proof of productivity purposes shall also be determined in accordance with Section 1817.117(a)(2).''

Section 1817.116(a)(3)(E) concerns standards for revegetation success for areas designated as pasture and/or hayland or grazing land. Section 1817.117(a)(2) concerns the use of trees and shrubs populations in determining the success of revegetation for areas to be developed for fish and wildlife habitat, recreation, or forest products land uses. Therefore, we find that the removal of this reference to the Department's tree and shrub vegetation standards for fish and wildlife habit, recreation, or forest products land uses will not make the Illinois regulation less effective than the counterpart Federal regulation at 30 CFR 817.116(b)(1) concerning standards for revegetation success for grazing land or pasture land.

d. *62 IAC 1816.116(a)(4)(ii), Success of Revegetation: Use of the Agricultural Lands Productivity Formula.*

In response to the required amendment at 30 CFR 913.16(y), the Department deleted 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.

We disapproved this provision and required the Department to remove it from the Illinois regulations on May 29, 1996 (61 FR 26801). We find that the removal of this provision is a satisfactory response to the required amendment codified at 30 CFR 913.16(y), and we are removing the required amendment from the Illinois program.

G. 62 IAC 1823.12, Prime Farmland: Soil Removal

The Department added a new provision at 62 IAC 1823.12(c) that allows the B and/or C horizons to be left in place for surface disturbance areas if the Department determines the soil capability can be retained.

By letter dated June 17, 1997 (Administrative Record No. IL–2000), we notified the Department of changes made to the Federal regulation at 30 CFR 823.12(c)(2). The Federal regulation allows the regulatory authority to approve exceptions from the requirement to remove B and C soil

horizons where they would not otherwise be removed by mining activities and where soil capabilities can be retained. We find that the proposed Illinois regulation is no less effective than the counterpart Federal regulation.

H. 62 IAC 1825.11, High Capability Lands: Special Requirements

The Department added the following requirement at section 1825.11(c): ''Measurement of success of revegetation shall be initiated within ten (10) years after completion of backfilling and final grading on high capability land.'' The Department proposed this revision to require operators to initiate crop testing on high capability land under the same time frame requirements as prime farmland because to their similarities.

There are no direct Federal counterparts to the Illinois high capability land provisions. However, we find that this proposal is not inconsistent with the Federal requirements for revegetation and restoration of soil productivity on prime farmland at 30 CFR 823.15(b)(1) or the Federal requirements for revegetation at 30 CFR 816.116 and 817.116.

I. 62 IAC 1840.11, Inspections by the Department

The Department clarified its inspection requirements by proposing revisions to subsections (a) and (b). Subsection (a) was revised to require the Department to conduct an average of a least one partial inspection per month at each active surface coal mining and reclamation operation. Subsection (b) was revised to require the Department to conduct an average of at least one complete inspection per calendar quarter at each active or inactive surface coal mining and reclamation operation.

The counterpart Federal regulation at 30 CFR 840.11(a) requires the State regulatory authority to conduct an average of a least one partial inspection per month at each active surface coal mining and reclamation operation under its jurisdiction. The counterpart Federal regulation at 30 CFR 840.11(b) requires the State regulatory authority to conduct an average of at least one complete inspection per calendar quarter at each active or inactive surface coal mining and reclamation operation under its jurisdiction. Therefore, we find that the revised Illinois requirements at 62 IAC 1840.11 (a) and (b) are consistent with the Federal requirements for inspections by State regulatory authorities at 30 CFR 840.11 (a) and (b).

J. 62 IAC 1847, Administravie and Judicial Review

1. *62 IAC 1847.3, Hearings.* Section 1847.3 provides procedures for hearings on exploration applications, new permits, permit revisions, permit renewals, permit rescissions or transfers, assignments, or sales of permit rights. The procedures also apply to conflict of interest hearings, valid existing right determinations, exemption determinations, formal reviews of decisions not to inspect or enforce, hearings for permits for special categories of mining, and challenges of ownership or control links. At subsection (g), the Department replaced its existing burden of proof provision with the following provisions:

> (1) In a proceeding to review a decision on an application for a new permit:
>
> (A) If the permit applicant is seeking review, the Department shall have the burden of going forward to establish a prima facie case as to the failure to comply with the applicable requirements of the State Act or regulations or as to the appropriateness of the permit terms and conditions, and the permit applicant shall have the ultimate burden of persuasion as to entitlement to the permit or as to the inappropriateness of the permit terms and conditions.
>
> (B) If any other person is seeking review, that person shall have the burden of going forward to establish a prima facie case and the ultimate burden of persuasion by a preponderance of the evidence that the permit application fails in some manner to comply with the applicable requirements of the State Act or regualtions.
>
> (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.

The proposed Illinois provision at 62 IAC 1847.3(g)(1) is consistent with and no less effective than the Federal burden of proof provision for new permits at 43 CFR 4.1366(a). The proposed Illinois provision at 63 IAC 1847.3(g)(2) for all otehr proceedings covered by this section is consistent with the Federal burden of proof provisions at 43 CFR 4.1366, 4.1374, 4.1384, and 4.1394 for permit actions, ownership and control determiniations, and valid existing right determinations. All of these expressly or in other language provide for a preponderance of the evidence standard. Therefore, we are approving 62 IAC 1847.3(g).

2. *62 IAC 1847.9, Bond Release hearings: Burden of Proof.* At subsection (g), the Department revised its burden of proof provision by requiring that ''the party seeking to reverse the Department's proposed release of bond shall have the burden of providing by a preponderance of evidence that the Department's decision is in error.''

The traditional Federal burden of proof for civil or administrative proceedings is proof by a preponderance of the evidence. As discussed in the above finding, administrative hearings under 43 CFR Part 4 expressly or in other language provide for a preponderance of the evidence standard. Therefore, we are approving the revision to 62 IAC 1847.9(g).

3. *63 IAC 1847.9(j) and (k), Bond Release Hearings: Written Exceptions.* The Department revised 62 IAC 1847.9(j) and (k) to clarify that the final decision of the Department in administrative review hearings for bond release is made by the hearing officer and not the Director of the Department of Natural Resources. The Department also proposed to change the time limits for filing and responding to written exceptions from 15 to 10 days and the time limits for issuance of a final administrative decision by the hearing officer from 15 to 10 days if no written exceptions are filed. Specifically, the Department proposed the following changes:

At section 1847.9(j), the Department is allowing each party to the hearing to file written exceptions with the hearing officer within ten days after service of the hearing officer's proposed decision. All parties shall then have ten days after service of written exceptions to file a response with the hearing officer.

At section 1847.9(k), the Department revised the existing provision to read as follows:

> If no written exceptions are filed, the hearing officer's proposed decision shall become final ten days after service of such decision. If written exceptions are filed, the hearing officer shall within 15 days following the time for filing a response thereto, either issue his final administrative decision affirming or modifying his proposed decision, or shall vacate the decision and remand the proceeding for rehearing.

The Federal regulations specify general adjudicatory provisions that States must include in their administrative review hearing procedures, but allow the States discretion in how to implement these provisions. This would include the determination of who shall make final administrative hearing decisions. Therefore, we find that the designation of a hearing officer to make final administrative hearing decisions does not make the Illinois regulations less effective than the Federal regulations. The Federal regulations contain no comparable provisions to those being revised concerning filing of written exceptions to a hearing officer's

decision, time limits for filing written exceptions and responses to exceptions, and time limits for issuance of a final administrative decision. However, we find that the proposed regulations at 62 IAC 1847.9(j) and (k) add clarity and specificity to the State program and are not inconsistent with SMCRA or the Federal regulations.

K. 62 IAC Part 1850, Training, Examination and Certification of Blasters

1. At section 1850.13(a), the Department may also provide the necessary training required for blaster certification. This change allows the Department or the operator or his representative to conduct blasters training.

The counterpart Federal regulation at 30 CFR 850.13(a) requires the regulatory authority to provide training for persons seeking to become certified as blasters. The Federal regulation allows the regulatory authority to establish the procedures to implement this requirement. Therefore, we find that the revised Illinois regulation at 62 IAC 1850.13(a) is no less effective than the Federal regulation at 30 CFR 850.13(a).

2. At 62 IAC 1850.14(a) and (b), the Department is revising its provisions for scheduling examinations and reexaminations for certification. Specifically, sections 1850.14(a) and (b) were revised to read as follows:

(a) Written examinations for blaster certification shall be administered on dates, times, and at locations announced by the Department via direct communication with operators and individuals who request in writing to be so notified. All persons scheduled for a regular examination session will be so notified at least one week prior to the scheduled exam date.

(b) Reexaminations shall be scheduled, if needed, for those persons who do not pass the regularly scheduled examination. The Department shall also allow for examination at this time of those persons who have newly applied for certification. All persons scheduled for examination or reexamination during the reexamination session will be so notified at least one week prior to the scheduled reexamination session.

The Federal regulations at 30 CFR 850.14 require the regulatory authority to ensure that candidates for blaster certification are examined. The Federal regulations at 30 CFR 850.13 require the regulatory authority to establish the procedures to implement this requirement. We find that the Department's proposed procedures will ensure candidates for blaster certification are examined as required by the Federal regulations. Therefore, we are approving the revisions at 62 IAC 1850.14(a) and (b).

3. The Department revised section 1850.15(a), concerning application and certification, to read as follows:

Each applicant shall submit a completed application for certification on forms supplied by the Department. Any applicant whose completed application has been received, reviewed and accepted by the Department prior to a regularly scheduled examination session shall be scheduled for that session. The following documents shall be included with the completed application form:

The Federal regulations at 30 CFR 850.15 require the regulatory authority to certify candidates for blaster certification. The Federal regulations at 30 CFR 850.13 require the regulatory authority to establish the procedures to implement this requirement. We find that the Department's procedures at 30 CFR 850.15 will ensure candidates for blaster certification are certified as required by the Federal regulations. Therefore, we are approving the revisions to 62 IAC 1850.15(a).

IV. Summary and Disposition of Comments

Public Comments

In **Federal Register** notices dated April 6 and November 16, 1998, we requested public comments on the proposed amendment and revisions to the amendment (63 FR 16719 and 63 FR 63628, respectively).

By letter dated April 10, 1998, we received comments regarding the Illinois regulation at 62 IAC 1778.14 (Administrative Record No. IL–5013). Then, by letters dated April 30 and May 6, 1998, we received comments concerning the Illinois regulations at 62 IAC Part 1847 for administrative hearings (Administrative Record Nos. IL–5016 and IL–5017, respectively).

The first commenter objected to the proposed revisions to 62 IAC 1778.14(c), concerning violation information, that were included in the February 26, 1998, proposed amendment. The commenter objected because the revised regulation did not limit the violation information requirements to operations owned or controlled by the applicant. The commenter stated that the language proposed is identical to the language of the Federal rules struck down by the United States Court of Appeals for the District of Columbia Circuit in *National Mining Association* v. *U.S. Dept. of Interior*, 105 F 3d 691 (D.C. Cir. 1997). The commenter also noted that the proposed language appeared to be missing pertinent punctuation and language. In its November 5, 1998, revised amendment, the Department changed its proposed regulation at 62 IAC 1778.14(c) to limit the violation information requirements to operations owned or controlled by the applicant and added applicable missing punctuation and language. As noted in finding III.B., the revised Illinois regulation is substantively identical to the counterpart Federal regulation at 30 CFR 778.14(c).

One commenter objected to the Department's proposed burden of proof provision at 62 IAC 1847.3(g)(1) that provides different burdens for the permit applicant and the non-permit applicant for administrative review of new permits. As discussed in finding III.J.1., the proposed provision is no less effective than the counterpart Federal regulation provision at 43 CFR 4.1366(a), which also provides different burdens for the permit applicant and the non-permit applicant for administrative review of new permits.

Two commenters objected to the Department's burden of proof provisions at 62 IAC 1847.3(g)(2) and 1847.9(g) that provided for a ''clearly erroneous'' standard for administrative review of a variety of hearing actions and bond release actions, respectively. In its November 5, 1998, revised amendment, the Department changed the burden of proof to a ''preponderance of evidence'' standard in both of these provisions (Administrative Record No. IL–5025). As discussed in findings III.J. 1. and 2., both provisions are now consistent with the Federal burden of proof standards at 43 CFR Part 4 for administrative hearings.

Federal Agency Comments

Under 30 CFR 732.17(h)(11)(i), we requested comments on the amendments from various Federal agencies with an actual or potential interest in the Illinois program (Administrative Record Nos. IL–5010 and IL–5026).

On April 2, 1998, the U.S. Natural Resources Conservation Service commented that the reference to the ''U.S. Natural Resources Conservation Service Practice Standard 378, 'Pond,' April 1987'' in 62 IAC 1816.49(a)(3)(B) and 1817.49(a)(3)(B) should be changed to ''Practice Standard IL 378 'Ponds,' June 1992'' (Administrative Record No. IL–5011).

As discussed in finding III.F.1., the Department made this change in its November 5, 1998, revised amendment.

Environmental Protection Agency (EPA)

Under 30 CFR 732.17(h)(11)(ii), we are required to get the written consent of the EPA for those provisions of the program amendment that relate to air or water quality standards published under

the authority of the Clean Water Act (33 U.S.C. 1251 *et seq.*) or the Clean Air Act (42 U.S.C. 7401 *et seq.*).

None of the revisions that the Department proposed to make in this amendment pertain to air or water quality standards. Therefore, we did not request the EPA's consent.

Under 30 CFR 732.17(h)(11)(i), we requested comments on the amendments from the EPA (Administrative Record Nos. IL–5010 and IL–5026). The EPA did not respond to either request.

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

Under 30 CFR 732.17(h)(4), we are required to request comments from the SHPO and ACHP on amendments that may have an effect on historic properties. On March 27 and November 6, 1998, we requested comments from the SHPO and ACHP on the Illinois amendments (Administrative Records Nos. IL–5010 and IL–5026, respectively), but neither respondend to our requests.

V. Director's Decision

Based on the above findings, we approve the amendments submitted by the Department on March 28, 1996, and February 26, 1998, and as revised on November 5, 1998.

We approve the regulations and statutes that the Department proposed with the provision that they be placed in force in identical form to the regulations and statutes submitted to and reviewed by OSM and the public.

To implement this decision, we are amending the Federal regulations at 30 CFR Part 913, which codify decisions concerning the Illinois program. We are making this final rule effective immediately to expedite the State program amendment process and to encourage Illinois to bring its program into conformity with the Federal standards. SMCRA requires consistency of State and Federal standards.

VI. 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 regulatory programs and program amendments since each 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 rules 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 published 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 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: January 25, 1999.

Brent Wahlquist,

Regional Director, Mid-Continent Regional Coordinating Center.

For the reasons set out in the preamble, 30 CFR Part 913 is amended as set forth below:

PART 913—ILLINOIS

1. The authority citation for Part 913 continues to read as follows:

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

2. Section 913.15 is amended in the table by adding a new entry in chronological order by ''Date of final publication'' to read as follows:

§ 913.15 Approval of Illinois regulatory program amendments.

* * * * *

Original amendment submission date	Date of final publication	Citation/description
*	*	* * * * *
March 28, 1996 and February 26, 1998.	February 9, 1999	225 ILCS 720/1.03, 7.03, and 7.04; 62 IAC 1701. Appendix A; 1761.12; 1764.13 and .15; 1773.11 and .15; 1774.11 and .13; 1778.14; 1785.17; 1800.40; 1816.46, .49, .64, .66, .67, .83, .116, and .117; 1817.46, .49, .61, .62, .66, .67, .83, .116, and .117; 1823.1, .11, .12, and .14; 1825.11; 1840.1 and .11; 1847.3 and .9; 1850.13, .14, .15, and .16.

§ 913.16 [Removed and reserved]

3. Section 913.16 is removed and reserved.

[FR Doc. 99–3129 Filed 2–8–99; 8:45 am]

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DEPARTMENT OF THE INTERIOR

Office of Surface Mining Reclamation and Enforcement

30 CFR Part 948

[WV–077–FOR]

West Virginia Regulatory Program

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

ACTION: Final rule; approval of amendment.

SUMMARY: OSM is approving with certain exceptions an amendment to the West Virginia permanent regulatory program under the Surface Mining Control and Reclamation Act of 1977 (SMCRA). The amendment revises both the West Virginia Surface Mining Reclamation Regulations and the West Virginia Surface Coal Mining and Reclamation Act. The amendment mainly consists of changes to implement the standards of the Federal Energy Policy Act of 1992. The amendment is intended to revise the State program to be consistent with the counterpart Federal provisions.

EFFECTIVE DATE: February 9, 1999.

FOR FURTHER INFORMATION CONTACT: Mr. Roger W. Calhoun, Director, Charleston Field Office, Telephone: (304) 347–7158.

SUPPLEMENTARY INFORMATION:

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

I. Background on the West Virginia Program

On January 21, 1981, the Secretary of the Interior conditionally approved the West Virginia program. Background information on the West Virginia program, including the Secretary's findings, the disposition of comments, and the conditions of the approval can be found in the January 21, 1981, **Federal Register** (46 FR 5915–5956). Subsequent actions concerning the West Virginia program and previous amendments are codified at 30 CFR 948.10, 948.12, 948.13, 948.15, and 948.16.

II. Submission of the Amendment

By letter dated April 28, 1997 (Administrative Record Number WV–1056), the West Virginia Division of Environmental Protection (WVDEP) submitted an amendment to its approved permanent regulatory program pursuant to 30 CFR 732.17. By letter dated May 14, 1997 (Administrative Record Number WV–1057), WVDEP submitted some revisions to the original submittal. The amendment contains revisions to § 38–2–1 *et seq.* of the West Virginia Surface Mining Reclamation Regulations [Code of State Regulations (CSR)] and to § 22–3–1 *et seq.* of the West Virginia Surface Coal Mining and Reclamation Act (WVSCMRA). The amendment mainly consists of changes to implement the standards of the Federal Energy Policy Act of 1992, and is intended to revise the State program to be consistent with the counterpart Federal provisions.

On October 10, 1997, OSM provided the State a list of concerns regarding the proposed amendment (Administrative Record Number WV–1073). By letter dated April 27, 1998 (Administrative Record Number WV–1085), the State submitted its final response to OSM's comments on the amendments.

An announcement concerning the initial amendment was published in the June 10, 1997, **Federal Register** (62 FR 31543–31546). A correction notice was published on June 23, 1997 (62 FR 33785), which clarified that the public comment period closed on July 10, 1997. No one requested an opportunity to speak at a public hearing, so none was held.

III. Director's Findings

Set forth below, pursuant to SMCRA and the Federal regulations at 30 CFR 732.15 and 732.17, are the Director's findings concerning the proposed amendment to the West Virginia program. Minor wording changes and other non-substantive changes are not identified.

A. Surface Coal Mining and Reclamation Act—§ 22–3–1 et seq.

Definitions

1. *Sec. 22–3–3(u) Definition of ''surface mine.''* This definition is amended at subsection 3(u)(2) by adding three examples of activities that are not encompassed by the definition of ''surface mine'' under the WVSCMRA. The three exceptions are: (1) Coal extraction pursuant to a government financed reclamation contract; (2) coal extraction authorized as an incidental part of development of land for commercial, residential, industrial, or civic use; and (3) the reclamation of an abandoned or forfeited mine by a no cost reclamation contract.

Sec. 22–3–3(u)(2)(1): Coal extraction authorized pursuant to a government financed reclamation contract. Section 528(2) of SMCRA provides an exemption from the requirements of SMCRA for coal extraction incidental to government-financed highway or other construction under regulations established by the regulatory authority. The WVDEP has explained that the proposed amendments are intended to clarify that the reclamation of abandoned sites is government-financed construction that is consistent with the provisions of section 528(2) of SMCRA and, therefore, not subject to SMCRA.

OSM is in the process of amending the Federal regulations at 30 CFR 707 and 874 concerning the financing of Abandoned Mine Land reclamation (AML) projects that involve the incidental extraction of coal (63 FR 34768; June 25, 1998). The first Federal revision would amend the definition of ''government-financed construction'' at 30 CFR 707.5 to allow less than 50 percent government funding when the construction is an approved AML project under SMCRA. The second revision would add a new section at 30 CFR 874.17 which would require specific consultations and concurrences with the Title V regulatory authority for AML construction projects receiving less than 50 percent government financing. The revised final Federal regulations will be published soon, and will likely affect our decision on the West Virginia amendments that concern government financed construction on abandoned mine lands. Therefore, OSM is deferring its decision on these amendments until after the publication in the **Federal Register** of the final amendments to 30 CFR Parts 707 and 874.

Sec. 22–3–3(u)(2)(2): Coal extraction incidental to development of land for commercial, residential, industrial, or civic use. As stated above, Section 528(2) of SMCRA, and § 22–3–26(b) of the WVSCMRA provide an exemption from the requirements of SMCRA for coal extraction incidental to government-financed highway or other construction under regulations established by the regulatory authority. However, no provision currently exists which provides an exemption from the requirements of SMCRA for coal extraction incidental to privately financed development of land for commercial, residential, industrial, or civic use.

Section 701(28) of SMCRA, the definition of ''surface coal mining

operations'', does not provide for such an exemption. As discussed in the March 13, 1979, preamble to the Federal regulations, a commenter recommended that the definition of surface coal mining operations exclude private excavation which results in the incidental recovery of coal (44 FR 14901, 14914). OSM concluded that such an exemption was inconsistent with Section 528 of SMCRA.

The WVDEP asserts, however, that Section 701(28) does not define ''surface coal mining operations'' to include any and all excavation which disturbs coal. For example, the WVDEP asserts that unless done in connection with a coal mine, coal removal relative to the development of land for commercial, residential, industrial or civic use is beyond the jurisdiction of SMCRA. Further, the WVDEP refers to section 101(f) of SMCRA which provides that because of the diversity in terrain, climate, biologic, chemical, and other physical conditions in areas subject to mining operations, the primary governmental responsibility for developing, authorizing, issuing, and enforcing regulations for surface mining and reclamation operations subject to SMCRA would rest with the States. Specifically, the WVDEP stated that because of the State's unique geographic and geologic conditions, any excavation activity in certain parts of the State will necessitate the excavation of coal. Sometimes such excavation would justify the requirement of a surface mining permit and in other instances it would not. The WVDEP stated that the proposed changes are intended to clarify when a permit is necessary and to provide for reasonable environmental controls when a permit is not required (but a special authorization under proposed section 22–3–28 would be) so as to prevent adverse impacts to the environment from excavation related disturbances. Finally, the WVDEP asserts that the proposed approach would prevent a waste of resources and provide environmental protection while accommodating development within the State.

The Director recognizes that requiring all privately financed construction activities in West Virginia which also remove coal to be permitted and regulated as surface coal mining operations may, in some instances, present both a hardship for the regulatory program and be a roadblock to development within the State. Nevertheless, OSM is bound by the constraints of SMCRA, both in its plain language and in clear expressions of Congressional intent. Congress expressly considered and rejected a blanket exemption from the definition of ''surface mining operations'' for privately financed construction. S. Rep. No. 95–337, 95th Cong., 1st Sess. 112 (1977). This West Virginia program amendment proposes precisely the same blanket exemption which Congress explicitly rejected. Therefore, the Director finds that the proposed provision is less stringent than SMCRA at section 528 and cannot be approved.

Sec. 22–3–3(u)(2)(3): The reclamation of an abandoned or forfeited mine by a no-cost reclamation contract. The State has proposed to exempt from the definition of ''surface mining'' the reclamation of abandoned or post-SMCRA forfeited mines conducted under a ''no cost'' reclamation contract.

Reclamation activities involving forfeited mines are subject to regulation under SMCRA. Bond forfeiture reclamation must be conducted in accordance with the reclamation plan of the revoked permit as provided by 30 CFR 800.50(b). Such activities are also subject to inspection under 30 CFR 842.11(e) and (f). However, reclamation activities on abandoned and forfeited mine sites do not constitute ''surface coal mining operations,'' so long as they do not include coal extraction. Therefore, the Director is approving W.Va. Code 22–3–3(u)(2)(3), because it is not, on its face, inconsistent with the Federal definition of ''surface coal mining operations'' at section 701(28). However, West Virginia has also proposed a regulation which would allow the placement of excess spoil on abandoned sites, pursuant to ''no cost'' reclamation contracts. The proposed regulation is included in a program amendment which is the subject of another rulemaking. (63 FR 32633, June 15, 1998) Therefore, the disposal of excess spoil on abandoned and forfeited sites pursuant to ''no cost'' contracts is not yet approved.

2. Sec. 22–3–3(x) is added to define ''Unanticipated event or condition.'' The Director finds the proposed definition to be substantively identical to and therefore no less stringent than the counterpart Federal provision at SMCRA section 701(33).

3. Sec. 22–3–3(y) is added to define ''Lands eligible for remining.'' Under this new definition, lands eligible for remining include lands that would be eligible for expenditure under Section 4 of the State's Abandoned Mine Lands and Reclamation Act. In addition, surface mining operations on lands eligible for remining would not affect the eligibility of such lands for AML funding, and, in the event of bond forfeiture, AML funds may be used to reclaim reaffected eligible lands. However, if conditions constitute an emergency under section 410 of SMCRA, then section 410 shall apply.

The Federal definition of ''lands eligible for remining'' at SMCRA section 701(34) provides that the term means those lands that would otherwise be eligible for expenditures under section 404 or under section 402(g)(4). Section 404 provides that surface coal mining operations on lands eligible for remining shall not affect the eligibility of such lands for reclamation and restoration. In the event of a bond or deposit forfeiture, section 404 allows the use of AML funds to reclaim the site only if the amount of the bond or deposit is not sufficient to provide for adequate reclamation or abatement.

In support of this amendment, WVDEP stated that any AML funds used at a remining site would be spent in accordance with AML guidelines, including eligibility requirements. Accordingly, the use of AML funds at remining sites would be subject to the concurrence of OSM that there is, among other things, no other responsible party at such sites and that the bond available is not sufficient to provide for adequate abatement or reclamation. Finally, the WVDEP stated that its interpretation of this program amendment is if the site was eligible for AML funds prior to remining it will be eligible for AML funds after remining. That is, section 22–3–3(y) does not preclude AML eligibility after a remining bond release.

The Director finds that the proposed amendment as explained above by the WVDEP appears to be no less stringent than SMCRA section 701(34) and can, therefore, be approved. However, that portion of section 22–3–3(y) pertaining to bond forfeitures is approved only to the extent that AML funds may be used to reclaim sites where a bond or deposit has been forfeited only if the bond or deposit is insufficient to provide for adequate reclamation or abatement.

4. Sec. 22–3–3(z) is added to define ''Replacement of water supply.'' The Director finds the proposed definition to be substantively identical to the introductory paragraph and to subsection (a) of the counterpart Federal definition at 30 CFR 701.5, except as noted below. The Federal provision provides that water supply replacements must be equivalent to ''premining'' water quantity and quality, and replacement must include payment of operation and maintenance costs in excess of customary and reasonable delivery costs of the ''premining'' water supply. The proposed State provision, however, merely provides that water supply replacements must be of

''equivalent quality and quantity.'' In support of this provision, WVDEP stated that the word ''premining'' was not included in the definition because that term can lead to confusion. The word ''equivalent'' rather than the words ''equivalent premining'' was used so that a realistic baseline (i.e., the quality and quantity of water in use prior to the permitted mining activity as determined by the premining survey) would provide certainty as to water replacement obligations. In addition, WVDEP explained that the State's definition and practice is that when a water supply is contaminated, interrupted, or disrupted the water supply must be replaced with a water supply that is equivalent in quantity, quality, and cost to that which existed prior to mining. The Director finds that the proposed definition, if implemented as explained by the WVDEP, would not be inconsistent with and is no less effective than the counterpart Federal definition at 30 CFR 701.5. The Director is approving the proposed definition with the understanding that it will be implemented as explained above. In addition, the Director notes that the proposed definition lacks a counterpart to provision (b) of the Federal definition of ''replacement of water supply'' at 30 CFR 701.5. This counterpart is necessary because W.Va. Code sec. 22–3–24(b) allows a water supply owner to waive replacement. Only pursuant to the terms of paragraph (b) of the Federal definition, however, is waiver of replacement allowed. Therefore, the required amendment, at 30 CFR 948.16(sss), remains in effect.

Performance Standards

5. *Sec. 22–3–13(b)(20).* This subparagraph, concerning revegetation performance standards, is amended by adding a provision stating that, on lands eligible for remining, the revegetation responsibility period will be not less than two growing seasons after the last year of augmented seeding. The proposed provision differs slightly from its Federal counterpart, in that it uses the term ''growing season'', while the SMCRA provision uses the term ''year.'' However, the proposal is no less stringent than Section 520(b)(20)(B) of SMCRA, because CSR 38–2–2.57 further defines growing season to mean one year. Therefore, the Director is approving the amendment.

6. *Sec. 22–3–13(b)(22).* This subparagraph is amended by deleting the word ''shall'' in the last sentence and replacing that word with ''may.'' This sentence now states that ''[s]uch approval [of single lift, durable rock excess spoil disposal fills] may not be unreasonably withheld if the site is suitable. * * *'' The Director finds the proposed revision does not change the meaning of the sentence and, therefore, does not render the provision less effective than the Federal requirements in 30 CFR 816/817.73.

7. Sec. 22–3–13(c)(3) is amended to allow the approval of permits involving a variance from restoring approximate original contour (AOC) for mountaintop removal operations when the postmining land use includes fish and wildlife habitat and recreation lands. A decision on this provision is being deferred. OSM requested public comment on a new report concerning an evaluation of approximate original contour and postmining land use in West Virginia. It is expected that some of the comments received in response to the evaluation will address the proposed revision. Therefore, OSM is deferring a decision on this provision at this time, and will consider any additional comments on the proposed postmining land use.

Inspection and Enforcement

8. *Sec. 22–3–15(h).* This paragraph is added to provide that the WVDEP Director may provide a compliance conference when requested by the permittee. The provision further provides that any such conference may not constitute an inspection as defined in § 22–3–15 of the WVSCMRA. The Director finds the provision to be substantively identical to and therefore no less effective than the Federal regulations at 30 CFR 840.16(b).

9. *Sec. 22–3–17(b).* The subsection is amended by adding a paragraph which provides that, within one year following the notice of a permit revocation, subject to the discretion of the director and based upon a petition for reinstatement, the revoked permit may be reinstated. Further, the provision provides that the reinstated permit may be assigned to any person who meets the permit eligibility requirements of this article.

The Federal enforcement requirements at section 521 of SMCRA do not specifically prohibit the reinstatement of a revoked permit. However, OSM notified the WVDEP that to be approvable, the proposed State provision must provide adequate safeguards to ensure that the reinstated permit will satisfy all of the requirements of the WVSCMRA. Currently, the proposed provision only requires that an applicant meet the permit eligibility requirements of the WVSCMRA. At a minimum, the State's reinstatement provisions need to provide for public participation, require that the revoked permit will meet the appropriate permitting requirements of the WVSCMRA, and require that the mining and reclamation plan will be modified to address any outstanding violations.

In response to OSM's concerns, the WVDEP stated that it, ''plans to use a process that would be similar to a permit transfer which would require the upgrade, if necessary, of the reinstated permit to meet applicable performance standards and advertisement with the opportunity for public comments.'' The State's existing transfer, assignment or sale procedures at CSR 38–2–3.25 require an advertisement with the opportunity for a 30-day comment period, that the bond be kept in full force and effect before, during and after the transfer, assignment or sale of the permit, and that the applicant correct all outstanding unabated violations. To accommodate the sale of assets from one party to another, the procedures also allow for the approval of a transfer, assignment or sale of a permit in advance of the close of the comment period.

The Director is approving the proposed State statutory revisions in so far as Section 22–3–17(b) does not contain any provisions that are less stringent than the requirements of SMCRA. However, because the State's proposed reinstatement provisions do not reference the transfer, assignment or sale requirements of Section 22–3–19(d) of WVSCMRA or CSR 38–2–3.25, and because the WVDEP acknowledges that it has not fully developed its reinstatement procedures, the State cannot implement the proposed provisions until its program is further amended. Therefore, the Director is requiring that the State further amend the West Virginia program to adopt reinstatement procedures similar to its transfer requirements contained in CSR 38–2–3.25. The procedures must allow for public participation, require that the revoked permit meet the appropriate permitting requirements of the WVSCMRA, and require that the mining and reclamation plan be modified to address any outstanding violations for any permit reinstated pursuant to § 22–3–17(b) of the WVSCMRA. However, in no event can a reinstated permit be approved in advance of the close of the public comment period, and the party seeking reinstatement must post a performance bond that will be in effect before, during, and after the reinstatement of the revoked permit.

Permit Issuance

10. *Sec. 22–3–18(c)* This paragraph is amended by deleting the word ''shall''

in two locations and replacing those words with ''may.'' With these revisions, a permit ''may'' not be issued until the applicant submits proof that a violation is being corrected, and a permit ''may'' not be issued if the applicant is found to be affiliated with a person who has had a permit or bond revoked for failure to reclaim.

Section 510(c) of SMCRA provides that permits ''shall'' not be issued by a regulatory authority if the circumstances described above exist. Under existing Federal requirements, a regulatory authority has no discretionary authority when it is obligated by law to deny a permit. In general, the phrase ''may not'' means the same as ''shall not'' and is not discretionary.

In response to OSM's concern about the interpretation of this amendment, the WVDEP stated that the changes were of form only, and are not intended to affect the meaning of the provision. Therefore, the Director is approving the amendments because they do not change the meaning of § 22–3–18(c) of the WVSCMRA.

11. *Sec. 22–3–18(f).* This paragraph is added to provide that the prohibition of § 22–3–18(c) of the WVSCMRA may not apply to a permit application due to any violation resulting from an unanticipated event or condition at a surface coal mine eligible for remining under a permit held by the applicant. The Director finds that the proposed provision is substantively identical to and, therefore, no less stringent than, the counterpart Federal provision at section 510(e) of SMCRA.

12. *Sec. 22–3–28.* The title of this section is amended from special ''permits'' to special ''authorization'' for reclamation of existing abandoned coal processing waste piles. In addition, the following is added to the title: coal extraction pursuant to a government-financed reclamation contract; coal extraction as an incidental part of development of land for commercial, residential, industrial, or civic use; no cost reclamation contract. In addition, throughout this provision, the term ''permit'' is replaced with ''authorization.'' Some of the provisions of § 22–3–28 were initially contained in § 20–6–31 of the WVSCMRA.

Subsections 22–3–28 (a), (b), and (c) pertain to special authorizations to engage in surface mining incidental to the development of land for commercial, residential, industrial, or civic use. These subsections are amended by replacing the word ''permit'' with ''authorization.'' Under the revised statutory provisions, a person may engage in surface coal mining incidental to the development of land for commercial, residential, industrial, or civic use after obtaining a special authorization from the Director of the WVDEP. Subsection (b) is also amended by changing the duration of a valid authorization from ''until work permitted is completed'' to ''two years.''

As discussed in the preamble to the Federal regulations at 30 CFR part 707, upon considering a Senate amendment that included an exemption for all construction, the conferees agreed to a modified version of the Senate amendment which limited the exemption to extraction of coal as an incidental part of government-financed construction only, rather than all construction as originally provided in the Senate language (44 FR at 14949, March 13, 1979).

In promulgating its definition of ''surface coal mining operations'' at 30 CFR 700.5, OSM considered and rejected a provision that would have clarified that the definition did not apply to coal removal incidental to private construction. See comment 3, column 2, of 44 FR at 14914. OSM found that such an exemption was inconsistent with Section 528 of SMCRA.

Furthermore, the Interior Board of Surface Mining Appeals (IBSMA), which was subsequently incorporated into the Interior Board of Land Appeals, twice ruled that ''the extraction of coal as an incidental part of privately financed construction is not an activity excluded as such from the coverage of the * * * regulatory program.'' See James Moore, 1 IBSMA, 216 (1979) and Gobel Bartley, 4 IBSMA 219 (1992). Finally, OSM has previously determined that 22–3–28(a)–(c) is inconsistent with SMCRA. (See 46 FR 5915, 5924, Finding 14.4, January 21, 1981.) Therefore, the existing and proposed provisions in paragraphs (a), (b) and (c) of Section 22–3–28 of the WVSCMRA relating to incidental mining operations related to commercial, residential, industrial, or civic use are less stringent than the Federal requirements at Sections 528 and 701(28) of SMCRA and cannot be approved.

Subsection 22–3–28(d) pertains to reclamation contracts issued solely for the removal of existing abandoned coal processing waste piles. Subsection (d) is amended by deleting the words ''special permit'' and replacing them with the words ''reclamation contract.'' With this change, the director of the WVDEP may issue a reclamation contract for removal of existing abandoned coal processing waste piles when not in conflict with the WVSCMRA. In addition, the State is deleting the requirement to have the director of the WVDEP promulgate rules for such operations.

Subsection 22–3–28(d) is implemented in the regulations at CSR 38–2–3.14. These two sections apply only to the disposal of refuse piles that do not meet the definition of coal. The removal of abandoned refuse piles that do not meet the definition of coal as set forth in ASTM Standard D 388–77 is not subject to regulation under SMCRA (55 FR 21313–21314; May 23, 1990). Therefore, since the amended regulations pertain to activities that are not subject to regulation under SMCRA, the Director finds that the proposed changes to § 22–3–28(d) of the WVSCMRA do not render the West Virginia program inconsistent with SMCRA or the Federal regulations.

Subsection 22–3–28(e). The State proposes to add new paragraph (e) to allow the Director to provide a special authorization for coal extraction pursuant to a government-financed reclamation contract, and a no-cost reclamation contract. The primary purpose of these contracts would be to ensure the reclamation of abandoned or forfeited mine lands.

As discussed above in Finding A.1., OSM is in the process of amending the Federal regulations at 30 CFR 707 and 874 concerning the financing of Abandoned Mine Land reclamation (AML) projects that involve the incidental extraction of coal (63 FR 34768; June 25, 1998). The first Federal revision would amend the definition of ''government-financed construction'' at 30 CFR 707.5 to allow less than 50 percent government funding when the construction is an approved AML project under SMCRA. The second revision would add a new section at 30 CFR 874.17 which would require specific consultations and concurrences with the Title V regulatory authority for AML construction projects receiving less than 50 percent government financing. The revised final Federal regulations will be published soon, and will likely affect our decision on the West Virginia amendments that concern government financed construction on abandoned mine lands. Therefore, OSM is deferring its decision on these amendments until after the publication in the **Federal Register** of the final amendments to 30 CFR Parts 707 and 874.

Subsection 22–3–28(f). The WVDEP proposes to add paragraph (f) to require that any person engaging in coal extraction pursuant to Section 28 must pay all applicable fees and taxes related to coal extraction, replace or restore all water supplies affected by such extraction, and obtain the consent of the

surface and mineral owners prior to conducting such activities.

As discussed above in this Finding, not all of the proposed provisions of this § 22–3–28 are consistent with sections 528 and 701(28) of SMCRA. Therefore, section 22–3–28(f) is approved, but may be implemented only with respect to those portions of § 22–3–28 that are approved in this rulemaking.

Senate Bill 378

13. *Senate Bill 378—W.Va. Code § 19–25–1 et. seq.* Besides the changes in its surface mining law, the WVDEP also submitted revisions to Chapter 19, Article 25 of the West Virginia Code. The proposed revisions are to encourage private landowners to allow the public to enter private lands for recreational purposes; provide for limitation of landowner liability for injury to persons entering private property and injury to the property of persons entering such property; and provide an exception for liability for deliberate, intentional or malicious infliction of injury.

There is no specific language in SMCRA that limits liability of landowners. However, SMCRA does provide for public participation during the mining and reclamation process. Operators are to maintain minimum insurance liability limits to provide for personal injury and property damage protection. Citizens are also allowed to accompany an inspector on an inspection. In addition, operators and landowners are to assume responsibility for the sound future maintenance of structures, i.e., impoundments, sedimentation ponds, etc., that are to remain after mining and reclamation is completed. State landowner liability limitations cannot interfere with an individual's rights under SMCRA. Therefore, before the statutory proposal could be found to be no less stringent than SMCRA, the WVDEP was requested on October 10, 1997, to provide OSM assurance that the proposed language will not inhibit public participation under the WVSCMRA.

In response to OSM questions, the WVDEP stated that Senate Bill 378, and W.Va. Code 19–25–1 *et seq.*, are not a part of the West Virginia Surface Control Mining and Reclamation Act and will not affect the public participation in the release process, nor access to the reclaimed mine site for purposes of administering the approved program. Additionally, the landowner is required under the approved program to assume responsibility for the future maintenance of structures to be left after reclamation, by signing a form which clearly sets forth the maintenance requirements. The WVDEP stated that the change to W.Va. Code section 19–25–1 is for the purpose of limiting civil liability and does not extend to the maintenance liability of WVSCMRA.

The Director therefore finds that the amendments to W.Va. Code section 19–25–1 do not render the West Virginia program less stringent than SMCRA nor less effective than the Federal regulations. However, Senate Bill 378 need not be approved as a program amendment, because the provisions contained in it do not alter any of the obligations imposed by WVSCMRA.

B. West Virginia Surface Mining Reclamation Regulations—CSR 38–2

Definitions

1. *CSR 38–2–2.4—Definition of ''acid-producing coal seam.''* This definition is amended by deleting the names of specific coal seams commonly associated with acid-producing minerals. In addition, the last sentence is amended by deleting reference to the multiple seams whose names were deleted and to refer instead to site-specific seams. There is no direct Federal counterpart to this State definition. However, the Director finds that the proposed deletion does not diminish the intent or clarity of the State definition, and does not render the West Virginia program inconsistent with SMCRA or the Federal regulations.

2. *CSR 38–2–2.43 Definition of ''downslope.''* This definition is amended by adding the phrase ''except in operations where the entire upper horizon above the lowest coal seam is proposed to be partly or entirely removed.'' Under the proposed revision, the definition of ''downslope'' would not apply to mountaintop removal or multiple seam operations. Prior to this amendment, the definition limited spoil placement on all mining operations to the lowest coal seam being mined.

The State explained that the definition change is needed to accommodate the unique requirements of multiple seam mining operations. In effect, the State said, under the proposed change the term ''being mined'' would be limited to the lowest coal ''prepared to be mined'' in a mining sequence as part of an approved mining and reclamation plan. An area that has been prepared to be mined would have been cleared, and drainage controls would be in place.

Despite the WVDEP's explanation, however, the Director notes that the amended language merely exempts such multiple seam mining operations from the approved definition of downslope, and does nothing to explain what the definition of ''downslope'' would be for such multiple-seam operations. Therefore, the Director is not approving the amendment to the definition of ''downslope.''

3. *CSR 38–2–2.95 Definition of ''prospecting.''* This definition is amended by adding the word ''substantial'' as a modifier of the word ''disturbance.'' Under the revised definition, prospecting would include the gathering of environmental data where such activity may cause any substantial disturbance of the land. The Federal regulations at 30 CFR 701.5 contain a definition of ''coal exploration'' that is synonymous with ''prospecting,'' except the Federal definition lacks the word ''substantial.'' The WVDEP explained that the change in the definition of prospecting is intended to reflect the language of SMCRA at section 512(a) which provides that each State program shall include a requirement that coal exploration operations which substantially disturb the natural land surface be conducted in accordance with exploration regulations issued by the regulatory authority. However, the Director notes that 30 CFR 772.11 requires that a notice of intent be filed for any coal exploration operation, regardless of whether any disturbance at all will occur. In promulgating this revised Federal regulation on December 29, 1988, the Director stated that ''for the regulatory authority to determine which proposed coal exploration operations may substantially disturb the natural land surface, it must be informed of all proposed exploration.'' (53 FR 52943). The WVDEP stated that the West Virginia program will continue to require notice to the WVDEP of both activities that do and do not cause substantial disturbance of the natural land surface. These notice provisions are contained in CSR 38–2–13.1 and 38–2–13.4(b).

However, the Director notes that a conflict still exists between the State's definition of ''prospecting'', which now proposes to exclude the gathering of environmental data which does not cause ''substantial'' disturbance of the land surface, and the notice requirements of CSR 38–2–13.1. Therefore, the Director is not approving the addition of the word ''substantial'' to modify the word ''disturbance'' in the definition of ''prospecting.''

4. *CSR 38–2–2.108 Definition of ''Sediment control or other water retention structure, sediment control or other water retention system, or sediment pond.''* The amendment adds the following sentence: ''Examples include wildlife ponds, settling basins

and all ponds and facilities or structures used for water treatment.'' The Director finds that the added language is illustrative and does not render the State definition less effective than the Federal definitions of ''sedimentation pond'' and ''siltation structure'' at 30 CFR 701.5.

5. *CSR 38–2–2.120 Definition of ''Substantially disturb.''* This definition is amended by changing the phrase ''land or water resources'' to read ''land and water resources.'' The WVDEP has explained that this change was an editorial change made by the State legislature. Further, the WVDEP interprets the provision to mean that if land and/or water resources are significantly impacted by prospecting that will mean that those resources have been ''substantively disturbed.'' The Director finds that the amended definition can be approved to the extent that it is construed in the manner explained by the WVDEP. However, because future administrations could construe the use of the term ''and'' in its more commonly understood sense, as a conjunctive connector, the Director is requiring that West Virginia amend its program by changing the phrase ''land and water resources'' to ''land or water resources'', in the definition of ''substantially disturb,'' or by otherwise making it clear that the term ''substantially disturb,'' for the purposes of prospecting, includes a significant impact on either land or water resources.

6. *CSR 38–2–3.2.e Readvertisement.* This provision is amended by deleting the last sentence. The deleted language required that permits that are being renewed or significantly revised, and permit applications that are being significantly revised must be advertised in accordance with paragraph 38–2–3.2.b and paragraph (6), subsection (a), section 9 of the WVSCMRA. The Director finds that the deletion does not render the West Virginia program less effective than the Federal four-week requirement at 30 CFR 773.13(a) because the West Virginia program continues to require four weeks of newspaper advertisement at subsections 3.2(a), 3.27.a.7. and 3.28.b.1. of the State's regulations.

7. *CSR 38–2–3.12.a.1. Subsidence control plan.* This provision is amended to require that the survey and map required by this subsection also identify the location and type of water supplies, and whether or not subsidence could contaminate, diminish or interrupt water supplies within an angle of draw of at least 30 degrees. The amendment also provides for an alternative angle of draw based on site specific analysis.

The State amendments differ from the counterpart Federal requirements at 30 CFR 784.20(a) in that the Federal provision does not limit the identification of the water supplies to those within a specified angle of draw. Also, the State provision does not require identification of the type and location of all structures within the permit and adjacent areas. Finally, the amendments lack the Federal requirement, contained in 30 CFR 784.20(a)(2), that the permit application include a narrative indicating whether subsidence, if it occurred, could cause material damage to or diminish the value or reasonably foreseeable use of such structures or renewable resource lands or could contaminate, diminish, or interrupt drinking, domestic, or residential water supplies.

In response to OSM's questions, the WVDEP explained that the West Virginia program permit application, concerning the information needed for the probable hydrologic consequences (PHC) determination at section 38–2–3.22, requires an applicant for an underground mine permit to conduct a ground water and surface water inventory which includes all areas within one-half mile of the proposed operation, including underground limits. This information is then used by the WVDEP permit reviewers to evaluate for possible impacts on those resources by subsidence. If during this evaluation it appears to the reviewer that impacts are likely outside the proposed 30-degree angle of draw, then the reviewer would document that need and expand the survey beyond the 30 degree limit.

The WVDEP explained that State use of the 30-degree angle of draw standard is intended to clarify a perceived ambiguity in the Federal regulation at 30 CFR 784.20(a)(3). The Federal provision requires a survey of the quantity and quality of all drinking, domestic, and residential water supplies within the permit and adjacent area that could be contaminated, diminished, or interrupted by subsidence. To clarify and standardize the term ''adjacent area,'' the State has chosen to require the surveys within a 30-degree angle of draw. However, the WVDEP explained, that since a permittee would have already provided a surface and groundwater inventory as part of the requirements for the PHC regulations at 38–2–3.22, the WVDEP will have the information available to require an enlargement of the 30-degree angle of draw requirement, if necessary. That is, if WVDEP's analysis of the PHC information reveals that impacts are likely outside the 30-degree angle of draw area, the WVDEP can expand the area within which the subsidence-related information survey is required. Therefore, the WVDEP asserts, additional information on water supplies will not be limited by the 30-degree angle of draw provision nor by the ''adjacent area'' standard as contained in the Federal and State provisions.

The Director finds that, despite the WVDEP's explanation above concerning the use of PHC data, the State program provides no specific authority to require a pre-subsidence survey in areas outside the proposed 30 degree angle of draw. Without such authority, the West Virginia program is rendered less effective than the Federal regulations at 30 CFR 784.20(a)(1) which require a map of the permit and adjacent areas showing the location, without limitation by an angle of draw, of lands, structures, and water supplies that could be damaged by subsidence. Therefore, the Director is not approving the phrase ''within an angle of draw of at least 30-degrees'' at § 38–2–3.12.a.1. Also, the Director is requiring that the West Virginia program be further amended to also require on the map provided for by § 38–2–3.12.a.1. the identification of the type and location of all lands, structures, and drinking, domestic and residential water supplies within the permit and adjacent areas because § 38–2–3.12.a.1. lacks that requirement.

Finally, the Director is requiring that the West Virginia program be further amended to require that the permit application include a narrative indicating whether subsidence, if it occurred, could cause material damage to or diminish the value or reasonably foreseeable use of such structures or renewable resource lands or could contaminate, diminish, or interrupt drinking, domestic, or residential water supplies.

38–2–3.12.a.1 is also being amended to provide for a site-specific angle of draw other than the 30-degree angle of draw. Approval of such a site-specific angle of draw will be based on the results of site specific analyses and demonstration that a different angle of draw is justified. Computer program packages predicting surface movement and deformation caused by underground coal extraction can be utilized.

The proposed language differs from the counterpart Federal authorization at 30 CFR 817.121(c)(4)(ii) for a site specific angle of draw in the following ways. The Federal provision provides that such a site specific angle of draw be based on site-specific geotechnical analysis of the potential surface impacts

of the proposed mining operation. Furthermore, the Federal provision requires a written finding by the regulatory authority that, based on the geotechnical analysis, the site specific angle of draw has a more reasonable basis than the 30-degree angle of draw. In response to OSM's comments, the WVDEP stated that to approve an angle of less than 30 degrees, ''an affirmative demonstration is required by the applicant that there will be no subsidence within that angle of draw (i.e. the geotechnical information required to support this claim will be on a case by case basis).'' The WVDEP did not clarify, however, that the regulatory authority would make a written finding concerning each proposed site-specific angle of draw.

Considering the clarification by the WVDEP discussed above, the Director finds that the provision to allow a site-specific angle of other than the 30-degree angle of draw can be approved with the understanding that such an alternative angle of draw is justified based on a site-specific geotechnical analysis of the potential surface impacts of the mining operation.

However, the Director believes that these requirements should be added formally to the State's program, to avoid any ambiguity of interpretation in the future. Therefore, she is requiring that the State amend the West Virginia program to provide that approval of any alternative angle of draw will be based on a written finding that a proposed angle of draw of less than 30 degrees is justified based on site-specific geotechnical analysis of the potential surface impacts of the proposed mining operation.

8. *CSR 38–2–3.12.a.2—Subsidence control plan.* This new provision adds language to require surveys of water supplies and structures that could be damaged within the applicable angle of draw. Language is also added to provide for a survey of the condition of all non-commercial buildings or residential dwellings and structures related thereto that may be materially damaged or for which the foreseeable use may be diminished by subsidence within the area encompassed by the applicable angle of draw.

The proposed provision concerning the survey of water supplies is less encompassing than the counterpart Federal regulations at 30 CFR 784.20(a)(3). Specifically, 30 CFR 784.20(a)(3) provides for a pre-subsidence survey (without limitation by an angle of draw) of the quantity and quality of all drinking, domestic, and residential water supplies within the permit area and adjacent area that could be contaminated, diminished, or interrupted by subsidence. By contrast, the proposed State provision only requires the water surveys to be conducted ''within the area encompassed by the applicable angle of draw.'' As discussed above in Finding B–7, the Director has determined that the State program provides no specific authority to require a pre-subsidence survey in areas outside the proposed 30 degree angle of draw.

The Director is approving the proposed provision except for the phrase, ''within the area encompassed by the applicable angle of draw'' which renders the West Virginia program less effective than the counterpart Federal regulations at 30 CFR 784.20(a)(3) and cannot be approved. In addition, the Director is requiring that the West Virginia program be further amended to be no less effective than 30 CFR 784.20(a)(3) by requiring a pre-subsidence survey, without limitation by an angle of draw, of the quantity and quality of all drinking, domestic, and residential water supplies within the permit area and adjacent area that could be contaminated, diminished, or interrupted by subsidence.

§§ 38–2–3.12.a.2.A and .B. These two provisions are added to allow an exemption or postponement of the pre-subsidence structural survey requirements at § 38–2–3.12.a.2. for areas of extraction of less than or equal to 60 percent. To receive an exemption under § 38–2–3.12.a.2.A., it must be demonstrated that damage to the structure(s) will not occur. To receive a postponement under § 38–2–3.12.a.2.B., it must be demonstrated that damage to the structure(s) will not occur, and that no mining (extraction greater than 60 percent) within the applicable angle of draw shall occur until the pre-subsidence structural survey is completed. In addition, § 38–2–3.12.a.2. provides that if extraction exceeds 60 percent in areas granted an exemption and/or postponement, the exemption and/or postponement will be voided for the entire underground mining operation. Furthermore, the presumption of causation will apply to any damage to structure(s) as a result of earth movement within a 30 degree angle of draw from any underground extraction.

The counterpart Federal regulations at 30 CFR 784.20 do not explicitly allow for exemptions from or postponements of the pre-subsidence survey requirement. However, the Federal regulations at 30 CFR 784.20(a)(3) require a survey only of structures ''that may be materially damaged or for which the reasonably foreseeable use may be diminished by subsidence.'' The proposed State-authorized exemption and/or postponement are contingent on a finding by the WVDEP that the permittee has demonstrated that damage to the structure(s) will not occur. Such a finding will be based upon extraction of 60 percent or less, and upon the demonstration provided by the permittee that damage to the structure(s) will not occur. In its response to OSM dated April 24, 1998, the WVDEP stated that ''[t]he WVDEP requires the applicant to identify those areas on a map for which the exemption is being requested, to provide the necessary documentation (pillar designs, amount of cover, etc.), and limits the extraction rate to less than 60%.'' To qualify for a postponement, the applicant follows the same process as to qualify for an exemption.

The Director notes that the proposed language does not clarify what would comprise the minimum information needed in a demonstration to convince the director of the WVDEP that the exemption or postponement is warranted. That is, what should the required demonstration consist of? To be no less effective than the Federal regulations, such a demonstration should consist of a site-specific geotechnical analysis of the potential surface impacts of the mining operation.

Proposed § 38–2–3.12.a.2.B. also provides that no mining (extraction greater than 60 percent) within the applicable angle of draw shall occur until the pre-subsidence structural survey is completed. The Director notes that any amendment that would authorize a delay in the timing of the structural condition survey required by 30 CFR 784.20(a)(3) must also provide copies of the survey and any technical assessment or engineering evaluation to the property owner. In addition, the proposed provisions must provide opportunity for the structure owner to comment on the adequacy of the structural condition survey and the planned implementation of the subsidence control plan as it pertains to the structure in view of the results of the survey. The proposed amendment lacks these provisions.

The Director finds that the proposed State provisions at 38–2–3.12.a.2.A. and 3.12.a.2.B., which authorize exemptions and postponements where it is demonstrated that damage will not occur, are less effective than the Federal provisions at 30 CFR 784.20(a)(3) and 817.121(c)(4)(ii) for the reasons stated above.

38–2–3.12.a.2. also provides that if the permittee is denied access to the land or property for the purpose of

conducting the pre-subsidence survey, the permittee will notify the owner, in writing, that no presumption of causation will exist. The Director finds this provision to be substantively identical to the counterpart Federal provision at 30 CFR 784.20(a)(3).

38–2–3.12.a.2. also requires that the survey report be signed by the person or persons who prepared and conducted the survey, and that copies of the survey report be provided to the property owner and to the WVDEP. The Director finds the proposed provision to be substantively identical to and therefore no less effective than the Federal regulations at 30 CFR 784.20(a)(3).

However, the Director finds that the State's proposal lacks the requirement, contained in 30 CFR 784.20(a)(3), that the permit applicant pay for any technical assessment or engineering evaluation used to determine the premining condition or value of non-commercial buildings or occupied residential dwellings or structures related thereto and the quality of drinking, domestic or residential water supplies. Also, the State's proposal lacks the requirement that the applicant must provide copies of any technical assessment or engineering evaluation to the property owner and regulatory authority. Therefore, the Director is requiring that the State further amend the West Virginia program to be no less effective than 30 CFR 784.20(a)(3) to provide that the permit applicant pay for any technical assessment or engineering evaluation used to determine the premining condition or value of structures and water supplies, and that copies of any technical assessments or engineering evaluations be provided to the property owner and regulatory authority.

Finally, amended 30–2–3.12.a.2. includes a definition of non-commercial building. The State definition is substantively identical to the counterpart Federal definition of ''non-commercial building'' at 30 CFR 701.5 with one exception. Unlike the State definition, the Federal definition also includes any building that is used on a ''temporary basis'' as a public building, or community or institutional building. As such, the State's proposed definition is less effective than its Federal counterpart and cannot be approved. In addition, the Director is requiring that the State further amend 38–2–3.12.a.2. to clarify that ''non-commercial building'' includes such buildings used on a regular or temporary basis.

9. *CSR 38–2–3.14—Removal of abandoned coal refuse disposal piles.* The State is proposing to amend 38–2–3.14 by deleting 3.14.b.7., which requires the submission of a determination of probable hydrologic consequences, and 3.14.b.8., which requires the submission of a hydrologic reclamation plan, as part of an application for a special permit for the removal of existing abandoned coal processing waste piles. Also, the State proposes to amend 3.14.b.12.E., to require a stability analysis of the coal waste pile only if requested by the Director. Next, the State proposes to delete existing 3.14.b.15.B., which requires plans, cross sections and design specifications for diversion ditches. Finally, the State proposes a new section 3.14.b.13.B., which requires that surface water be diverted around or ''over'' the material remaining after removal of a coal waste pile, by properly designed and stabilized diversion channels which have been designed using the best current technology to provide protection to the environment and the public. The channels are required to be designed and constructed to ensure stability of the remaining material, control erosion, and minimize water infiltration into the material.

The provisions at 38–2–3.14 pertain to the disposal of refuse disposal piles that do not meet the definition of coal. The removal of abandoned refuse piles that do not meet the definition of coal as set forth in ASTM Standard D 388–77 is not subject to regulation under SMCRA (55 FR 21313–21314; May 23, 1990). Therefore, since the amended regulations pertain to activities that are not subject to regulation under SMCRA, the Director finds that the proposed deletions do not render the West Virginia program less effective and can be approved. The Director notes that the proposed State rules apply only to non-coal refuse (red dog) piles. An operator proposing to remove or reprocess refuse piles which contain coal, as provided by CSR 38–2–3.14.a, must submit a permit application that meets all of the applicable requirements of CSR 38–2–3.

10. *CSR 38–2–3.29—Incidental boundary revisions (IBR).* These provisions are amended at subsection 3.29.a. by adding language to authorize IBR's for areas where it has been demonstrated to the WVDEP director that limited coal removal on areas immediately adjacent to the existing permit is the only practical alternative to recovery of unanticipated reserves or necessary to enhance reclamation efforts or environmental protection. The WVDEP has explained that the primary purpose of this change is to facilitate enhanced reclamation of abandoned mine sites adjacent to the permit area, thus relieving the demand for reclamation funds by reducing the number of sites on the AML inventory. The WVDEP stated that such IBR's must comply with all applicable environmental performance standards, and would be subject to the required findings provided at 38–2–3.29.d. prior to approval.

The Director finds the proposed amendment to be not inconsistent with the intent and purpose of Section 511(a) of SMCRA and 30 CFR 774.13(d), except as noted below. On February 21, 1996 (61 FR 6511, 6520) the Director approved a previous amendment to this provision. In that approval, the Director stated that, ''. . . under the proposed language IBR's will not be authorized for surface or underground operations in cases where additional coal removal is the primary purpose of the revision.'' That is, the Director had determined that to be consistent with the intent of sections 511(a)(3) of SMCRA and 30 CFR 774.13(d) which pertain to incidental boundary revisions, coal removal cannot be the primary purpose of an IBR. Therefore, the Director is not approving the phrase ''the only practical alternative to recovery of unanticipated reserves or'' because it would authorize coal removal as the primary purpose of an IBR.

11. *CSR 38–2–3.35—Measurement tolerances.* This provision is added to specify the standards for grade and linear measurements. Specifically, all grade measurements and linear measurements shall be subject to a tolerance of two percent. All angles shall be measured from the horizontal and shall be subject to a tolerance of five percent. The amendment provides, however, that the authorized deviations from the approved plan do not affect storage capacity and/or performance standards. In effect, the measurement tolerances relate to the amount of allowed variances between approved designs and the ''as built'' measurements of those designs. That is, the measurement tolerances pertain to constructed, or ''as built'' structures and not to design measurements. Neither SMCRA nor the Federal regulations contain counterparts to these proposals. However, the Director finds that the proposed tolerances, with the requirement that approved storage capacities and performance standards must be met, are reasonable, not inconsistent with SMCRA or the Federal regulations, and can be approved.

Sediment Control Structures

12. *CSR 38–2–5.5.c—Permanent impoundments.* This provision is amended to add that for permanent impoundments, the landowner sign a request that the structure be left for

recreational or other purposes. There is no Federal counterpart to this proposal. Language is deleted which requires that the operator also sign the request, and that the request assert that the landowner assumes liability for the structure and will provide for sound future maintenance of the structure. The Federal regulations at 30 CFR 800.40(c) allow for the retention of permanent impoundments after bond release, as long as provisions for sound future maintenance by the operator or landowner have been made with the regulatory authority. The West Virginia program provides for sound future maintenance by the permittee or landowner at 38–2–12.2.c.2.D. That form (MR–12) assigns the landowner responsibility for the sound future management of any permanent impoundments. The Director finds, therefore, that the amendment at subsection 5.5.c does not render the West Virginia program less effective than the Federal regulations and can be approved.

Blasting

13. *CSR 38–2–6.5.a.—Blasting procedures.* This provision is amended by adding language to allow for blasting on Sunday if the WVDEP Director determines that the blasting is necessary and there has been an opportunity for a public hearing. The Federal regulations do not prohibit blasting on Sundays. According to the Federal regulations, an operator is only allowed to conduct blasting activities at times approved by the regulatory authority and announced in the blasting schedule. Therefore, the Director finds that the proposed revision does not render the West Virginia program less effective than the Federal requirements at 30 CFR 816/817.64.

Fish and Wildlife

14. *CSR 38–2–8.2.e.—Habitat development.* This provision is added to encourage and specify the criteria for timber windrowing to promote the enhancement of food, shelter, and habitat for wildlife. As proposed, unmarketable timber may be used for windrowing, but the use of spoil material, debris, abandoned equipment, root balls, and other undesirable material in a windrow is prohibited. Such windrowing must be approved in the mining and reclamation plan, and must be approved as part of a wildlife planting plan and authorized where the postmining land use includes wildlife habitat. The proposed requirements would apply to the construction of timber windrows in both steep and non-steep slope areas.

The Federal regulations do not contain specific criteria concerning the design or construction of timber windrows. However, SMCRA at section 515(d)(1) and the Federal regulations at 30 CFR 816.107(b) prohibit the placement of debris, including that from clearing and grubbing on the downslope in steep slope areas. The Director finds that the proposed provision is not inconsistent with the Federal provisions cited above. As with the Federal provisions, the State provision is intended to prohibit debris, such as spoil material, abandoned equipment, root balls, and other undesirable material, on the downslope. In addition, the timber windrowing would be designed for wildlife habitat, the designs would be reviewed by a State wildlife biologist specialist, and windrowing would only be approved for postmining land use that includes wildlife habitat. Though not specifically stated in the proposed rule, the WVDEP has informed OSM that the design of the windrow will be reviewed by a State wildlife biologist as part of the wildlife enhancement plan for a postmining land use containing wildlife habitat. (Administrative Record No. WV–1085) The Director finds that 38–2–8.2.e is consistent with SMCRA section 515(d)(1), and no less effective than the Federal regulations at 30 CFR 780.16 and 816.107(d) provided the design of the windrowing will be reviewed by a State wildlife biologist as part of the wildlife enhancement plan for a postmining land use containing wildlife habitat. The Director notes that the Federal regulations at 30 CFR 948.16(ttt) continue to require that the State regulations at CSR 38–2–14.19 concerning the disposal of noncoal mine wastes be amended at subsection d., which concerns windrowing. The WVDEP has indicated that 38–2–14.19.d. will be proposed for deletion in a future rulemaking session.

Revegetation

15. *CSR 38–2–9.2.i.2.—Revegetation plan.* This provision is amended by adding a sentence to specify that an alternate maximum or minimum soil pH may be approved based on the optimum pH for the revegetated species. There is no direct Federal counterpart to the State standards for lime and soil pH. However, the Director finds that the amendment is not inconsistent with the Federal regulations at 30 CFR 816/817.111(a), which provide for the establishment of a diverse, effective, and permanent vegetative cover, and 30 CFR 816/817.22, which require that the resulting soil medium be the best available in the permit area to support revegetation. Therefore, the provision is approved.

16. *CSR 38–2–9.3.h.1.—Standards for evaluating vegetative cover.* This provision is deleted and replaced in its entirety. The new language requires that the minimum stocking rate of commercial tree species shall be in accordance with the approved forest management plan prepared by a registered professional forester. The revised provision also changes the minimum tree stocking rate from 600 trees per acre to no less than 450 stems per acre. In order to qualify for the ''Commercial Woodlands'' postmining land use and the reduced tree stocking rates contained in 38–2–9.3.h., the permittee must have an approved management plan prepared by a registered professional forester. The West Virginia Division of Forestry (WVDOF) and the WVDEP signed a memorandum of understanding on June 4, 1998, to ensure compliance with 30 CFR 816.116/817(b)(3)(i) (Administrative Record Number WV–1109). In that memorandum of understanding, the WVDOF agreed to review in a timely manner all ''Commercial Woodlands'' planting and forest management plans to be included in surface mining permits issued by the WVDEP. If after review, the WVDOF agrees that the planting and forest management plan is in conformance with the prevailing and regional conditions, the WVDOF will provide the WVDEP with a letter indicating such agreement. Therefore, the Director finds this amendment to be consistent with the Federal regulations at 30 CFR 816/817.116(b)(3)(i).

17. *CSR 38–2–9.3.h.2.—Standards for evaluating vegetative cover.* The State is proposing to delete the provision that a minimum of 75 percent of the countable trees identified in the planting plan be commercial tree species. There is no direct Federal counterpart to this provision. However, considering the memorandum of understanding between the WVDOF and the WVDEP discussed above at Finding B.16., the Director finds that the deletion does not render the West Virginia program less effective than the Federal regulations concerning the revegetation standards for success of areas to be developed for forest products at 30 CFR 816/817.116(b)(3).

18. *CSR 38–2–9.3.h.2. (formerly h.3)—Standards for evaluating vegetative cover.* This provision is amended to change the survival rate from 450 trees to 300 trees per acre, or the rate specified in the forest management plan, whichever is greater. There is no direct Federal counterpart to these amendments. However, considering the

memorandum of understanding between the WVDOF and the WVDEP discussed above at Finding B.16., the Director finds that the amendments are not inconsistent with the Federal regulations at 30 CFR 816/817.116(b)(3).

19. *CSR 38–2–14.11—Procedures to obtain inactive status.* Subsection 14.11.e. is amended to delete the exemption from the three-year limit on inactive status for preparation plants and load-out facilities. Added language authorizes the WVDEP Director to grant inactive status for a period not to exceed ten years, provided the facilities are maintained in such condition that operations could be resumed within 60 days.

Subsection 14.11.f. is added to authorize the WVDEP Director to grant inactive status for a period not to exceed current permit term plus five years for underground mining operations provided the operation is maintained in such condition that the operations could be resumed within 60 days and openings are protected from unauthorized entry.

Subsection 14.11.g. is added to authorize the WVDEP Director to grant inactive status for a period not to exceed ten years for coal refuse sites provided the completed lifts of the coal refuse site are regraded (which may include topsoiling), seeded and drainage control, where possible, has been installed in accordance with the terms and conditions of the permit.

Subsection 14.11.h. is added to provide that the WVDEP Director may grant inactive status for a permit for a longer term than set forth in 14.11.e. and f., provided the permittee furnishes and maintains bond that is equal to the estimated actual reclamation cost, as determined by the director. The director shall review the estimated actual reclamation cost at least every two and one-half years.

In support of this amendment, the WVDEP explained that the proposed amendments set maximum time limits for inactive status for underground mines, preparation plants, load-out facilities and coal refuse sites. The proposed amendments also set standards the sites must meet before inactive status can be approved and the condition the mining operations must be maintained. Furthermore, the WVDEP explained, the amendments contain a requirement that a bond adequacy determination be conducted periodically to assure bond is sufficient to accomplish reclamation in event of forfeiture.

The Federal regulations at 30 CFR 816/817.131 concerning temporary cessation of operations do not specify, as the proposed amendments do, a maximum time limit for temporary cessation, that inactive facilities must be maintained in a condition that would allow them to be reactivated within 60 days, and that the regulatory authority must periodically review the adequacy of the bond. However, the Federal regulations do provide that temporary abandonment shall not relieve a person of his obligation to comply with any provisions of the approved permit. The West Virginia program contain a similar requirement at CSR 38–2–14.11.a.9. Temporarily abandoned sites in West Virginia must be permitted, and the provisions of the permit must be met. That is, an approved permit shall be maintained throughout the life of the inactive status. If a permit expires during an inactive status and is not renewed, the site must be reclaimed. The Director finds that the amendments are not inconsistent with the Federal requirements and can be approved.

20. *CSR 38–2–14.15.b.6.A.—Contemporaneous reclamation standards for mountaintop removal.* This provision is amended to provide that the Director of the WVDEP may grant a variance to the disturbed and unreclaimed acreage standard not to exceed 500 acres on operations which consist of multiple spreads of equipment.

In support of this amendment, the WVDEP asserted that the proposed amendment better assures contemporaneous reclamation because it recognizes and accounts for operational and geologic factors in formulating the mining and reclamation plan, especially on large, multiple-seam mining operations. Furthermore, the WVDEP asserts, the variance of 500 acres proposed by this amendment is not automatically approved, but is discretionary with the regulatory authority and would be granted only when justified.

The Federal time and distance standards for contemporaneous reclamation at 30 CFR 816.101 have been indefinitely suspended. (57 FR 33875, July 31, 1992) The remaining Federal regulations at 30 CFR 816/817.100 require that reclamation efforts occur as contemporaneously as practicable with the mining operations. The WVDEP asserts that is precisely the purpose of the proposed amendment: to properly plan for contemporaneous reclamation with large, multiple-seam operations.

The Director finds that the 500-acre standard, when implemented as described by the WVDEP is not inconsistent with the Federal regulations at 30 CFR 816.100 which provide for reclamation as contemporaneously as practicable with the mining operation, and can be approved.

21. *CSR 38–2–14.15.c.—Contemporaneous reclamation standards; reclaimed areas.* The State has revised its provisions concerning reclaimed areas to delete language concerning Phase I bond release and semi-permanent ancillary facilities. Language is added to provide that regraded areas must also be stabilized.

Also added is a list that identifies areas that shall not be included in the calculation of disturbed area. The list includes: Subsection 14.15.c.1. Semi-permanent ancillary facilities (such as haulroads and drainage control systems); 14.15.c.2. Areas within the confines of excess spoil disposal fills that are being constructed in the conventional method; 14.15.c.3. Areas containing 30 aggregate acres or less which have been cleared and grubbed and have the appropriate drainage controls installed and certified; 14.15.c.4. Areas that have been cleared and grubbed which exceed the 30 aggregate acres and/or those which will not be included in the operational area within six months, if the appropriate drainage control structures are installed and certified and temporary vegetative cover is established; and 14.15.c.5. Areas which have been backfilled and graded with material placed in a stable, controlled manner which will not subsequently be moved to final grade, mechanically stabilized, and had drainage controls installed, but not necessarily certified.

In support of this amendment, the WVDEP stated that it has been determined by field observations that there is a need to recognize operational and geographic conditions in order to accomplish reclamation as contemporaneously as possible. In addition, the WVDEP stated that it recognizes the need for flexibility with earth moving activities in certain situations so that reclamation can occur as contemporaneously as practicable with coal removal. The WVDEP asserts that the proposed amendment better assures contemporaneous reclamation than the rules currently in effect because it recognizes and accounts for those conditions in formulating a mining and reclamation plan.

As stated above in Finding B–20, the Federal time and distance requirements for contemporaneous reclamation have been suspended. The existing Federal rules merely require that reclamation activities occur as contemporaneously as practicable with the mining operations. However, the amendments

appear reasonable when the type of mining operations are considered, and are not inconsistent with the concept of contemporaneous reclamation at 30 CFR 816/817.100. Therefore, the Director finds the amendments can be approved.

22. *CSR 38–2–14.15.d.—Contemporaneous reclamation standards; applicability.* This provision is amended by adding a final sentence to provide that the WVDEP Director may consider contemporaneous reclamation plans on multiple permitted areas with adjoining boundaries where contemporaneous reclamation is practiced on a total operation basis. The Federal regulations at 30 CFR 816/817.100 require that reclamation activities occur as contemporaneously as practicable with the mining operations, and do not prohibit the development of a contemporaneous reclamation plan for multiple permitted areas with adjoining boundaries. Therefore, the Director finds that the amendments are not inconsistent with the Federal requirements and can be approved.

Subsidence Control

23. *CSR 38–2–16.2.c.—Surface owner protection; material damage.* This provision is amended by adding a definition of the term ''material damage''. The proposed definition is identical to the counterpart Federal definition at 30 CFR 701.5 except that three words are missing. In response to OSM's comments, the WVDEP acknowledged the inadvertent omission of the word ''damage'' after the word ''material'' in the first sentence, and the missing words ''or facility'' after the word ''structure'' in the last part of the first sentence.

In response to OSM's comments, WVDEP concluded that the State's definition of ''structure'', at 38–2–2.116, can be construed to include ''facilities'', since it includes manmade structures. The Director is approving this amendment, therefore, with the following understandings: that the State will add the word ''damage'' after the word ''material'' in future rulemaking, and will interpret the current definition as if the inadvertently omitted word were present; and that the State will consider its definition of ''structure'' at 38–2–2.116 to include ''facilities'' as used in the Federal sense.

24. *CSR 38–2–16.2.c.2.—Surface owner protection.* This amendment adds a final sentence to provide that the provision to correct subsidence-related material damage applies only to subsidence related damage caused by underground mining activities conducted after October 24, 1992. The proposed change is to ensure consistency with the Energy Policy Act of 1992 (EPACT). EPACT was signed into law on October 24, 1992. The Federal subsidence requirements of that Act are now in section 720 of SMCRA. Section 720 of SMCRA requires underground mining operations conducted after October 24, 1992, to promptly repair or compensate for material damage caused by subsidence to non-commercial buildings or any occupied residential dwelling and related structures. The Director finds the added language to be substantively identical to SMCRA section 720 and the Federal regulations at 30 CFR 817.121(c)(2) concerning repair or compensation for subsidence damage.

25. *CSR 38–2–16.2.c.3.—Presumption of causation.* This provision is added to provide that if alleged subsidence damage occurs to protected structures as a result of earth movement within the area in which a pre-subsidence structural survey is required, a rebuttable presumption exists that the underground mining operation caused the damage.

CSR 38–2–16.2.c.3.A.—This provision is added to provide that if the permittee was denied access to conduct a pre-subsidence survey, no presumption of causation will exist.

CSR 38–2–16.2.c.3.B.—This provision is added to provide that the presumption will be rebutted if, for example, the evidence establishes that: the damage predated the mining in question; the damage was proximately caused by some other factors or was not proximately caused by subsidence; or the damage occurred outside the surface area within which subsidence was actually caused by the mining in question.

CSR 38–2–16.2.c.3.C.—This provision is added to provide that in any determination of whether damage to protected structures was caused by subsidence from underground mining, all relevant and reasonably available information will be considered by the director.

The Director finds that CSR 38–2–16.2.c.3. is substantively identical to, and therefore no less effective than, the Federal regulations at 30 CFR 817.121(c)(4), except as noted below.

The Federal regulations at 30 CFR 817.121(c)(4) contain requirements for establishing and rebutting a presumption of causation by subsidence. Unlike the Federal requirements, the proposed State provisions at 38–2–16.2.c.3. apply the presumption of causation to subsidence related damage within the area where a presubsidence structural survey is required, whereas the Federal regulations at 30 CFR 817.121(c)(4)(i) apply the presumption to the surface area within the angle of draw. Since the proposed State regulations at 38–2–3.12.a.2. require the survey to be conducted for any structures within the angle of draw, however, the effect of both the Federal and State provisions should be the same, namely, that the presumption will apply to all structures within the 30 degree angle of draw.

The WVDEP has stated, however, that it would not apply the presumption for a structure if the applicant has already provided, and the State accepted, a demonstration of ''no anticipated material damage'' for structures above areas where developmental mining occurs where coal extraction will be less than or equal to 60 percent (See, CSR 38–2–3.12.a.2.). The WVDEP argues that it would be inappropriate for the State to assert a presumption that mining caused alleged damage within the applicable angle of draw when the State has already made a finding, based on evidence presented by the permittee, that coal removal would not cause damage to structures.

The Director does not agree with the WVDEP that a presumption does not apply. The Director finds that the Federal regulations require application of the presumption to any structure within the applicable angle of draw, even if a presubsidence survey was not performed for that structure. Therefore, the Director finds that 38–2–16.2.c.3. is less effective than the Federal regulations at 30 CFR 817.121(c)(4)(i) to the extent that the presumption of causation of subsidence damage only applies within the area which a pre-subsidence structural survey is required. Therefore, the Director is requiring that § 38–2–16.2.c.3. be further amended to provide that a rebuttable presumption of causation would exist within the applicable angle of draw, regardless of whether or not a presubsidence survey has been conducted.

In addition, in Subparagraph c.3.B. the word ''or'' appears after the phrase ''other factors,'' whereas in the counterpart Federal provision at 30 CFR 817.121(c)(4)(iv) the word ''and'' appears after the phrase ''other factors.'' Under the State provision, the presumption that damage was caused by subsidence would be rebutted if the evidence establishes that the damage was proximately caused by some other factors, ''or'' was not proximately caused by subsidence. The counterpart Federal provision provides examples of how the presumption can be rebutted. The preamble discussion of the Federal provision states that the permittee must

provide information on the effect of the underground mining, but ''[t]he proof needed to rebut the presumption will be determined on a case-by-case basis.'' 60 FR 16740, col. 2. The Federal provision states that the presumption would be rebutted if, for example, the evidence establishes that the damage was proximately caused by some other factors, *and* was not proximately caused by subsidence. In instances where there is only one proximate cause, the two tests are equally rigorous, since a finding that some other factor proximately caused the damage necessarily includes a finding that subsidence was not the proximate cause. In such instances, a permittee who successfully demonstrates that subsidence did not proximately cause damage would not be required, under either the Federal or State test, to identify the other factor or factors that did proximately cause the damage. However, in a case where there may not be a single proximate cause, but two or more concurrent causes, one of which is subsidence, the State test is less effective, because it would allow a permittee to rebut the presumption by merely demonstrating that some other factor was a contributing (proximate) cause. By contrast, in such cases, the Federal example would require the permittee to demonstrate that subsidence was not a proximate cause. In this type of case, if the permittee did not demonstrate that subsidence was not a proximate cause, the Federal presumption would not be rebutted, whereas the State presumption could be. Because the State language could allow rebuttal of the presumption without information on the effect of the underground mining in such circumstances, the Director finds that CSR 38–2–16.2.c.3.B. is less effective than the Federal regulations at 30 CFR 817.121(c)(4)(iv). Consequently, the Director is requiring that the State amend CSR 38–2–16.2.c.3.B., or otherwise amend its program, to make it clear that the presumption of subsidence causation of damage can be rebutted only where the permittee demonstrates that the damage was proximately caused by some other factor or factors and was not proximately caused by subsidence.

26. *CSR 38–2–16.2.c.4.—Bonding for subsidence damage.* This provision is added to provide that when subsidence related material damage occurs to lands, structures, or water supply, and if the director issues violation(s), the director may extend the 90-day abatement period to complete repairs, but the extension shall not exceed one year from date of violation notice. To qualify for an extension, the permittee must demonstrate, in writing, that it would be unreasonable to complete repairs within the 90-day abatement period. If the abatement period is extended beyond 90 days, as part of the remedial measures, the permittee shall post an escrow bond to cover the estimated costs of repairs.

The Federal regulations contain similar requirements regarding bond adjustments for subsidence related damage. Unlike the Federal regulations, the State provision does not appear to specifically require bond adjustment when subsidence related material damage occurs to facilities. However, the WVDEP has stated that it interprets its definition of ''structures'' at CSR 38–2–2.116 to include ''facilities'' as used in the Federal language at 30 CFR 817.121(c)(5). The Director accepts the State's interpretation that ''structures'' includes ''facilities.''

Also, subsection 16.2.c.4. does not specifically require an operator, as does the Federal provision, to post additional bond in the amount of the decrease in the value of the property if the permittee will be compensating the owner, or in the amount of the estimated cost to replace the water supply until the repair, compensation, or replacement is completed. The WVDEP explained that the term ''compensation'' is not used in the State provision because ''compensation'' is a concept that must be adjudicated in West Virginia, and the WVDEP can't make that determination before the court does. The WVDEP further explained that under the phrase ''estimated cost of repair'' the WVDEP requires an escrow bond that would be the equivalent to the ''compensation'' required by the Federal regulations. The Director disagrees with the State's conclusion that ''repair'' is equivalent to ''compensation.'' Nevertheless, the Director finds that the State provision is no less effective than its Federal counterpart, because it requires the posting of an adequate bond to cover repair costs in all instances, even where the permittee proposes to compensate, rather than repair or replace. In this respect, the landowner will be assured of receiving adequate funds to cover the costs of repair or replacement of his or her structure in the event the permittee defaults on its obligation to repair, replace or compensate. Since repair, replacement and compensation are all acceptable means of meeting the permittee's obligations under the State counterpart to the Energy Policy Act of 1992, the State requirement to post a repair bond fairly meets the purposes of the Energy Policy Act.

The State provision also provides for an extension to the 90-day abatement period requirement provided that the permittee demonstrates that it would be unreasonable to complete repairs within the 90-day abatement period. The counterpart Federal requirements provide that an extension of the 90-day abatement period may be granted for three reasons: that subsidence is not complete; that not all subsidence related material damage has occurred; or that not all reasonably anticipated changes have occurred affecting the protected water supply and, therefore it would be unreasonable to complete repairs within 90 days. In response to OSM's questions concerning this difference, the WVDEP explained that the WVDEP interpretation is tied to the State rules concerning Notices of Violation (NOV). Under the State system, if repair or compensation for damage or water loss is not accomplished, the State issues an NOV to the permittee. Any extension to the time limit for repair or compensation must be compatible with the NOV provisions. The State NOV provisions at Section 20.2, however, do not specifically provide for time extensions for the reasons authorized in the Federal regulations. Without counterparts to the Federal provisions that allow for extension of the 90-day abatement period only under the circumstances identified above, it appears that operators in West Virginia may be permitted to assert additional reasons as to why the abatement period should be extended. In this respect, the State provision is less effective than its Federal counterpart, which allows extensions to the abatement period under only three different circumstances.

The Director is, therefore, requiring the State to amend its program to provide that an extension of the 90-day abatement period may be granted for one of only three reasons: that subsidence is not complete; that not all subsidence related material damage has occurred; or that not all reasonably anticipated changes have occurred affecting the protected water supply.

The State provision also differs from the counterpart Federal provision in that, under the State provision, the 90-day abatement period begins with the issuance of an NOV, rather than with the date of occurrence of subsidence-related material damage. Under the Federal scheme, the permittee's obligation to repair, replace or compensate for damage begins with the occurrence of that damage. If the appropriate remedial work has not been completed within 90 days, the Federal regulation requires the permittee to post

a bond, unless the abatement period is extended for one of the three reasons discussed above. Under the State scheme, however, the permittee's 90 day ''grace period'', wherein no bond is required, begins only after a NOV is issued. In reality, the permittee could enjoy a grace period of much longer than 90 days under the State provision, since there will always be some time lapse between the occurrence of damage and the issuance of a NOV. Therefore, the Director finds that the State provision is less effective than its Federal counterpart, and she is requiring the State to amend this provision, or otherwise amend its program, to require that the 90-day period before which additional bond must be posted begin to run from the date of occurrence of subsidence-related material damage.

The Federal bonding and 90-day abatement period requirements at CFR 817.121(c)(5) also apply to any contamination, diminution, or interruption of a drinking, domestic or residential water supply as a result of underground mining activities. The State's provision, however, only applies these requirements to subsidence-related damage to water. In response to OSM's questions, the WVDEP stated that it disagrees with OSM's interpretation because CFR 817.121(c)(5) only applies to subsidence related damage. The Director disagrees with this assessment of CFR 817.121(c)(5). CFR 817.121(c)(5) provides that ''when contamination, diminution, or interruption to a water supply protected under § 817.41(j) occurs, the regulatory authority must require the permittee to obtain additional performance bond * * * in the amount of the estimated cost to replace the protected water supply if the permittee will be replacing the water supply, until the * * * replacement is completed.'' 30 CFR 817.41 provides the hydrologic-balance protection standards for underground mining. Subsection 817.41(j) provides for the replacement of any drinking, domestic or residential water supply that is contaminated, diminished or interrupted by underground mining activities conducted after October 24, 1992, if the affected well or spring was in existence before the date the regulatory authority received the permit application for the activities causing the loss, contamination or interruption. Therefore, CFR 817.121(c)(5) clearly provides for additional bond whenever protected water supplies are contaminated, diminished or interrupted by underground mining activities conducted after October 24, 1992. The Director finds CSR 38–2–16.2.c.4. to be less effective than the counterpart Federal regulations to the extent that the West Virginia provision limits the requirement for additional bond for water supplies contaminated, diminished, or interrupted only to such water supplies that are so affected specifically by subsidence rather than by underground mining operations in general. The Director is requiring the State to further amend the West Virginia program to be no less effective than the Federal regulations at CFR 817.121(c)(5) to require additional bond whenever protected water supplies are contaminated, diminished or interrupted by underground mining activities conducted after October 24, 1992. The amount of the additional bond must be adequate to cover the estimated cost of replacing the affected water supply.

27. *CSR 38–2–20.1.e.—Inspection frequencies.* This provision is added to provide that the permittee may request an on-site compliance conference. It also sets forth the requirements related to such a conference. A compliance conference shall not constitute an inspection, within the meaning of § 22–3–15 of the WVSCMRA and CSR 38–2–20. Neither the holding of a compliance conference nor any opinion given by an authorized representative of the director at a conference shall affect the following: CSR 38–2–20.1.e.1.—Any rights or obligations of the director or by the permittee with respect to any inspection, notice of violation, or cessation order, whether prior to or subsequent to the compliance conference; or CSR 38–2–20.1.e.2.—The validity of any notice of violation or cessation order issued with any condition or practice reviewed at the compliance conference.

The Federal regulations at 30 CFR 840.16 contain procedures governing compliance conferences. The added State compliance conference procedures at subsection 20.1.e. are the same as the corresponding Federal procedures and are, therefore, approved.

IV. Summary and Disposition of Comments

Federal Agency Comments

Pursuant to section 503(b) of SMCRA and 30 CFR 732.17(h)(11)(i), comments were solicited from various interested Federal agencies. The U.S. Department of the Army, Army Corps of Engineers responded and stated that the amendments are satisfactory to the agency. The U.S. Department of Labor, Mine Safety and Health Administration (MSHA) made several comments, none of which, however, pertain to the amendments being considered by OSM. Therefore, MSHA's comments are not being addressed in this notice.

Public Comments

The following comments were received in response to the public comment periods.

CSR 38–2–3.29—Incidental Boundary Revisions

The commenter stated that the state is expanding the limits for IBR's even further, and is also proposing to allow coal removal under the auspices of IBR's. In response, the Director notes that as discussed in Finding B–10, the Director is only partially approving this provision. The Director has not approved the proposed language that would have authorized coal removal as the primary purpose of the IBR. While the term incidental boundary revisions is not defined in the Federal regulations, OSM has required that such revisions be minor in nature, so as not to effect significant changes to the environment, or the environmental protection information upon which permit conditions and permit approval were based. Furthermore, the Director has determined that to be consistent with the intent of sections 511(a)(3) of SMCRA and 30 CFR 774.13(d) which pertain to incidental boundary revisions, coal removal cannot be the primary purpose of an IBR.

W.Va. Code §§ 22–3–3(u) and 22–3–28—Special Authorization for Exceptions to the Definition of Surface Mining (Special Permits)

The commenter stated that this amendment creates whole new categories of surface mining that will be exempt from the basic requirements and standards of permitting. In response, the Director notes that SMCRA at section 528(2) provides that the extraction of coal as an incidental part of Federal, State, or local government-financed highway or other construction under regulations established by the regulatory authority shall not be subject to the provisions of SMCRA. SMCRA at section 701(28) provides the definition of ''surface coal mining operations.'' Section 701(28) provides, in part, that surface coal mining operations means activities conducted on the surface of lands in connection with a surface coal mine. The proposed amendments at W.Va. Code §§ 22–3–3(u) and 22–3–28 reflect the State's interpretation that the proposed forms of coal removal and reclamation are authorized under section 528(2) of SMCRA, or are not

encompassed by the definition of surface coal mining operations at 701(28).

As discussed in Finding A–1 and Finding A–12, the Director is not approving §§ 22–3–3(u)(2)(2) and 22–3–28(a), (b), and (c) concerning coal extraction as an incidental part of development of land for commercial, residential, industrial, or civic use.

Also as discussed in Findings A–1 and A–12, the director is deferring a decision on the provisions at Sections 22–3–3(u)(2)(1) and 22–3–28(e) that concern government financed construction. The Director will render a decision on the West Virginia amendments after publication of new Federal regulations at 30 CFR 707 and 874 regarding the financing of AML projects that involve the incidental extraction of coal.

CSR 38–2–14.11.e., f., g. and h.—Inactive Status

The commenter stated that the proposed language further loosens the time frames allowed for operations to remain on inactive status and thus further clouds the ''temporary'' nature of mining (and the negative impacts of mining on communities and resources) envisioned in SMCRA. In response, the Director notes that the Federal regulations at 30 CFR 816/817.131 provide that surface facilities in which there are no current operations, but in which operations are to be resumed under an approved permit shall be effectively secured. Further, the Federal regulations provide that temporary abandonment shall not relieve a person of his or her obligation to comply with any provisions of the approved permit. While the Federal regulations do not define the term ''temporary cessation,'' the regulations make it clear that operations that are under temporary cessation must be under an approved permit, and must comply with the provisions of the approved permit. As discussed in Finding B–19, the Director has determined that temporarily abandoned sites in West Virginia must be permitted, and that the provisions of the permit must be met. Therefore, the Director found that the amendments are not inconsistent with the Federal requirements and can be approved.

CSR 38–2–14.15.c and .d—Contemporaneous Reclamation Standards

The commenter stated that approving the provisions would make inspecting even more difficult, and bonding will present even more confusion than currently exists. The commenter also stated that approval of the provisions would mean that the preferred mining methods are dictating the limits of SMCRA, rather than SMCRA controlling the limits of mining and its impacts. In response, the Director notes that it is essential to consider the methods of mining when developing the mining and reclamation plans, and that the type of mining will have direct impact on what is perceived as contemporaneous reclamation. For example, while contour mining can be conducted in a way that active coal removal pits are small and quickly backfilled with spoil removed to create an adjacent pit, mountaintop removal operations involving multiple-seam mining may disturb large areas for longer periods. However, essential to both operations is the need to control water and sediment movement to prevent soil loss and water pollution. The proposed amendments, while accommodating mountaintop removal mining in the contemporaneous reclamation standards, do not reduce or eliminate the performance standards for controlling erosion and sedimentation and protecting water. As stated above in Finding B–20, the Federal time and distance requirements for contemporaneous reclamation have been suspended. However, the amendments appear reasonable when the type of mining operations are considered, and the Director has concluded that the amendments are not inconsistent with the concept of contemporaneous reclamation at 30 CFR 816/817.100.

W.Va. Code 22–3–3(z)—Replacement of Water Supply

The commenter stated that the proposed definition of ''replacement of water supply'' is not acceptable for the following reasons. First, the definition omits reference to premining quality, quantity, and cost. Concerning cost, the commenter stated that under the proposed amendments, a person could end up with a water supply that costs them much more than their original water supply that was damaged by mining. In addition, the commenter asserted that the same specific protections are missing when the word ''premining'' is not included before the words ''quality and quantity.''

Second, the commenter asserted that the definition lacks any reference to replacement requirements if the affected water supply was not needed for the land use in existence at the time of loss, contamination, or diminution, and if the supply is not needed to achieve the postmining land use. In those cases, the commenter said, according to OSM final rules of March 31, 1995, a demonstration is required to show that a suitable alternative water source is available and could feasibly be developed. Written concurrence from the water supply owner is also required.

In response, the Director agrees with the commenter that the proposed definition of ''replacement of water supply'' omits reference to ''premining'' water quality and quantity. The WVDEP has clarified that the word ''equivalent'' was used to clarify that water replacement would involve replacing the quality and quantity of water in use prior to the permitted mining activity. The WVDEP further stated that replacement requires a supply that is not only equivalent in quantity and quality, but also in cost. A stated above in Finding A–4, the Director found that the proposed definition, if implemented as explained by the WVDEP, is not inconsistent with and is no less effective than the counterpart Federal definition at 30 CFR 701.5.

Concerning the commenter's second comment, the Director agrees with the commenter that the proposed definition of ''replacement of water supply'' lacks a counterpart to provision (b) of the Federal definition of ''replacement of water supply'' at 30 CFR 701.5. As stated above in Finding A–4, the Director is requiring that the State further amend the West Virginia program to add such a counterpart.

CSR 38–2–16.2.c.—Material Damage

The commenter stated that possible interpretations of the word ''significant'' are troublesome at best. The commenter noted that the proposed definition of ''material damage'' reflects the minimum as set out by OSM in its final rule of March 31, 1995. The commenter also stated that the use of ''reasonably foreseeable uses'', rather than the more optimistic and far more protective ''future beneficial uses'', as incorporated in the State's Groundwater Act, is also troublesome. The Director disagrees with the commenter. As stated above in Finding B–23, except for the inadvertent omissions of words, the State's definition of ''material damage'' is substantively identical to the counterpart Federal definition at 30 CFR 701.5.

CSR 38–2–3.12—Subsidence Control Plan

The commenter stated that proposed provisions concerning subsidence control plans, presubsidence surveys, presumption of causation, repair of damage, etc. offer less protection than OSM requires and should be examined closely by OSM. The commenter is referred to Findings B–7, B–8, B–25 and B–26 wherein the Director found that

not all of the provisions contained in 38–2–3.12 and 38–2–16.2.c. could be approved. Moreover, the Director is requiring the State to amend its program to correct the deficiencies found in subsections 3.12 and 16.2.c.

Environmental Protection Agency (EPA)

Pursuant to 30 CFR 732.17(h)(11)(ii), OSM is required to obtain the written concurrence of the EPA with respect to those provisions of the proposed program amendment that relate to air or water quality standards promulgated under the authority of the Clean Water Act (33 U.S.C. 1251 *et seq.*) or the Clean Air Act (42 U.S.C. 7401 *et seq.*). OSM requested EPA concurrence on June 6, 1997 (Administrative Record Number WV–1059). Pursuant to 30 CFR 732.17(h)(11)(i), OSM solicited comments from the EPA on the proposed amendment on June 5, 1997 (Administrative Record Number WV–1060)

EPA responded to OSM's request for comments and concurrence by letter dated October 23, 1998 (Administrative Record Number WV–1108). EPA has concerns about the proposed provision at § 22–3–13(c)(3) of the WVSCMRA that would allow an exemption for mountaintop removal operations from restoring mined land to its approximate original contour (AOC) if the post-mining land use is fish and wildlife habitat and recreation lands. EPA stated that the proposed revision would allow excess overburden to be disposed in valley fills rather than on top of the mined area to achieve AOC. A use designation as fish and wildlife habitat and recreation lands would not appear to be necessary if the goal was just to provide wildlife habitat and recreation land, rather than avoid the expense of placing overburden back on top of mined areas. It is very likely, EPA stated, that wildlife habitat areas would occur naturally on post-mining lands, including areas restored to the approximate original contour, as a result of appropriate reclamation without any special use designation. In addition, it appears that the proposed designation as wildlife habitat and recreation lands is not intended for lands to be used by the public since an exemption for ''public use'' is already in the State statute. EPA said that its concern is that disposal of excess overburden in valley fills may harm aquatic life in headwater streams and possibly downstream reaches.

EPA noted OSM's intention to defer action on proposed revisions to § 22–3–13(c)(3) of the WVSCMRA regarding an exemption to approximate original contour for mountaintop removal operations until a later date and that the comment period will be reopened on this provision. With this understanding, the EPA concurred with the proposed WVDEP revisions under the condition that the EPA be given an opportunity to concur or not concur with the proposed amendment to § 22–3–13(c)(3) of the WVSCMRA.

V. Director's Decision

Based on the findings above the Director is approving West Virginia's proposed amendment submitted on April 28, 1997, except as noted below.

Sec. 22–3–3(u)(2) Amendments to the definition of ''surface mine'' are approved with the following exceptions: (1) The provision concerning coal extraction authorized pursuant to a government financed reclamation contract is deferred. (2) The provision concerning coal extraction incidental to development of land for commercial, residential, or civic use is not approved. (3) The provision concerning the reclamation of abandoned or forfeited mines by no-cost reclamation contracts is approved, except for the disposal of excess spoil on abandoned and forfeited sites pursuant to ''no cost'' contracts, which will be considered in another rulemaking.

Sec. 22–3–3(y) is approved, but the portion pertaining to bond forfeitures is approved only to the extent that AML funds may be used to reclaim sites where a bond or deposit has been forfeited only if the bond or deposit is insufficient to provide for adequate reclamation or abatement.

Sec. 22–3–3(z) Amendments to the definition of ''Replacement of water supply'' are approved with the understanding that the definition will be implemented as explained above in Finding A–4.

In addition, the required amendment, at 30 CFR 948.16(sss), remains in effect.

A decision on Sec. 22–3–13(c)(3) is deferred.

Sec. 22–3–17(b) is approved, but because the State's proposed reinstatement provisions do not reference the transfer, assignment or sale requirements of Section 22–3–19(d) of WVSCMRA or CSR 38–2–3.25, and because the WVDEP acknowledges that it has not fully developed its reinstatement procedures, the State cannot implement the proposed provisions until its program is further amended. Therefore, the Director is requiring that the State further amend the West Virginia program to adopt reinstatement procedures similar to its transfer requirements contained in CSR 38–2–3.25. The procedures must allow for public participation, require that the revoked permit meet the appropriate permitting requirements of the WVSCMRA, and require that the mining and reclamation plan be modified to address any outstanding violations for any permit reinstated pursuant to § 22–3–17(b) of the WVSCMRA. However, in no event can a reinstated permit be approved in advance of the close of the public comment period, and the party seeking reinstatement must post a performance bond that will be in effect before, during, and after the reinstatement of the revoked permit.

The provisions in Section 22–3–28 (a), (b) and (c) concerning coal mining incident to the development of land for commercial, residential, industrial or civic use are not approved.

A decision on section 22–3–28(e) is deferred.

Sec. 22–3–28(f) is approved, but may be implemented only with respect to those portions of sec. 22–3–28 that are approved in this rulemaking.

38–2–2.43 Definition of ''downslope.'' The amendment to the definition of ''downslope'' is not approved.

38–2–2.95 Definition of ''prospecting.'' The Director is not approving the addition of the word ''substantial'' to modify the word ''disturbance'' in the definition of ''prospecting.''

38–2–2.120 Definition of ''substantially disturb.'' The director is approving the amendment to this definition to the extent that the phrase ''land and water resources'' is construed to mean ''land or water resources.'' The Director is requiring that West Virginia amend its program by changing the phrase ''land and water resources'' to ''land or water resources'', in the definition of ''substantially disturb'', or by otherwise making it clear that the term ''substantially disturb'', for the purposes of prospecting, includes a significant impact on either land or water resources.

38–2–3.12.a.1. The phrase ''within an angle of draw of at least 30-degrees'' at § 38–2–3.12.a.1 is not approved. In addition, the Director is requiring that the State amend its program to require that the map of all lands, structures, and drinking, domestic and residential water supplies which may be materially damaged by subsidence show the type and location of all such lands, structures, and drinking, domestic and residential water supplies. Finally, the Director is requiring that the State amend its program to require that the permit application include a narrative indicating whether subsidence, if it occurred, could cause material damage to or diminish the value or reasonably foreseeable use of such structures or

renewable resource lands or could contaminate, diminish, or interrupt drinking, domestic, or residential water supplies.

38–2–3.12.a.1., pertaining to alternative, site-specific angles of draw, is approved with the understanding that such an alternative angle of draw would be justified based on a site-specific geotechnical analysis of the potential surface impacts of the mining operation. In addition, the Director is requiring that the State further amend the West Virginia program to clarify that approval of any alternative angle of draw will be based on a written finding that the proposed angle of draw has a more reasonable basis than the 30-degree angle of draw based on site-specific geotechnical analysis of the potential surface impacts of the proposed mining operation.

38–2–3.12.a.2. is approved except that the phrase ''within the area encompassed by the applicable angle of draw'' as it applies to water supply surveys is not approved. The definition of ''non-commercial building'' is not approved. The Director is requiring that the State amend the definition of ''non-commercial building'' at 38–2–3.12.a.2., or otherwise amend the West Virginia program, to clarify that ''non-commercial building'' includes such buildings used on a regular or temporary basis. In addition, the Director is requiring that the West Virginia program be further amended to be no less effective than 30 CFR 784.20(a)(3) by requiring a pre-subsidence survey, without limitation by an angle of draw, of the quantity and quality of all drinking, domestic, and residential water supplies within the permit area and adjacent area that could be contaminated, diminished, or interrupted by subsidence.

38–2–3.12.a.2.A. and .B. are not approved.

The Director is also requiring that West Virginia amend CSR 38–2–3.12.a.2., or otherwise amend its program, to require that the permit applicant pay for any technical assessment or engineering evaluation used to determine the premining condition or value of non-commercial buildings or occupied residential dwellings or structures related thereto and the quality of drinking, domestic or residential water supplies, and to require that the applicant provide copies of any technical assessment or engineering evaluation to the property owner and to the regulatory authority.

38–2–3.29.a. is approved except the phrase ''the only practical alternative to recovery of unanticipated reserves or'' is not approved.

38–2–8.2.e. is approved with the understanding that the design of the windrowing will be reviewed by a State wildlife biologist as part of the wildlife enhancement plan for a postmining land use containing wildlife habitat.

38–2–16.2.c. is approved with the understanding that the State will correct the inadvertent omission of words in future rulemaking, and will interpret the current definition as if the inadvertently omitted words were present; and that the State will consider its definition of ''structure'' at 38–3–2.116 to include ''facilities'' as used in the Federal sense.

38–2–16.2.c.3. is less effective than the Federal regulations at 30 CFR 817.121(c)(4)(i) to the extent that the presumption of causation of subsidence damage only applies within the area which a pre-subsidence structural survey is required. The Director is requiring that § 38–2-16.2.c.3. be further amended to provide that a rebuttable presumption of causation would exist within the applicable angle of draw, regardless of whether or not a presubsidence survey has been conducted.

38–2–16.2.c.3.B. The Director is requiring the State to further amend CSR 38–2–16.2.c.3.B, or otherwise amend its program, to make it clear that the presumption of subsidence causation of damage can be rebutted only where the permittee demonstrates that the damage was proximately caused by some other factor or factors and was not proximately caused by subsidence.

CSR 38–2–16.2.c.4 is approved except: To the extent that it does not limit extensions of the 90-day abatement period under circumstances set forth in the Federal regulations at 30 CFR 817.121(c)(5); to the extent that it limits the requirement for additional bond for water supplies contaminated, diminished, or interrupted only to such water supplies that are so affected specifically by subsidence rather than by underground mining operations in general; and, to the extent that it provides that the 90-day period before which additional bond must be posted does not begin to run until an NOV is issued. In addition, the Director is requiring that the State amend 38–2–16.2.c.4., or otherwise amend the West Virginia program, to be no less effective than the Federal regulations at 30 CFR 817.121(c)(5), which provide that an extension of the 90-day abatement period may be granted for one of only three reasons: that subsidence is not complete; that not all subsidence related material damage has occurred; or that not all reasonably anticipated changes have occurred affecting the protected water supply. The Director is also requiring that the State amend 38–2–16.2.c.4., or otherwise amend the West Virginia program, to be no less effective than the Federal regulations at 30 CFR 817.121(c)(5) by requiring additional bond whenever protected water supplies are contaminated, diminished or interrupted by underground mining operations conducted after October 24, 1992. The amount of the additional bond must be adequate to cover the estimated cost of replacing the affected water supply. Finally, the Director is requiring that the State amend 38–2–16.2.c.4., or otherwise amend the West Virginia program, to require that the 90-day period before which additional bond must be posted begin to run from the date of occurrence of subsidence-related material damage.

The Federal regulations at 30 CFR 948 codifying decisions concerning the West Virginia program are being amended to implement this decision. This final rule is being made effective immediately to expedite the State program amendment process and to encourage States to bring their programs into conformity with the Federal standards without undue delay. Consistency of State and Federal standards is required by SMCRA.

VI. Procedural Determinations

Executive Order 12866

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

Executive Order 12988

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

National Environmental Policy Act

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

Paperwork Reduction Act

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

Regulatory Flexibility Act

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

Unfunded Mandates

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

List of Subjects in 30 CFR Part 948

Intergovernmental relations, Surface mining, Underground mining.

Dated: January 27, 1999.

Michael K. Robinson,

Acting Regional Director, Appalachian Regional Coordinating Center.

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

PART 948—WEST VIRGINIA

1. The authority citation for Part 948 continues to read as follows:

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

2. Section 948.15 is amended in the table by adding a new entry in chronological order by ''Date of Final Publication'' to read as follows:

§ 948.15 Approval of West Virginia regulatory program amendments.

* * * * *

Original amendment submission date	Date of final publication	Citation/description
*	*	* * * * *
April 28, 1997	February 9, 1999	W.Va. Code 22–3 Sections 3(u)(2)(1) (decision deferred), (2)(not approved), (3); 3(x), (y)(partial approval), (z)(partial approval); 13(b)(20), (22), (c)(3)(decision deferred); 15(h); 17(b); 18(c), (f); 28(a-c) (not approved), (d), (e)(decision deferred), (f). WV Regulations CSR 38–2 Sections 2.4, 2.43 (not approved), 2.95 (not approved), 2.108, 2.120; 3.2.e; 3.12.a.1 (partial approval), .2 (partial approval); 3.14.b.7 & .8 deleted, .12.E, .15.B deleted, .13.B; 3.29.a (partial approval); 3.35; 5.5.c; 6.5.a; 8.2.e; 9.2.i.2; 9.3.h.1, .2; 14.11.e, .f, .g, .h; 14.15.b.6.A, .c, .d; 16.2.c (partial approval), .2, .3 (partial approval), .4 (partial approval); 20.1.e.

3. Section 948.16 is amended by adding new paragraphs (www through hhhh) to read as follows:

§ 948.16 Required regulatory program amendments.

* * * * *

(www) By April 12, 1999, West Virginia must submit either a proposed amendment or a description of an amendment to be proposed, together with a timetable for adoption, to adopt reinstatement procedures similar to its transfer requirements contained in CSR 38–2–3.25 and to allow for public participation, require that the revoked permit meet the appropriate permitting requirements of the WVSCMRA, and require that the mining and reclamation plan be modified to address any outstanding violations for any permit reinstated pursuant to § 22–3–17(b) of the WVSCMRA.

(xxx) By April 12, 1999, West Virginia must submit either a proposed amendment or a description of an amendment to be proposed, together with a timetable for adoption, to require that West Virginia amend its program by changing the phrase ''land and water resources'' to ''land *or* water resources'', in the definition of ''substantially disturb'' at 38–2–2.120, or by otherwise making it clear that the term ''substantially disturb'', for the purposes of prospecting, includes a significant impact on either land or water resources.

(yyy) By April 12, 1999, West Virginia must submit either a proposed amendment or a description of an amendment to be proposed, together with a timetable for adoption to revise 38–2–3.12.a.1., or otherwise amend the West Virginia program to clarify that approval of any alternative angle of draw will be based on a written finding that the proposed angle of draw has a more reasonable basis than the 30-degree angle of draw based on site-specific geotechnical analysis of the potential impacts of the proposed mining operation.

(zzz) By April 12, 1999, West Virginia must submit either a proposed amendment or a description of an amendment to be proposed, together with a timetable for adoption to revise 38–2–3.12.a.1., or otherwise amend the West Virginia program to require that the map of all lands, structures, and drinking, domestic and residential water supplies which may be materially damaged by subsidence show the type and location of all such lands, structures, and drinking, domestic and residential water supplies within the permit and adjacent areas, and to require that the permit application include a narrative indicating whether subsidence, if it occurred, could cause material damage to or diminish the value or reasonably foreseeable use of such structures or renewable resource lands or could contaminate, diminish, or interrupt drinking, domestic, or residential water supplies.

(aaaa) By April 12, 1999, West Virginia must submit either a proposed amendment or a description of an amendment to be proposed, together with a timetable for adoption to revise

CSR 38–2–3.12.a.2., or otherwise amend the West Virginia program to require that the water supply survey required by CSR 38–2–3.12.a.2. include all drinking, domestic, and residential water supplies within the permit area and adjacent area, without limitation by an angle of draw, that could be contaminated, diminished, or interrupted by subsidence.

(bbbb) By April 12, 1999, West Virginia must submit either a proposed amendment or a description of an amendment to be proposed, together with a timetable for adoption to revise 38–2–3.12.a.2., or otherwise amend the West Virginia program to require that the permit applicant pay for any technical assessment or engineering evaluation used to determine the premining condition or value of non-commercial buildings or occupied residential dwellings or structures related thereto and the quality of drinking, domestic or residential water supplies, and to require that the applicant provide copies of any technical assessment or engineering evaluation to the property owner and to the regulatory authority.

(cccc) By April 12, 1999, West Virginia must submit either a proposed amendment or a description of an amendment to be proposed, together with a timetable for adoption to amend the definition of ''non-commercial building'' at 38–2–3.12.a.2. to clarify that ''non-commercial building'' includes such buildings used on a regular or temporary basis.

(dddd) By April 12, 1999, West Virginia must submit either a proposed amendment or a description of an amendment to be proposed, together with a timetable for adoption to amend its regulations at CSR 38–2–16.2.c.3., or otherwise amend the West Virginia program, to provide that a rebuttable presumption of causation would exist within the applicable angle of draw, regardless of whether or not a presubsidence survey has been conducted.

(eeee) By April 12, 1999, West Virginia must submit either a proposed amendment or a description of an amendment to be proposed, together with a timetable for adoption to amend its regulations at CSR 38–2–16.2.c.3.B., or otherwise amend its program, to make it clear that the presumption of causation of damage by subsidence can be rebutted by evidence that the damage was proximately caused by some other factors and was not proximately caused by subsidence.

(ffff) By April 12, 1999, West Virginia must submit either a proposed amendment or a description of an amendment to be proposed, together with a timetable for adoption to amend 38–2–16.2.c.4., or otherwise amend the West Virginia program, to be no less effective than the Federal regulations at 30 CFR 817.121(c)(5), which provide that an extension of the 90-day abatement period may be granted for one of only three reasons: that subsidence is not complete; that not all subsidence related material damage has occurred; or that not all reasonably anticipated changes have occurred affecting the protected water supply.

(gggg) By April 12, 1999, West Virginia must submit either a proposed amendment or a description of an amendment to be proposed, together with a timetable for adoption to amend 38–2–16.2.c.4., or to otherwise amend the West Virginia program, to be no less effective than the Federal regulations at 30 CFR 817.121(c)(5) by requiring additional bond whenever protected water supplies are contaminated, diminished or interrupted by underground mining operations conducted after October 24, 1992. The amount of the additional bond must be adequate to cover the estimated cost of replacing the affected water supply.

(hhhh) By April 12, 1999, West Virginia must submit either a proposed amendment or a description of an amendment to be proposed, together with a timetable for adoption to amend CSR 38–2–16.2.c.4., or to otherwise amend the West Virginia program, to be no less effective than the Federal regulations at 30 CFR 817.121(c)(5), by requiring that the 90-day period before which additional bond must be posted begin to run from the date of occurrence of subsidence-related material damage.

[FR Doc. 99–3128 Filed 2–8–99; 8:45 am]

BILLING CODE 4310–05–P

DEPARTMENT OF DEFENSE

Office of the Secretary

32 CFR Part 235

Sale or Rental of Sexually Explicit Material on DoD Property

AGENCY: Department of Defense.

ACTION: Final rule.

SUMMARY: This rule concerns sexually explicit audio recordings, films, video recordings, or periodicals with visual depictions available for sale or rental on property under the jurisdiction of the Department of Defense. It implements 10 U.S.C. 2489a.

EFFECTIVE DATE: This rule is effective June 29, 1998.

FOR FURTHER INFORMATION CONTACT: LTC Bernard Ingold, USA, 703–697–3387.

SUPPLEMENTARY INFORMATION:

Executive Order 12866, ''Regulatory Planning and Review''

It has been determined that 32 CFR part 235 is not a significant regulatory action. The rule does not:

(1) Have an annual effect to the economy of $100 million or more or adversely affect in a material way the economy; a section of the economy; productivity; competition; jobs; the environment; public health or safety; or State, local, or tribal governments or communities;

(2) Create a serious inconsistency or otherwise interfere with an action taken or planned by another Agency;

(3) Materially alter the budgetary impact of entitlements, grants, user fees, or loan programs, or the rights and obligations of recipients thereof; or

(4) Raise novel legal or policy issues arising out of legal mandates, the President's priorities, or the principles set forth in this Executive Order.

Pub. L. 96–354, ''Regulatory Flexibility Act'' (5 U.S.C. 601)

It has been certified that this rule is not subject to the Regulatory Flexibility Act (5 U.S.C. 601) because it would not, if promulgated, have a significant economic impact on a substantial number of small entities.

Pub. L. 96–511, ''Paperwork Reduction Act'' (44 U.S.C. Chapter 35)

It has been certified that this part does not impose any reporting or recordkeeping requirements under the Paperwork Reduction act of 1995.

List of Subjects in 32 CFR Part 235

Business, Civilian personnel, Concessions, Government contracts, Military personnel.

Accordingly, title 32 of the Code of Federal Regulations, Chapter I, subchapter M, is amended to add part 235 to read as follows:

PART 235—SALE OR RENTAL OF SEXUALLY EXPLICIT MATERIAL ON DOD PROPERTY

Sec.

235.1 Purpose.
235.2 Applicability and scope.
235.3 Definitions.
235.4 Policy.
235.5 Responsibilities.
235.6 Procedures.
235.7 Information requirements.

Authority: 10 U.S.C. 2489a.

§ 235.1 Purpose.

This part implements 10 U.S.C. 2489a, consistent with DoD Directive 1330.9 [1] by providing guidance about restrictions on the sale or rental of sexually explicit materials on property under the jurisdiction of the Department of Defense or by members of the Armed Forces or DoD civilian officers or employees, acting in their official capacities.

§ 235.2 Applicability and scope.

This part: (a) Applies to the Office of the Secretary of Defense, the Military Departments (including the Coast Guard when it is operating as a Service in the Navy), the Chairman of the Joint Chiefs of Staff, the Combatant Commands, the Inspector General of the Department of Defense, the Defense Agencies, and the DoD Field Activities.

(b) Shall not confer rights on any person.

§ 235.3 Definitions.

Dominant theme. A theme of any material that is superior in power, influence, and importance to all other themes in the material combined.

Lascivious. Lewd and intended or designed to elicit a sexual response.

Material. An audio recording, a film or video recording, or a periodical with visual depictions, produced in any medium.

Property under the jurisdiction of the Department of Defense. Commissaries operated by the Defense Commissary Agency and facilities operated by the Army and Air Force Exchange Service, the Navy Exchange Service Command, the Marine Corps Exchanges, and U.S. Navy ships' stores (sometimes referred to collectively herein as ''retail outlets''), excluding, for the purposes of this part, entities that are not instrumentalities of the United States.

Sexually explicit material. Material, the dominant theme of which is the depiction or description of nudity, including sexual or excretory activities or organs, in a lascivious way.

§ 235.4 Policy.

In implementing 10 U.S.C. 2489a, it is DoD policy that: (a) No sexually explicit material may be offered for sale or rental on property under the jurisdiction of the Department of Defense, and no member of the Armed Forces, or DoD civilian officer or employee, acting in his or her official capacity, shall offer for sale or rental any sexually explicit material.

(b) Material shall not be deemed sexually explicit because of any message or point of view expressed therein.

§ 235.5 Responsibilities.

(a) The Assistant Secretary of Defense for Force Management Policy, under the Under Secretary of Defense for Personnel and Readiness, shall:

(1) Monitor and, as to DoD resale activities under the Assistant Secretary's authority, direction and control, ensure compliance with this part;

(2) Establish, and appoint a chair of, the Resale Activities Board of Review (the ''Board'') and approve senior representatives from the Army and Air Force Exchange Service, the Navy Exchange Service, and the Marine Corps Exchange Service; and approve a senior representative from each of the Military Departments, if designated by the Military Department concerned, to serve as board members on the Resale Activities Board.

(3) Monitor the activities of the Resale Activities Board of Review and ensure that the Board discharges its responsibilities as set forth in § 235.6.

(b) The Secretaries of the Military Departments shall ensure that their respective component DoD resale activities comply with this part and may designate a senior representative to serve on the Board.

(c) The Secretary of the Army and the Secretary of the Air Force shall each appoint one senior representative from the Army and Air Force Exchange Service to serve on the Board.

(d) The Secretary of the Navy shall appoint a senior representative from the Navy Exchange Service Command and a senior representative from the Marine Corps Exchange Service to serve on the Board.

§ 235.6 Procedures.

(a) The Board shall have the authority and responsibility periodically to review material offered or to be offered for sale or rental on property under DoD jurisdiction, and to determine whether any such material is sexually explicit in accordance with this part. Within 60 days of the issuance of this part, the Board shall undertake and complete an initial review of material that is offered for sale or rental on the date that this part becomes effective.

(b) If the Board determines that any material offered for sale or rental on property under DoD jurisdiction is sexually explicit, such material shall be withdrawn from all retail outlets where it is sold or rented and returned to distributors or suppliers, and shall not be purchased absent further action by the Board.

(c) Following its initial review under paragraph (a) of this section, the Board shall convene as necessary to determine whether any material offered or to be offered for sale or rental on property under DoD jurisdiction is sexually explicit. The Board members shall, to the extent practicable, maintain and update relevant information about material offered or to be offered for sale or rental on property under DoD jurisdiction.

(d) If any purchasing agent or manager of a retail outlet has reason to believe that material offered or to be offered for sale or rental on property under DoD jurisdiction may be sexually explicit as defined herein, and such material is not addressed by the Board's instructions issued under paragraph (e) of this section, he or she shall request a determination from the Board about such material.

(e) At the conclusion of its initial review under paragraph (a) of this section, and, thereafter, from time to time as necessary, the Board shall provide instructions to purchasing agents and managers of retail outlets about the withdrawal and return of sexually explicit material. The Board may also provide instructions to purchasing agents and managers of retail outlets about material that it has determined is not sexually explicit. Purchasing agents and managers of retail outlets shall continue to follow their usual purchasing and stocking practices unless instructed otherwise by the Board.

§ 235.7 Information requirements.

The Chair, Resale Activities Board of Review, shall submit to the Assistant Secretary of Defense for Force Management Policy an annual report documenting the activities, decisions, and membership of the Board. The annual report shall be due on October 1. The annual report required by this part is exempt from licensing in accordance with paragraph 5.4.3. of DoD 8910.1–M.[2]

Dated: February 3, 1999.

L.M. Bynum,

Alternate OSD Federal Register Liaison Officer, Department of Defense.

[FR Doc. 99–3023 Filed 2–8–99; 8:45 am]

BILLING CODE 5000–04–M

[1] Copies are available at http://web7.osd.mil/corres.htm.

[2] See footnote 1 to § 235.1.

DEPARTMENT OF TRANSPORTATION

Coast Guard

33 CFR Part 117

[CGD05–99–004]

Drawbridge Operation Regulations; Atlantic Intracoastal Waterway, Morehead City, NC

AGENCY: Coast Guard, DOT.

ACTION: Notice of temporary deviation from regulations.

SUMMARY: The Commander, Fifth Coast Guard District has issued a temporary deviation from the regulations governing the operation of the Beaufort & Morehead Railroad Bridge across the Atlantic Intracoastal Waterway (ICW), mile 203.8, in Morehead City, North Carolina. Beginning February 22, 1999, through February 28, 1999, this deviation allows the bridge to remain closed to navigation between the hours of 7 a.m. to 12 noon; and 1 p.m. to 5 p.m. The closure is necessary to facilitate the rehabilitation of the bridge's bascule span.

DATES: This deviation is effective from 7 a.m. on February 22, 1999 until 5 p.m. on February 28, 1999.

FOR FURTHER INFORMATION CONTACT: Ann B. Deaton, Bridge Administrator, Fifth Coast Guard District, at (757) 398–6222.

SUPPLEMENTARY INFORMATION: The Beaufort & Morehead Railroad Bridge is owned and operated by the North Carolina Department of Transportation (NCDOT). The current regulations in Title 33 Code of Federal Regulations, Section 117.5 require the draw to open promptly and fully upon signal for the passage of vessels.

In May 1998, the Coast Guard approved the rehabilitation work of the bridge for structural repairs. On December 16, 1998, the Coast Guard received a request from McLean Contracting Company, contractors for NCDOT, to schedule daytime closures of the bridge to facilitate the ongoing rehabilitation of the railroad bridge.

The Coast Guard has advised the local Coast Guard units, including MSO Wilmington and Group Fort Macon, of the bridge's closure on the requested times and dates, and they did not object. The Coast Guard will inform the commercial/recreational users of the waterway of the bridge closure in the weekly Notice to Mariners so that these vessels can arrange their transits to avoid being temporarily impacted by this deviation.

Beginning February 22, 1999, through February 28, 1999, this deviation allows the bridge to remain closed to navigation between the hours of 7 a.m. to 12 noon; and 1 p.m. to 5 p.m.

Dated: February 1, 1999.

Roger T. Rufe, Jr.,

Vice Admiral, U.S. Coast Guard Commander, Fifth Coast Guard District.

[FR Doc. 99–3134 Filed 2–8–99; 8:45 am]

BILLING CODE 4910–15–M

DEPARTMENT OF TRANSPORTATION

Coast Guard

33 CFR Part 117

[CGD8–96–049]

RIN 2115–AE47

Drawbridge Operation Regulation; Back Bay of Biloxi, MS

AGENCY: Coast Guard, DOT.

ACTION: Interim rule with request for comments.

SUMMARY: The Coast Guard is changing the regulation governing the operation of the Popps Ferry Road bascule span bridge across the Back Bay of Biloxi, mile 8.0, at Biloxi, Harrison County, Mississippi. This final rule permits the draw to remain closed to navigation from 7:30 a.m. to 9 a.m. and from 4:30 p.m. to 6 p.m., Monday through Friday, except Federal holidays. Presently, the draw opens on signal at all times.

DATES: This rule becomes effective on March 11, 1999. Comments must be received by May 10, 1999.

ADDRESSES: You may mail comments to Commander (ob), Eighth Coast Guard District, 501 Magazine Street, New Orleans, Louisiana 70130–3396, or deliver them to room 1313 at the same address between 8 a.m. and 3 p.m., Monday through Friday, except Federal holidays.

The Commander, Eighth Coast Guard District, Bridge Administration Branch 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 the address given above, between 8 a.m. and 3 p.m., Monday through Friday, except Federal holidays.

FOR FURTHER INFORMATION CONTACT: Mr. Philip R. Johnson, Bridge Administration Branch, (504) 589–2965.

SUPPLEMENTARY INFORMATION:

Requests for Comments

The Coast Guard encourages interested parties to participate in this rulemaking by submitting written data, views, or arguments. Persons submitting comments should include their names and addresses, identify this rulemaking (CGD 08–96–049) and the specific section of this document to which each comment applies, and give the reason for each comment. Please submit all comments and attachments in an unbound format, no larger that 8½ by 11 inches, suitable for copying and electronic filing. Persons wanting acknowledgment of receipt of comments should enclose stamped, self-addressed postcards or envelopes.

The Coast Guard will consider all comments received during the comment period and may revise this rule before making it final.

Background and Purpose

The Coast Guard is changing the operation of the Popps Ferry Road bascule span bridge across the Back Bay of Biloxi, mile 8.0, at Biloxi, Harrison County, Mississippi. Navigation on the waterway consists of tugs with tows, commercial fishing vessels and occasional recreational craft. Vehicular traffic crossing the bridge during peak rush hour traffic periods has increased significantly during recent years. Additionally, since the City of Biloxi is bisected by the Popps Ferry Road Bridge, openings of the draw span, during rush hour traffic periods, paralyze vehicular traffic movement. This is the only route available to mid-city commuters without taking a 15-mile detour. This change will allow for the free flow of vehicular traffic while still meeting the reasonable needs of navigation.

The Coast Guard published a notice of proposed rulemaking on November 20, 1996 (61 FR 59047). The proposed rule would have permitted the draw to remain closed to navigation from 7:30 a.m. to 9 a.m., 11:30 a.m. to 1:30 p.m. and from 4:30 p.m. to 6 p.m., Monday through Friday, except Federal holidays.

Comments prompted the Coast Guard to reevaluate the proposal. Objections to the proposal were primarily based on the previous poor condition of the bridge which had resulted in only one bascule leaf being operable, thereby restricting navigation to daytime transits only. After the bridge had been restored to its fully operable condition, the Coast Guard published a supplemental notice of proposed rulemaking on September 23, 1998 (63 FR 50821). The supplemental notice of proposed rulemaking proposed the same schedule, but was published so that interested parties could have another opportunity to comment on the proposed change before a final decision was made.

Four letters were received in response to the supplemental notice of proposed rulemaking. One letter from the Mayor of the City of Biloxi, expressed support for the proposed rule. Two letters from towing companies expressed opposition to the proposal, stating that the times during which the bridge would be closed to navigation would severely hamper coal deliveries to the Mississippi Power Company electric power plant, during peak load periods. A letter from the Mississippi Power Company also stated that the restricted openings of the bridge would hinder deliveries of coal to the electric power plant during peak load periods. Also in that letter, Mississippi Power Company requested a meeting for all interested parties to discuss alternatives to the proposal and to seek a compromise. In response to this request, the Harrison County Board of Supervisors contacted each party who responded to the supplementary notice of proposed rulemaking and arranged a meeting on December 10, 1998 at the Harrison County Board of Supervisors Building in Biloxi, Mississippi. The towing companies and the Mississippi Power Company agreed that deleting the proposed mid-day closure of 11:30 a.m. to 1:30 p.m. Mondays through Fridays except Federal holidays would cause fewer concerns about coal deliveries.

The Coast Guard agrees that the change to the proposed rule will be less disruptive to coal deliveries to the power plant and that the two remaining closure periods in the morning and afternoon will provide relief for vehicular traffic during rush hours. This change is being published as an interim rule to make the changed schedule effective and to allow the public to comment on the schedule before the Coast Guard issues its final rule. The Coast Guard will consider all comments received and may revise this rule before making it final.

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 cost and benefits under section 6(a)(3) of that order. It has not been reviewed 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. This is because the number of vessels impaired during the proposed closed-to-navigation periods is minimal. Commercial fishing vessels and tugs with tows still have ample opportunity to transit this waterway before and after the peak vehicular traffic periods as is their customary practice.

Small Entities

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

This rule considers the needs of local commercial fishing vessels, as the study of vessels passing the bridge included such commercial vessels. These local commercial fishing vessels will still have the ability to pass the bridge in the early morning, early afternoon and evening hours. Thus, the economic impact is expected to be minimal. Additionally, there is no indication that other waterway users would suffer and type of economic hardship if they are precluded from transiting the waterway during the hours that the draw is scheduled to remain in the closed-to-navigation position. Therefore, the Coast Guard certifies under 5 U.S.C. 605(b) that this rule will not have a significant economic impact on a substantial number of small entities. If, however, you think that your business or organization qualifies as a small entity and that this final rule will have a significant impact on your business or organization, please submit a comment (see **ADDRESSES**) explaining why you think it qualifies and in what way and to what degree this final rule will economically affect it.

Collection of Information

This rule does not provide for a collection of information under the Paperwork Reduction Act of 1995 (44 U.S.C. 3501 et seq.).

Federalism

The Coast Guard has analyzed this rule under the principles and criteria contained in Executive Order 12612 and has determined that this rule does not have sufficient implications for federalism to warrant the preparation of a Federalism Assessment.

Environment

The Coast Guard considered the environmental impact of this rule and concluded that under Figure 2–1, paragraph 32(e) of Commandant Instruction M16475.1C, this final rule is categorically excluded from further environmental documentation. A ''Categorical Exclusion Determination'' is available in the docket for inspection or copying where indicated under **ADDRESSES**.

List of Subjects in 33 CFR Part 117

Bridges.

For the reasons set out in the preamble, the Coast Guard is amending Part 117 of Title 33, Code of Federal Regulations, as follows:

PART 117—DRAWBRIDGE OPERATION REGULATIONS

1. The authority citation for Part 117 continues to read as follows:

Authority: 33 U.S.C. 499; 49 CFR 1.46; 33 CFR 1.05–1(g); section 117.255 also issued under the authority of Pub. L. 102–587, 106 Stat. 5039.

2. Add § 117.675(c) to read as follows:

§ 117.675 Back Bay of Biloxi.

* * * * *

(c) The draw of the Popps Ferry Road bridge, mile 8.0, at Biloxi, shall open on signal; except that, from 7:30 a.m. to 9 a.m. and from 4:30 p.m. to 6 p.m. Monday through Friday, except Federal holidays, the draw need not be opened for passage of vessels. The draw shall open at any time for a vessel in distress.

Dated: January 26, 1999.

A.L. Gerfin, Jr.,

Captain, U.S. Coast Guard, Acting Commander, 8th Coast Guard Dist.

[FR Doc. 99–3132 Filed 2–8–99; 8:45 am]

BILLING CODE 4910–15–M

LIBRARY OF CONGRESS

Copyright Office

37 CFR Part 255

[Docket No. 96–4 CARP DPRA]

Mechanical and Digital Phonorecord Delivery Rate Adjustment Proceeding

AGENCY: Copyright Office, Library of Congress.

ACTION: Final regulations.

SUMMARY: The Copyright Office of the Library of Congress is announcing final regulations setting the rate for the delivery of digital phonorecords in general and deferring until the next scheduled rate adjustment proceeding further consideration of the royalty rate for the delivery of a digital phonorecord where the reproduction or distribution

is incidental to the transmission which constitutes a digital phonorecord delivery.

EFFECTIVE DATE: January 1, 1998.

FOR FURTHER INFORMATION CONTACT: David O. Carson, General Counsel, or Tanya M. Sandros, Attorney Advisor, Copyright Arbitration Royalty Panel (''CARP''), P.O. Box 70977, Southwest Station, Washington, DC 20024. Telephone (202) 707–8380. Telefax: (202) 252–3423.

SUPPLEMENTARY INFORMATION: On November 1, 1995, Congress passed the Digital Performance Right in Sound Recordings Act of 1995 (''Digital Performance Act''). Pub. L. 104–39, 109 Stat. 336. Among other things, the Act confirms and clarifies that the scope of the statutory license to make and distribute phonorecords of nondramatic musical compositions, 17 U.S.C. 115, includes the right to distribute or authorize distribution by means of a digital transmission which constitutes a ''digital phonorecord delivery.'' 17 U.S.C. 115(c)(3)(A).

A ''digital phonorecord delivery'' is defined as ''each individual delivery of a phonorecord by digital transmission of a sound recording which results in a specifically identifiable reproduction by or for any transmission recipient of a phonorecord of that sound recording * * *.'' 17 U.S.C. 115(d).

The Digital Performance Act established that the rate for all digital phonorecord deliveries (''DPDs'') made or authorized under a compulsory license on or before December 31, 1997, was the same as the rate in effect for the making and distribution of physical phonorecords for that period. 17 U.S.C. 115(c)(3)(A)(i). For digital phonorecord deliveries made or authorized after December 31, 1997, the Digital Performance Act established a two-step process for determining the terms and rates; either the copyright owners of nondramatic musical works and those persons entitled to obtain a license may negotiate the rates and terms for the statutory license, or they may participate in a Copyright Arbitration Royalty Panel (''CARP'') proceeding. 17 U.S.C. 115(c)(3)(A)–(D). In a CARP proceeding, the parties present evidence to a panel of three arbitrators who, based upon the written record, write a report for the Librarian of Congress in which the CARP sets out its determination concerning the appropriate rates and terms. 17 U.S.C. 802(c) and (e).

The Librarian initiated the voluntary negotiation period for this rate setting proceeding on July 17, 1996, and directed it to end on December 31, 1996. 61 FR 37213 (July 17, 1996). At the same time, the Librarian announced a schedule for a CARP proceeding in case the interested parties were unable to reach an industry-wide agreement through the negotiation process. The Librarian vacated this schedule and a second schedule for a CARP proceeding at the request of the negotiating parties, Recording Industry Association of America (''RIAA''), the National Music Publishers' Association, Inc. (''NMPA''), and The Harry Fox Agency, Inc. (''Harry Fox''). 61 FR 65243 (December 11, 1996); 62 FR 5057 (February 3, 1997).

Ultimately, these parties reached a voluntary agreement which they submitted to the Librarian of Congress on November 5, 1997, pursuant to 37 CFR 251.63(b). Section 251.63(b) allows the Librarian to adopt rates and terms embodied in a proposed settlement without convening an arbitration panel, if after conducting a notice-and-comment proceeding, no party with an intent to participate in a CARP proceeding files a substantive comment opposing the proposed regulations. *See* e.g., 62 FR 63502 (December 1, 1997) (proposing regulations setting rates and terms for the section 118 license). Accordingly, the Librarian published the proposed rates and terms for digital phonorecord deliveries for public comment. 62 FR 63506 (December 1, 1997).

Three parties filed comments in response to the proposed terms and rates: the United States Telephone Association (''USTA''), the Coalition of Internet Webcasters (''Webcasters''), and Broadcast Music, Inc. (''BMI''). These comments served to identify heretofore unknown parties who have a significant interest in the setting of the rates and terms for the delivery of digital phonorecord deliveries. Consequently, the parties entered a new round of negotiations in an attempt to resolve the commenters' concerns and reach a mutually acceptable industry-wide agreement.

During the second phase of negotiations, the NMPA, SGA, and RIAA submitted a memorandum to the Copyright Office requesting that it adopt the unopposed rate for the delivery of digital phonorecords in general and the schedule for future rate adjustment proceedings set forth in its November 5, 1997, agreement, and that it either adopt the proposed rates and terms for incidental digital phonorecord deliveries set forth in the proposed regulations or sever and defer further consideration of these rates and terms until the next rate adjustment proceeding. The Copyright Office then offered the parties who had filed a Notice of Intent to Participate an opportunity to comment on the memorandum. *See* Order, Docket No. 96–4 CARP DPRA (October 16, 1998).

USTA responded that its concerns were fully addressed by the memorandum; and the three performing rights organizations, ASCAP, BMI, and SESAC, filed a joint comment which generally supported the recommendations outlined in the NMPA/SGA/RIAA memorandum, provided that the final regulations included a provision recognizing that the section 115 license does not affect in any way the public performance rights granted under 17 U.S.C. 106(4). Similarly, the Webcasters filed comments which supported the adoption of the rate and terms for digital phonorecord deliveries in general and the suggestion to sever and defer further consideration of rates and terms for incidental DPDs until the next rate adjustment proceeding with two modifications. First, the Webcasters sought an amendment to the proposed rules that would allow a party to petition the Copyright Office for a proceeding to set a rate for the transmission of an incidental digital phonorecord delivery prior to the next scheduled date. Second, the Webcasters requested that no rate be set for the incidental DPDs prior to the completion of a study required by Congress under section 104 of the Digital Millennium Copyright Act of 1998 (''DMCA''), subject to the right to petition for an interim rate adjustment proceeding.

In reply comments, NMPA/SGA/RIAA agreed to the ASCAP/BMI/SESAC suggestion for a clarification and the Webcasters' suggestion for a right to petition for a rate adjustment proceeding for incidental DPDs during the interim period. However, they did not support the Webcasters' request to postpone the rate adjustment proceeding for incidental DPDs until the Office completes its study on the operation of sections 109 and 117 of the Copyright Act, 17 U.S.C., as effected by Title I of the DMCA.

On December 4, 1998, the NMPA/SGA/RIAA submitted a second joint petition for adjustment of digital phonorecord delivery royalty rates, incorporating the proposed modifications except for the suggestion to postpone the rate adjustment proceeding until the completion of the study. The petition was filed pursuant to 17 U.S.C. 115(c) and 803(a) and 37 CFR 251.63(b). Section 251.63(b) allows the Librarian to adopt the proposed rates and terms at the conclusion of an unopposed notice-and-comment rulemaking proceeding. This being so,

the Copyright Office requested public comment on the proposed rates and terms in a notice published in the **Federal Register**. 63 FR 71249 (December 24, 1998).

The Copyright Office received no comments opposing the rates and terms for the delivery of digital phonorecords set forth in the December 24, 1998, **Federal Register** notice. Therefore, by this notice, the Librarian is adopting and the Copyright Office is announcing final regulations which set the rate for the delivery of digital phonorecords in general and defer until the next scheduled rate adjustment proceeding further consideration of the royalty rate for the delivery of a digital phonorecord where the reproduction or distribution is incidental to the transmission which constitutes a digital phonorecord delivery.

List of Subjects in 37 CFR Part 255

Copyright, Recordings.

For the reasons set forth in the preamble, the Library amends 37 CFR part 255 as follows:

PART 255—ADJUSTMENT OF ROYALTY PAYABLE UNDER COMPULSORY LICENSE FOR MAKING AND DISTRIBUTING PHONORECORDS

1. The authority citation for part 255 continues to read as follows:

Authority: 17 U.S.C. 801(b)(1) and 803.

2. Revise § 255.5 to read as follows:

§ 255.5 Royalty rate for digital phonorecord deliveries in general.

(a) For every digital phonorecord delivery made on or before December 31, 1997, the royalty rate payable with respect to each work embodied in the phonorecord shall be either 6.95 cents, or 1.3 cents per minute of playing time or fraction thereof, whichever amount is larger.

(b) For every digital phonorecord delivery made on or after January 1, 1998, except for digital phonorecord deliveries where the reproduction or distribution of a phonorecord is incidental to the transmission which constitutes the digital phonorecord delivery, as specified in 17 U.S.C. 115(c)(3)(C) and (D), the royalty rate payable with respect to each work embodied in the phonorecord shall be the royalty rate prescribed in § 255.3 for the making and distribution of a phonorecord made and distributed on the date of the digital phonorecord delivery (the ''Physical Rate''). In any future proceeding under 17 U.S.C. 115(c)(3)(C) or (D), the royalty rates payable for a compulsory license for digital phonorecord deliveries in general shall be established de novo, and no precedential effect shall be given to the royalty rate payable under this paragraph for any period prior to the period as to which the royalty rates are to be established in such future proceeding.

3. Add §§ 255.6 through 255.8 to read as follows:

§ 255.6 Royalty rate for incidental digital phonorecord deliveries.

The royalty rate for digital phonorecord deliveries where the reproduction or distribution of a phonorecord is incidental to the transmission which constitutes a digital phonorecord delivery, as specified in 17 U.S.C. 115(c)(3)(C) and (D), is deferred for consideration until the next digital phonorecord delivery rate adjustment proceeding pursuant to the schedule set forth in § 255.7; provided, however, that any owner or user of a copyrighted work with a significant interest in such royalty rate, as provided in 17 U.S.C. 803(a)(1), may petition the Librarian of Congress to establish a rate prior to the commencement of the next digital phonorecord delivery rate adjustment proceeding. In the event such a petition is filed, the Librarian of Congress shall proceed in accordance with 17 U.S.C. 115(c)(3)(D), and all applicable regulations, as though the petition had been filed in accordance with 17 U.S.C. 803(a)(1).

§ 255.7 Future proceedings.

The procedures specified in 17 U.S.C. 115(c)(3)(C) shall be repeated in 1999, 2001, 2003, and 2006 so as to determine the applicable rates and terms for the making of digital phonorecord deliveries during the periods beginning January 1, 2001, 2003, 2005, and 2008. The procedures specified in 17 U.S.C. 115(c)(3)(D) shall be repeated, in the absence of license agreements negotiated under 17 U.S.C. 115(c)(3)(B) and (C), upon the filing of a petition in accordance with 17 U.S.C. 803(a)(1), in 2000, 2002, 2004, and 2007 so as to determine new rates and terms for the making of digital phonorecord deliveries during the periods beginning January 1, 2001, 2003, 2005, and 2008. Thereafter, the procedures specified in 17 U.S.C. 115(c)(3)(C) and (D) shall be repeated in each fifth calendar year. Notwithstanding the foregoing, different years for the repeating of such proceedings may be determined in accordance with 17 U.S.C. 115(c)(3)(C) and (D).

§ 255.8 Public performances of sound recordings and musical works.

Nothing in this part annuls or limits the exclusive right to publicly perform a sound recording or the musical work embodied therein, including by means of a digital transmission, under 17 U.S.C. 106(4) and 106(6).

Dated: January 29, 1999.

Marybeth Peters,

Register of Copyrights.

James H. Billington,

The Librarian of Congress.

[FR Doc. 99–3119 Filed 2–8–99; 8:45 am]

BILLING CODE 1410–33–P

ENVIRONMENTAL PROTECTION AGENCY

40 CFR Part 52

[CA–011–0071; FRL–6229–5]

Approval and Promulgation of Implementation Plans; California State Implementation Plan Revision; North Coast Unified Air Quality Management District and Northern Sonoma County Air Pollution Control District

AGENCY: Environmental Protection Agency (EPA).

ACTION: Direct final rule.

SUMMARY: EPA is taking direct final action to approve revisions to the California State Implementation Plan (SIP). This action is an administrative change which revises the definitions in North Coast Unified Air Quality Management District (NCUAQMD) and Northern Sonoma County Air Pollution Control District (NSCAPCD) Rules 130, Definitions. The intended effect of approving this action is to incorporate changes to the definitions for clarity and consistency with revised federal and state definitions. This approval action will incorporate these definitions into the Federally approved SIP. Thus, EPA is finalizing the approval of these revisions into the California SIP under provisions of the CAA regarding EPA action on SIP submittals, SIPs for national primary and secondary ambient air quality standards and plan requirements for nonattainment areas.

DATES: This rule is effective on April 12, 1999, without further notice, unless EPA receives relevant adverse comments by March 11, 1999. If EPA receives such comment, then it will publish a timely withdrawal in the **Federal Register** informing the public that this rule will not take effect.

ADDRESSES: Written comments on this action should be addressed to: Andrew

Steckel, Rulemaking Office (AIR–4), Air Division, U.S. Environmental Protection Agency, Region 9, 75 Hawthorne Street, San Francisco, CA 94105–3901. Copies of the rule revisions and EPA's existing SIP approved rule is available for public inspection at EPA's Region IX office during normal business hours. Copies of the submitted rule revisions are also available for inspection at the following locations:

Rulemaking Office (AIR–4), Air Division, U.S. Environmental Protection Agency, Region IX, 75 Hawthorne Street, San Francisco, CA 94105.

Environmental Protection Agency, Air Docket (6102), 401 ''M'' Street, SW, Washington, DC 20460.

California Air Resources Board, Stationary Source Division, Rule Evaluation Section, 2020 ''L'' Street, Sacramento, CA 95812.

North Coast Unified Air Quality Management District, 2300 Myrtle Avenue, Eureka, CA 95501.

Northern Sonoma County Air Pollution Control District, 150 Matheson, Healdsburg, CA 95448.

FOR FURTHER INFORMATION CONTACT: Cynthia G. Allen, Rulemaking Office (AIR–4), Air Division, U.S. Environmental Protection Agency, Region IX, 75 Hawthorne Street, San Francisco, CA 94105–3901, Telephone: (415) 744–1189.

SUPPLEMENTARY INFORMATION:

I. Applicability

The rules being approved into the California SIP include: North Coast Unified Air Quality Management District, Rule 130 and Northern Sonoma County Air Pollution Control District, Rule 130. These rules were submitted by the California Air Resources Board to EPA on December 31, 1990 and May 18, 1998 (North Coast Unified) and March 10, 1998 (Northern Sonoma).

II. Background

On March 3, 1978, EPA promulgated a list of nonattainment areas under the provisions of the Clean Air Act, as amended in 1977 (1977 Act or pre-amended Act), that listed NCUAQMD and NSCAPCD as attainment or unclassifiable for all pollutants, see 43 FR 8964, 40 CFR 81.305. In response to Section 110(a) of the Act and other requirements, the NCUAQMD and NSCAPCD submitted many rules which EPA approved into the SIP.

This document addresses EPA's direct-final action for the following NCUAQMD and NSCAPCD rules: Rule 130, Definitions. These rules were adopted by NCUAQMD on December 7, 1989 and September 26, 1997 and by NSCAPCD on July 25, 1995, and submitted by the State of California for incorporation into its SIP on December 31, 1990 and May 18, 1998 (North Coast Unified) and on March 10, 1998 (Northern Sonoma). These rules were found to be complete on February 28, 1991 and July 17, 1998 (North Coast Unified) and on May 21, 1998 (Northern Sonoma), pursuant to EPA's completeness criteria that are set forth in 40 CFR part 51, Appendix V [1] and are being finalized for approval into the SIP. These rules were originally adopted as part of NCUAQMD and NSCAPCD's efforts to achieve and maintain the National Ambient Air Quality Standards (NAAQS).

The following are EPA's summary and final action for these rules.

III. EPA Evaluation and Action

In determining the approvability of a rule, EPA must evaluate the rule for consistency with the requirements of the CAA and EPA regulations, as found in section 110, and part D of the CAA and 40 CFR part 51 (Requirements for Preparation, Adoption and Submittal of Implementation Plans). The EPA interpretation of these requirements, which forms the basis for this action, appears in various EPA policy guidance documents.[2]

EPA previously reviewed many rules from the NCUAQMD and NSCAPCD and incorporated them into the federally approved SIP pursuant to section 110(k)(3) of the CAA. Those definitions that are being superseded by today's action are as follows:

- North Coast Unified AQMD. Rule 130, Definitions (submitted 11/10/76, 05/23/79, 03/23/81, 03/14/84, 08/14/84, 10/19/84)
- Northern Sonoma County APCD. Rule 130, Definitions (submitted 11/10/76, 10/19/84, 10/16/85)

NCUAQMD Rule 130, Definitions, has been revised to include the following new definitions: (b1) Baseline/Impact Area, (b2) Baseline Concentration, (b2) Best Available Control Technology (BACT), (e2) Episode Alert, (n1) Net Increase In Emissions, (p2) Permit, (p4) Potential to Emit, (p6) Precursor, (s3) Smelt Dissolving Tank, (s4) Stacking, and (t2) Toxic Air Contaminants. Administrative and other minor changes have also been made to some SIP approved definitions for clarity and consistency with revised federal and state definitions.

NSCAPCD Rule 130, Definitions, has been revised to include the following new definitions: (b1) Baseline Concentration, (b2) Base Unit, (b3) Best Available Control Technology (BACT), (e2) Episode Alert, (m1) Modeling, (n1) Net Increase In Emissions, (p2) Permit, (p4) Potential to Emit, (p6) Precursor, (p7) Prevention of Significant Deterioration (PSD) Increment, (s2) Significant, (s3) Small Business, (s4) Smelt Dissolving Tank, (s5) Stacking, (s9) Steam Generating Unit, and (t2) Toxic Air Contaminant (TAC). Administrative and other minor changes have also been made to some SIP approved definitions for clarity and consistency with revised federal and state definitions.

EPA has evaluated the submitted rules and has determined that they allow proper implementation of rules previously approved into the SIP, and do not relax the requirements of those rules. Therefore, NCUAQMD and NSCAPCD Rules 130, Definitions, are being approved under section 110(k)(3) of the CAA as meeting the requirements of section 110(a) and part D. Future action by EPA on prohibitory, new source review, or other NCUAQMD and NSCAPCD rules may require changes to these definitions. We are not, however, aware of any such necessary change at this time.

EPA is publishing these rules without prior proposal because the Agency views this as a noncontroversial amendment and anticipates no adverse comments. However, in the proposed rules section of this **Federal Register** publication, EPA is publishing a separate document that will serve as the proposal to approve the SIP revision should relevant adverse comments be filed. This rule will be effective April 12, 1999 without further notice unless the Agency receives relevant adverse comments by March 11, 1999.

If the EPA received such comments, then EPA will publish a document withdrawing the final rule and informing the public that the rule will not take effect. All public comments received will then be addressed in a subsequent final rule based on the proposed rule. The EPA will not institute a second comment period on this action. Any parties interested in commenting on this action should do so at this time. If no such comments are received, the public is advised that this

[1] EPA adopted the completeness criteria on February 16, 1990 (55 FR 5830) and, pursuant to section 110(k)(1)(A) of the CAA, revised the criteria on August 26, 1991 (56 FR 42216).

[2] Among other things, the pre-amendment guidance consists of those portions of the proposed post-1987 ozone and carbon monoxide policy that concern RACT, 52 FR 45044 (November 24, 1987); ''Issues Relating to VOC Regulation Cutpoints, Deficiencies, and Deviations, Clarification to Appendix D of November 24, 1987 **Federal Register** Notice'' (Blue Book) (notice of availability was published in the **Federal Register** on May 25, 1988).

rule will be effective on April 12, 1999 and no further action will be taken on the proposed rule.

IV. Administrative Requirements

Executive Order 12866

The Office of Management and Budget (OMB) has exempted this regulatory action from Executive Order (E.O.) 12866, entitled ''Regulatory Planning and Review.''

B. Executive Order 12875

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

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

C. Executive Order 13045

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

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

D. Executive Order 13084

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

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

E. Regulatory Flexibility Act

The Regulatory Flexibility Act (RFA) generally requires an agency to conduct a regulatory flexibility analysis of any rule subject to notice and comment rulemaking requirements unless the agency certifies that the rule will not have a significant economic impact on a substantial number of small entities. Small entities include small businesses, small not-for-profit enterprises, and small governmental jurisdictions. This final rule will not have a significant impact on a substantial number of small entities because SIP approvals under section 110 and subchapter I, part D of the Clean Air Act do not create any new requirements but simply approve requirements that the State is already imposing. Therefore, because the Federal SIP approval does not create any new requirements, I certify that this action will not have a significant economic impact on a substantial number of small entities. Moreover, due to the nature of the Federal-State relationship under the Clean Air Act, preparation of flexibility analysis would constitute Federal inquiry into the economic reasonableness of state action. The Clean Air Act forbids EPA to base its actions concerning SIPs on such grounds. *Union Electric Co.*, v. *U.S. EPA*, 427 U.S. 246, 255–66 (1976); 42 U.S.C. 7410(a)(2).

F. Unfunded Mandates

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

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

G. Submission to Congress and the Comptroller General

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

H. Petitions for Judicial Review

Under section 307(b)(1) of the Clean Air Act, petitions for judicial review of this action must be filed in the United

States Court of Appeals for the appropriate circuit by April 12, 1999. Filing a petition for reconsideration by the Administration of this final rule does not affect the finality of this rule for the purposes of judicial review nor does it extend the time within which a petition for judicial review may be filed, and shall not postpone the effectiveness of such rule or action. This action may not be challenged later in proceedings to enforce its requirements. (See section 307(b)(2).)

List of Subjects in 40 CFR Part 52

Environmental protection, Air pollution control, Hydrocarbons, Incorporation by reference, Intergovernmental relations, Nitrogen dioxide, Ozone, Reporting and recordkeeping requirements, Volatile organic compound.

Note: Incorporation by reference of the State Implementation Plan for the State of California was approved by the director of the Federal Register on July 1, 1982.

Dated: January 4, 1999.

Laura Yoshii,

Regional Administrator, EPA Region IX.

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

PART 52—[AMENDED]

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

Authority: 41 U.S.C. 7401 et seq.

2. Section 52.220 is amended by adding paragraphs (c)(254)(i)(B)(*1*) and (255)(i)(B)(*1*).

§ 52.220 Identification of plan.

* * * * *

(c) * * *

(254) * * *

(i) * * *

(B) Northern Sonoma County Air Pollution Control District.

(*1*) Rule amended on July 25, 1995.

* * * * *

(255) * * *

(i) * * *

(B) North Coast Unified Air Quality Management District.

(*1*) Rule 130 amended September 26, 1997.

* * * * *

[FR Doc. 99–2793 Filed 2–8–99; 8:45 am]

BILLING CODE 6560–50–M

ENVIRONMENTAL PROTECTION AGENCY

40 CFR Part 52

[CA 194–0125a; FRL–6226–5]

Approval and Promulgation of Implementation Plans; California State Implementation Plan Revision; Monterey Bay Unified Air Pollution Control District

AGENCY: Environmental Protection Agency (EPA).

ACTION: Direct final rule.

SUMMARY: EPA is taking direct final action to approve a revision to the California State Implementation Plan (SIP). The revision concerns Monterey Bay Unified Air Pollution Control District's (MBUAPCD) Rule 430. This rule controls emissions of volatile organic compounds (VOC) from leather processing operations. This action will incorporate the rule into the Federally approved SIP. The intended effect of approving this rule is to regulate emissions of VOC in accordance with the requirements of the Clean Air Act, as amended in 1990 (CAA or the Act). EPA is finalizing the approval of this revision into the California SIP under provisions of the CAA regarding EPA action on SIP submittals, and SIPs for national primary and secondary ambient air quality standards.

DATES: This direct final rule is effective on April 12, 1999, without further notice, unless EPA receives adverse comments by March 11, 1999. If EPA receives such comments, then it will publish a timely withdrawal in the **Federal Register** informing the public that this rule will not take effect.

ADDRESSES: Written comments must be submitted to Andrew Steckel at the Region IX office listed below. Copies of the rule revision and EPA's evaluation report are available for public inspection at EPA's Region IX office during normal business hours. Copies of the submitted rule revisions are also available for inspection at the following locations:

Rulemaking Office (AIR–4), Air Division, U.S. Environmental Protection Agency, Region IX, 75 Hawthorne Street, San Francisco, CA 94105.

Environmental Protection Agency, Air Docket (6102), 401 ''M'' Street, SW., Washington, DC 20460.

California Air Resources Board, Stationary Source Division, Rule Evaluation Section, 2020 ''L'' Street, Sacramento, CA 95812.

Monterey Bay Unified Air Pollution Control District, Rule Development, 24580 Silver Cloud Ct., Monterey, CA 93940–6536.

FOR FURTHER INFORMATION CONTACT: Andrew Steckel, Rulemaking Office (AIR–4), Air Division, U.S. Environmental Protection Agency, Region IX, 75 Hawthorne Street, San Francisco, CA 94105–3901, Telephone: (415) 744–1191.

SUPPLEMENTARY INFORMATION:

I. Applicability

The rule being approved into the California SIP includes MBUAPCD's Rule 430, Leather Processing Operations. This rule was submitted by the California Air Resources Board (CARB) to EPA on March 26, 1997.

II. Background

On November 15, 1990, the Clean Air Act Amendments of 1990 (CAA or the Act) were enacted. Pub. L. 101–549, 104 Stat. 2399, codified at 42 U.S.C. 7401–7671q. 40 CFR part 81.305 provides the attainment status designations for air districts in California. MBUAPCD is listed as being in attainment for the National Ambient Air Quality Standards (NAAQS) for ozone; therefore stationary sources in the air district are not subject to the Reasonably Available Control Technology (RACT) requirements of section 182(b)(2).

On March 26, 1997, the State of California submitted to EPA MBUAPCD's Rule 430, Leather Processing Operations which was amended by MBUAPCD on January 15, 1997. This submitted rule was found to be complete on August 6, 1997 pursuant to EPA's completeness criteria that are set forth in 40 CFR Part 51 Appendix V [1] and is being finalized for approval into the SIP. By today's document, EPA is taking direct final action to approve this submittal. This final action will incorporate this rule into the Federally approved SIP.

VOC emissions contribute to the production of ground level ozone and smog. MBUAPCD's Rule 430 controls emissions of VOC from leather processing operations. The rule was adopted as part of MBUAPCD's effort to maintain attainment of the National Ambient Air Quality Standards (NAAQS) for ozone. The following is EPA's evaluation and final action for this rule.

III. EPA Evaluation and Action

In determining the approvability of a VOC rule, EPA must evaluate the rule

[1] EPA adopted the completeness criteria on February 16, 1990 (55 FR 5824) and, pursuant to section 110(k)(1)(A) of the CAA, revised the criteria on August 26, 1991 (56 FR 42216).

for consistency with the requirements of the CAA and EPA regulations, as found in section 110 and 40 CFR part 51 (Requirements for Preparation, Adoption and Submittal of Implementation Plans) respectively. The EPA interpretation of these requirements, which forms the basis for this action, appears in various EPA policy guidance documents. Among these provisions is the requirement that a VOC rule must, at a minimum, provide for the implementation of RACT for stationary sources of VOC emissions in areas designated as nonattainment for ozone. Since MBUAPCD is in attainment for ozone, RACT requirements do not apply.

While MBUAPCD is in attainment with the ozone NAAQS, the emission limits and enforceability elements such as applicability, test methods, recordkeeping, and compliance determinations are still appropriate as part of the MBUAPCD's ozone attainment plan.

On October 25, 1995, EPA approved into the SIP a previous version of Rule 430, Leather Processing Operations that had been adopted by MBUAPCD on May 25, 1994. MBUAPCD's submitted Rule 430, Leather Processing Operations, includes the following significant changes from the current SIP:

- A lower exemption level of sources from 100 tons per year (tpy) of VOC to 20 tpy;
- Deletion of extraneous provisions (i.e., obsolete effective dates, obsolete VOC limits, and unnecessary definitions);
- Revised and new reference to other related District rules;
- Revised and new definitions;
- VOC limits using the metric system; and
- Clarification of application and test methods, and other requirements of the rule.

A more detailed discussion can be found in the Technical Support Document (TSD) for Rule 430, dated January 4, 1999.

EPA has evaluated the submitted rule and has determined that it is consistent with the CAA, EPA regulations and EPA policy. Therefore, MBUAPCD's Rule 430, Leather Processing Operations, is being approved under section 110(k)(3) of the CAA as meeting the requirements of section 110(a) and Part D.

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

EPA is publishing this rule without prior proposal because the Agency views this as a noncontroversial amendment and anticipates no adverse comments. However, in the proposed rules section of this **Federal Register** publication, EPA is publishing a separate document that will serve as the proposal to approve the SIP revision should relevant adverse comments be filed. This rule will be effective April 12, 1999 without further notice unless the Agency receives adverse comments by March 11, 1999.

If the EPA received such comments, then EPA will publish a timely withdrawal in the **Federal Register** informing the public that the rule will not take effect. All public comments received will then be addressed in a subsequent final rule based on the proposed rule. The EPA will not institute a second comment period on this rule. Any parties interested in commenting on this action should do so at this time. If no such comments are received, the public is advised that this rule will be effective on April 12, 1999 and no further action will be taken on the proposed rule.

IV. Administrative Requirements

A. Executive Order 12866

The Office of Management and Budget (OMB) has exempted this regulatory action from Executive Order (E.O.) 12866, entitled ''Regulatory Planning and Review.''

B. Executive Order 12875

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

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

C. Executive Order 13045

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

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

D. Executive Order 13084

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

Today's rule does not significantly or uniquely affect the communities of Indian tribal governments. This action does not involve or impose any requirements that affect Indian Tribes.

Accordingly, the requirements of section 3(b) of E.O. 13084 do not apply to this rule.

E. Regulatory Flexibility Act

The Regulatory Flexibility Act (RFA) generally requires an agency to conduct a regulatory flexibility analysis of any rule subject to notice and comment rulemaking requirements unless the agency certifies that the rule will not have a significant economic impact on a substantial number of small entities. Small entities include small businesses, small not-for-profit enterprises, and small governmental jurisdictions. This final rule will not have a significant impact on a substantial number of small entities because SIP approvals under section 110 and subchapter I, part D of the Clean Air Act do not create any new requirements but simply approve requirements that the State is already imposing. Therefore, because the Federal SIP approval does not create any new requirements, I certify that this action will not have a significant economic impact on a substantial number of small entities. Moreover, due to the nature of the Federal-State relationship under the Clean Air Act, preparation of flexibility analysis would constitute Federal inquiry into the economic reasonableness of state action. The Clean Air Act forbids EPA to base its actions concerning SIPs on such grounds. *Union Electric Co.*, v. *U.S. EPA*, 427 U.S. 246, 255–66 (1976); 42 U.S.C. 7410(a)(2).

F. Unfunded Mandates

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

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

G. Submission to Congress and the Comptroller General

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

H. Petitions for Judicial Review

Under section 307(b)(1) of the Clean Air Act, petitions for judicial review of this action must be filed in the United States Court of Appeals for the appropriate circuit by April 12, 1999. Filing a petition for reconsideration by the Administrator of this final rule does not affect the finality of this rule for the purposes of judicial review nor does it extend the time within which a petition for judicial review may be filed, and shall not postpone the effectiveness of such rule or action. This action may not be challenged later in proceedings to enforce its requirements. (See section 307(b)(2).)

List of Subjects in 40 CFR Part 52

Environmental protection, Air pollution control, Hydrocarbons, Incorporation by reference, Intergovernmental relations, Nitrogen dioxide, Ozone, Reporting and recordkeeping requirements, Volatile organic compound.

Note: Incorporation by reference of the State Implementation Plan for the State of California was approved by the director of the Federal Register on July 1, 1982.

Dated: January 14, 1999.

Felicia Marcus,

Regional Administrator, Region IX.

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

PART 52 [AMENDED]

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

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

Subpart F—California

2. Section 52.220 is amended by adding paragraph (c)(245)(i)(C)(*1*) to read as follows:

§ 52.220 Identification of plan.

* * * * *

(c) * * *

(245) * * *

(i) * * *

(C) Monterey Bay Unified Air Pollution Control District.

(*1*) Rule 430, amended on January 15, 1997.

* * * * *

[FR Doc. 99–2791 Filed 2–8–99; 8:45 am]

BILLING CODE 6560–50–P

ENVIRONMENTAL PROTECTION AGENCY

40 CFR Part 52

[CA 207–0114a; FRL–6229–7]

Approval and Promulgation of State Implementation Plans; California State Implementation Plan Revision; Amador County Air Pollution Control District and Northern Sonoma County Air Pollution Control District

AGENCY: Environmental Protection Agency (EPA).

ACTION: Direct final rule.

SUMMARY: EPA is taking direct final action on revisions to the California State Implementation Plan (SIP). The revisions concern rules from the Amador County Air Pollution Control District (ACAPCD) and the Northern Sonoma County Air Pollution Control District (NSCAPCD). This action will remove these rules from the federally approved SIP. The intended effect of this action is to remove rules from the SIP in accordance with the Clean Air Act, as amended in 1990 (CAA or the Act). Thus, EPA is finalizing the removal of these rules from the California SIP under provisions of the CAA regarding EPA action on SIP submittals and SIPs for national primary and secondary ambient air quality standards.

DATES: This rule is effective on April 12, 1999, without further notice, unless EPA receives adverse comments by March 11, 1999. If EPA receives such comment, then it will publish a timely withdrawal in the **Federal Register** informing the public that this rule will not take effect.

ADDRESSES: Comments must be submitted to Andrew Steckel at the Region IX office listed below. Copies of these rules, along with EPA's evaluation

report for each rule, are available for public inspection at EPA's Region IX office during normal business hours. Copies of the submitted requests for rescission are also available for inspection at the following locations:

Rulemaking Office (AIR–4), Air Division, U.S. Environmental Protection Agency, Region IX, 75 Hawthorne Street, San Francisco, CA 94105.

Environmental Protection Agency, Air Docket (6102), 401 ''M'' Street, SW, Washington, DC 20460.

California Air Resources Board, Stationary Source Division, Rule Evaluation Section, 2020 ''L'' Street, Sacramento, CA 95812.

Amador County Air Pollution Control District, 500 Argonaut Lane, Jackson, CA 95642.

Northern Sonoma County Air Pollution Control District, 150 Matheson Street, Healdsburg, CA 95448–4908.

FOR FURTHER INFORMATION CONTACT:

Yvonne Fong, Rulemaking Office (AIR–4), Air Division, U.S. Environmental Protection Agency, Region IX, 75 Hawthorne Street, San Francisco, CA 94105, Telephone: (415) 744–1199.

SUPPLEMENTARY INFORMATION:

I. Applicability

The ACAPCD rules being removed from the California SIP are: Rule 213.2, Organic Solvents; and Rule 213.3, Disposal and Evaporation of Solvents. The NSCAPCD rules being removed from the California SIP are: Rule 56, Sulfide Emission Standard; Rule 64, Organic Solvents; Rule 64.1, Architectural Coatings; and Rule 64.2, Disposal and Evaporation of Solvents. The ACAPCD adopted Rules 213.2 and 213.3 on July 18, 1972 and repealed them on June 16, 1981. The NSCAPCD adopted Rules 56, 64, 64.1, and 64.2 on June 30, 1972 and repealed them on November 10, 1976. On September 30, 1997 and October 7, 1997, the ACAPCD and NSCAPCD's Boards of Directors respectively adopted resolutions requesting the removal of these rules from the California SIP. The California Air Resources Board (CARB) submitted to EPA both Districts' requests for removal of these rules from the SIP on March 10, 1998.

II. Background

On March 3, 1978, EPA promulgated a list of the ozone and sulfur dioxide attainment areas under the provisions of the Clean Air Act, as amended in 1977 (1977 Act or pre-amended Act). 43 FR 8964, 40 CFR 81.305. The Amador County Area was included among the areas in attainment for ozone and the North Coast Air Basin Area, which encompasses Northern Sonoma County, was included among the areas in attainment for ozone and sulfur dioxide. The rules being addressed in this action were originally adopted by the ACAPCD and the NSCAPCD as part of their efforts to maintain the National Ambient Air Quality Standard (NAAQS) for ozone and sulfur dioxide. These rules were originally adopted to control volatile organic compound (VOC) emissions from organic solvents, architectural coatings, and the disposal and evaporation of solvents and to provide a sulfide emission standard. Because the Amador County and North Coast Air Basin Areas have never been classified as nonattainment pursuant to Section 107 of the Act for the pollutants listed above, these rules were not required by the Act. The ACAPCD and NSCAPCD removed these rules from their district rule books on June 16, 1981 and November 10, 1976, respectively. The ACAPCD and NSCAPCD have certified through resolutions adopted by their Boards of Directors on September 30, 1997 and October 7, 1997 that rescission of these rules will not result in emissions increases or otherwise interfere with any applicable provisions of the CAA.

On March 10, 1998, ACAPCD and NSCAPCD submitted requests to EPA, through CARB, for the removal of ACAPCD Rules 213.2 and 213.3 and NSCAPCD Rules 56, 64, 64.1, and 64.2 from the California SIP.

III. EPA Action

The following ACAPCD rules rescinded by today's action were previously approved into the California SIP by EPA:

—Rule 213.2, Organic Solvents, adopted July 18, 1972, approved January 24, 1978 (43 FR 3275).

—Rule 213.3, Disposal and Evaporation of Solvents, adopted July 18, 1972, approved January 24, 1978 (43 FR 3275).

The following NSCAPCD rules rescinded by today's action were previously approved into the California SIP by EPA:

—Rule 56, Sulfide Emission Standard, adopted June 30, 1972, approved September 22, 1972 (37 FR 19812).

—Rule 64, Organic Solvents, adopted June 30, 1972, approved September 22, 1972 (37 FR 19812).

—Rule 64.1, Architectural Coatings, adopted June 30, 1972, approved September 22, 1972 (37 FR 19812).

—Rule 64.2, Disposal and Evaporation of Solvents, adopted June 30, 1972, approved September 22, 1972 (37 FR 19812).

EPA is publishing this document without prior proposal because the Agency views this as a noncontroversial amendment and anticipates no adverse comments. However, in the Proposed Rules section of this **Federal Register** publication, EPA is publishing a separate document that will serve as the proposal to approve these SIP revisions should adverse comments be filed. This rule will be effective April 12, 1999, without further notice unless the Agency receives adverse comments by March 11, 1999.

If EPA receives such comments, then EPA will publish a document withdrawing this final rule and informing the public that the rule will not take effect. All public comments received will then be addressed in a subsequent final rule based on the proposed rule. The EPA will not institute a second comment period on this action. Any parties interested in commenting on this action should do so at this time. If no such comments are received, the public is advised that this rule will be effective on April 12, 1999 and no further action will be taken on the proposed rule.

IV. Administrative Requirements

A. Executive Order 12866

The Office of Management and Budget (OMB) has exempted this regulatory action from Executive Order (E.O.) 12866, Regulatory Planning and Review.

B. Executive Order 12875

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

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

C. Executive Order 13045

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

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

D. Executive Order 13084

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

Today's rule does not significantly or uniquely affect the communities of Indian tribal governments. Accordingly, the requirements of section 3(b) of E.O. 13084 do not apply to this rule.

E. Regulatory Flexibility Act

The Regulatory Flexibility Act (RFA) generally requires an agency to conduct a regulatory flexibility analysis of any rule subject to notice and comment rulemaking requirements unless the agency certifies that the rule will not have a significant economic impact on a substantial number of small entities. Small entities include small businesses, small not-for-profit enterprises, and small governmental jurisdictions. This final rule will not have a significant impact on a substantial number of small entities, but will simply remove previously-approved SIP requirements that are no longer in effect. Therefore, because the Federal SIP approval does not create any new requirements, I certify that this action will not have a significant economic impact on a substantial number of small entities. Moreover, due to the nature of the Federal-State relationship under the Clean Air Act, preparation of a flexibility analysis would constitute Federal inquiry into the economic reasonableness of state action. The Clean Air Act forbids EPA to base its actions concerning SIPs on such grounds. *Union Electric Co.*, v. *U.S. EPA*, 427 U.S. 246, 255–66 (1976); 42 U.S.C. 7410(a)(2).

F. Unfunded Mandates

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

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

G. Submission to Congress and the Comptroller General

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

H. Petitions for Judicial Review

Under section 307(b)(1) of the Clean Air Act, petitions for judicial review of this action must be filed in the United States Court of Appeals for the appropriate circuit by April 12, 1999. Filing a petition for reconsideration by the Administrator of this final rule does not affect the finality of this rule for the purposes of judicial review nor does it extend the time within which a petition for judicial review may be filed, and shall not postpone the effectiveness of such rule or action. This action may not be challenged later in proceedings to enforce its requirements. (See section 307(b)(2).)

List of Subjects in 40 CFR Part 52

Environmental protection, Air pollution control, Hydrocarbons, Incorporation by reference, Intergovernmental relations, Ozone, Reporting and recordkeeping requirements, Volatile organic compounds, Sulfur oxides.

Note: Incorporation by reference of the State Implementation Plan for the State of California was approved by the Director of the Federal Register on July 1, 1982.

Dated: January 25, 1999.

Laura Yoshii,

Acting Regional Administrator, Region IX.

Part 52, Chapter I, Title 40 of the Code of Federal Regulations is amended as follows:

PART 52—[AMENDED]

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

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

Subpart F—California

2. Section 52.220 is amended by adding paragraphs (c)(6)(xvi) and (c)(31)(xviii)(E) to read as follows:

§ 52.220 Identification of Plan.

* * * * *

(c) * * *

(6) * * *

(xvi) Northern Sonoma County Air Pollution Control District.

(A) Previously approved on September 22, 1972 and now deleted without replacement Rules 56, 64, 64.1 and 64.2.

* * * * *

(31) * * *

(xviii) * * *

(E) Previously approved on January 24, 1978 and now deleted without replacement Rules 213.2 and 213.3.

* * * * *

[FR Doc. 99–2782 Filed 2–8–99; 8:45 am]

BILLING CODE 6560–50–P

ENVIRONMENTAL PROTECTION AGENCY

40 CFR Part 52

[CO–001–0019a; FRL–6216–6]

Approval and Promulgation of Air Quality Implementation Plans; Colorado; Revision to Regulation No. 7, Section III, General Requirements for Storage and Transfer of Volatile Organic Compounds

AGENCY: Environmental Protection Agency (EPA).

ACTION: Direct final rule.

SUMMARY: EPA is approving the revision to the Colorado State Implementation Plan (SIP) as submitted by the Governor on April 22, 1996. The revision consists of the addition of paragraph C to section III, ''General Requirements for Storage and Transfer of Volatile Organic Compounds,'' of Regulation No. 7, ''Regulation To Control Emissions of Volatile Organic Compounds.'' This new paragraph C to section III exempts beer production and associated beer container storage and transfer operations involving volatile organic compounds (VOC) with a true vapor pressure of less than 1.5 pounds per square inch atmosphere (psia), at actual conditions, from the submerged or bottom-fill requirements of section III. B. EPA's approval will serve to make this revision federally enforceable and was requested by the Governor.

DATES: This direct final rule is effective on April 12, 1999 without further notice, unless EPA receives adverse comment by March 11, 1999. If adverse comment is received, EPA will publish a timely withdrawal of the direct final rule in the **Federal Register** and inform the public that the rule will not take effect.

ADDRESSES: Written comments may be mailed to: Richard R. Long, Director, Air and Radiation Program (8P–AR), United States Environmental Protection Agency, Region VIII, 999 18th Street, Suite 500, Denver, Colorado 80202–2466.

Copies of the documents relevant to this action are available for public inspection during normal business hours at the following office: United States Environmental Protection Agency, Region VIII, Air and Radiation Program, 999 18th Street, Suite 500, Denver, Colorado 80202–2466; and, the Air and Radiation Docket and Information Center, United States Environmental Protection Agency, 401 M Street, SW, Washington, DC 20460.

Copies of the State documents relevant to this action are available for public inspection at the Colorado Department of Public Health and Environment, Air Pollution Control Division, 4300 Cherry Creek Drive South, Denver, Colorado 80246–1530.

FOR FURTHER INFORMATION CONTACT: Tim Russ, Air and Radiation Program (8P–AR), United States Environmental Protection Agency, Region VIII, 999 18th Street, Suite 500, Denver, Colorado 80202–2466 Telephone number: (303) 312–6479.

SUPPLEMENTARY INFORMATION:

I. Background to the Action

A. Brief History on the Development of Colorado's Regulation No. 7 (Reg. 7)

On March 3, 1978, EPA designated the Denver-Boulder metropolitan area as nonattainment for the National Ambient Air Quality Standards (NAAQS) for ozone (43 FR 8976). This designation was reaffirmed by EPA on November 6, 1991 (56 FR 56694) pursuant to section 107(d)(1) of the CAA, as amended in 1990. Furthermore, since the Denver-Boulder area had not shown a violation of the ozone standard during the three-year period from January 1, 1987 to December 31, 1989, the Denver-Boulder area was classified as a ''transitional'' ozone nonattainment area under section 185A of the amended Act.

The current Colorado Ozone SIP was approved by EPA in the **Federal Register** on December 12, 1983 (48 FR 55284). The SIP contains Reg. 7 which applies RACT to stationary sources of VOCs. Reg. 7 was adopted to meet the requirements of Section 172(b)(2) and (3) of the 1977 CAA (concerning the application of RACT to stationary sources [1].)

[1] The requirement to apply RACT to existing stationary sources in a nonattainment area was carried forth under the amended Act in section 172(c)(1).

During 1987 and 1988, EPA Region VIII conducted a review of Reg. 7 for consistency with the Control Techniques Guidelines documents (CTGs) and regulatory guidance, for enforceability and for clarity. The CTGs, which are guidance documents issued by EPA, set forth measures that are presumptively RACT for specific categories of sources of VOCs. A substantial number of deficiencies were identified in Reg. 7. In 1987, EPA published a proposed policy document that included, among other things, an interpretation of the RACT requirements as they applied to VOC nonattainment areas (see 52 FR 45044, November 24, 1987). On May 25, 1988, EPA published a guidance document entitled ''Issues Relating to VOC Regulation Cutpoints, Deficiencies, and Deviations, Clarification to Appendix D of the November 24, 1987 **Federal Register** Notice'' (the ''Blue Book''). A review of Reg. 7 against these documents uncovered additional deficiencies in the regulation.

By a letter dated September 27, 1989, the Governor submitted revisions to Reg. 7 that partially addressed EPA's concerns. By a letter dated August 30, 1990, the Governor submitted additional revisions to Reg. 7 that addressed EPA's remaining concerns with the September 27, 1989, SIP revision.

On May 30, 1995, EPA published a final rule in the **Federal Register** (60 FR 28055) that fully approved the Governor's September 27, 1989, and August 30, 1990, revisions to Reg. 7. The final rule became effective on June 29, 1995.

B. Background Material Regarding the New Exemption to Section III ''General Requirements for Storage and Transfer of Volatile Organic Compounds'' of Reg. 7

Section III of Reg. 7 contains the following language in paragraph III. B which relates to the transfer of VOCs: ''Except as otherwise provided in this regulation, all volatile organic compounds transferred to any tank, container, or vehicle compartment with a capacity exceeding 212 liters (56 gallons), shall be transferred using submerged or bottom filling equipment. For top loading, the fill tube shall reach within six inches of the bottom of the tank compartment. For bottom-fill operations, the inlet shall be flush with the tank bottom.''

In June of 1994, the Colorado Association of Commerce and Industry (CACI) sought an exemption to the section III. B submerged/bottom-fill requirements of Reg. 7. One of CACI's members, Coors Brewing Company of

Golden, Colorado (Coors), had determined that it had several tanks and process vessels of greater than 56 gallons capacity to which it transferred VOCs without using submerged or bottom filling equipment. The VOC[2] in this case was mostly ethanol. CACI's original proposed SIP revision to section III of Reg. 7 was determined by both the Colorado Air Pollution Control Division (APCD) and EPA to be overly broad. On March 1, 1995, the APCD proposed an alternative SIP revision, narrowing the scope of the revision to only apply to beer production and associated beer container storage and transfer operations involving VOCs with a true vapor pressure of less than 1.5 psia.

The purpose of CACI's request for the SIP revision was described in their hearing statement that was provided to the Colorado Air Quality Control Commission (AQCC). Documentation provided by Coors, and included in CACI's hearing statement, indicated that costs to retrofit the non-complying tanks and process vessels at the Coors Golden, Colorado facility to permit submerged or bottom filling would be approximately $350,000. The corresponding emission reduction would be approximately 5.74 tons per year (TPY) or 31.45 pounds per day.

On March 16, 1995, the AQCC approved an exemption from Reg. 7's submerged/bottom-fill requirements consistent with the APCD's March 1, 1995, proposal. On April 22, 1996, the Governor submitted this exemption to EPA for approval as a SIP revision. The exemption is limited to beer production and associated beer container storage and transfer operations involving VOCs with a true vapor pressure of less than 1.5 psia.

The exemption is applicable to the Denver-Boulder metropolitan area in that this area has been the only ozone nonattainment area (originally classified as transitional under section 185A of the CAA) in Colorado. Coors is the only large-scale brewery operation in the Denver-Boulder area, although there are several micro-breweries in the Denver-Boulder area to which this exemption would apply.

On October 30, 1997, EPA asked the APCD for additional information regarding the amount of emission reductions that would not be realized as a result of the exemption. In a letter dated November 24, 1997, from Dennis Myers, Unit Leader, Construction Permits, APCD, to Larry Svoboda, Air State Support Unit, Air Program, Region VIII, EPA, the State provided further emission estimates for Coors and the micro-breweries in the Denver-Boulder area that this Reg. 7 revision would affect. For the State's November 24, 1997, letter, Coors provided additional emissions estimates that indicated approximately 12.442 tons per year of VOCs would be exempted from control, at Coors' facility, under the revision to Reg. 7. The State also included in its letter a listing of 44 brewpubs, contract breweries, and micro-breweries located in the Denver-Boulder ozone area. Based on a State ''Inter-Office Communication'', included with the State's November 24, 1997, letter, the State assigned an annual average emission factor of 0.13 tons per year of VOCs for craft breweries (which includes micro-breweries, brewpubs, and contract breweries). Including the average annual VOC emissions from these additional 44 facilities, the Reg. 7 revision would exempt approximately 18.16 tons per year, or 99.5 pounds per day of VOC emissions (12.44 tons per year from Coors and 5.72 tons per year from micro-breweries, brewpubs, and contract breweries).

This amount of VOC emissions is extremely minimal compared to the total inventory of VOC emissions in the Denver-Boulder area. Therefore, EPA does not believe the Reg. 7 exemption will interfere with the area's ability to attain and maintain the ozone NAAQS.[3] In conducting its analysis of the proposed exemption, EPA examined the State's VOC emission inventory for the Denver-Boulder area for 1993, which the State submitted on August 8, 1996 as part of an ozone maintenance plan for the Denver-Boulder area. Although the maintenance plan was rendered unnecessary by EPA's revocation of the 1-hour ozone standard, EPA believes that the 1993 VOC emission inventory contained in the maintenance plan is comprehensive and accurate. In the 1993 inventory, the State estimated that VOC emissions from anthropogenic sources for the Denver-Boulder area were approximately 312 tons per day. The Reg. 7 exemption that EPA is acting on today would increase (or more accurately, would not reduce) VOC emissions in the Denver-Boulder area by approximately 99.5 pounds per day, which is equivalent to 0.05 tons per day. This is only 0.016% of the total 1993 VOC inventory of 312 tons per day, an amount which is not anticipated to interfere with the area's ability to attain or maintain the 0.08 ppm 8-hour ozone standard. Accordingly, EPA is approving the submitted Reg. 7 exemption as a revision to the SIP.

II. Analysis of the State's Submittal

Section 110(k) of the CAA sets out provisions governing EPA's action on submissions of revisions to a State Implementation Plan. The CAA also requires States to observe certain procedural requirements in developing SIP revisions for submittal to EPA. Section 110(a)(2) of the CAA requires that each SIP revision be adopted after reasonable notice and public hearing prior to being submitted by a State to EPA.

To accomplish the above revisions to Reg. 7, the AQCC held a public hearing on March 16, 1995, directly after which the AQCC adopted the revision to Reg. 7. This revision became effective on May 30, 1995. The Governor submitted this revision to Reg. 7 to EPA by a letter dated April 22, 1996. By operation of law under the provisions of section 110(k)(1)(B) of the CAA, the submittal became complete on October 22, 1996.

III. Final Action

EPA is approving the revision to Colorado Regulation No. 7, section III, ''General Requirements for Storage and Transfer of Volatile Organic Compounds,'' that adds a new paragraph C as adopted by the AQCC on March 16, 1995, and submitted to EPA by the Governor on April 22, 1996.

EPA is publishing this action without prior proposal because the Agency views this as a noncontroversial amendment and anticipates no adverse comments. However, in the proposed rules section of this **Federal Register** publication, EPA is publishing a separate document that will serve as the proposal to approve the SIP revision should adverse comments be filed. This rule will be effective April 12, 1999 without further notice unless the Agency receives adverse comments by March 11, 1999.

If EPA receives such comments, then EPA will publish a timely withdrawal of the direct final rule informing the public that the rule will not take effect. All public comments received will then be addressed in a subsequent final rule based on the proposed rule. The EPA will not institute a second comment period on this rule. Any parties interested in commenting on this rule

[2] EPA's definition of a VOC is found in 40 CFR 51.100(s) and was most recently amended on April 9, 1998 (63 FR 17331).

[3] On July 18, 1997, EPA replaced the 0.12 parts per million (ppm) 1-hour ozone standard with a 0.08 ppm 8-hour ozone standard (62 FR 38856). On June 5, 1998, EPA revoked the 0.12 ppm 1-hour standard for the Denver-Boulder area (and other areas around the country) and now only the new 8-hour ozone standard applies. As a result of the revocation, the Denver-Boulder area currently has no designation for ozone. EPA's current thinking is that the Agency will designate areas attainment or nonattainment for the new standard in the year 2000.

should do so at this time. If no such comments are received, the public is advised that this rule will be effective on April 12, 1999 and no further action will be taken on the proposed rule.

IV. Administrative Requirements

A. Executive Order 12866

The Office of Management and Budget (OMB) has exempted this regulatory action from Executive Order 12866, entitled ''Regulatory Planning and Review.''

B. Executive Order 12875: Enhancing the Intergovernmental Partnership

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

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

C. Executive Order 13045

Executive Order 13045, Protection of Children from Environmental Health Risks and Safety Risks (62 FR 19885, April 23, 1997), applies to any rule that: (1) is determined to be ''economically significant'' as defined under E.O. 12866, and (2) concerns an environmental health or safety risk that EPA has reason to believe may have a disproportionate effect on children. If the regulatory action meets both criteria, the Agency must evaluate the environmental health and safety effects of the planned rule on children, and explain why the planned regulation is preferable to other potentially effective and reasonably feasible alternatives considered by the Agency.

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

D. Executive Order 13084: Consultation and Coordination With Indian Tribal Governments

Under Executive Order 13084, EPA may not issue a regulation that is not required by statute, that significantly affects or uniquely affects the communities of Indian tribal governments, and that imposes substantial direct compliance costs on those communities, unless the Federal government provides the funds necessary to pay the direct compliance costs incurred by the tribal governments, or EPA consults with those governments. If EPA complies by consulting, Executive Order 12084 requires EPA to provide to the Office of Management and Budget, in a separately identified section of the preamble to the rule, a description of the extent of EPA's prior consultation with representatives of affected tribal governments, a summary of the nature of their concerns, and a statement supporting the need to issue the regulation. In addition, Executive Order 13084 requires EPA to develop an effective process permitting elected officials and other representatives of Indian tribal governments ''to provide meaningful and timely input in the development of regulatory policies on matters that significantly or uniquely affect their communities.''

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

E. Regulatory Flexibility Act

The Regulatory Flexibility Act (RFA) generally requires an agency to conduct a regulatory flexibility analysis of any rule subject to notice and comment rulemaking requirements unless the agency certifies that the rule will not have a significant economic impact on a substantial number of small entities. Small entities include small businesses, small not-for-profit enterprises, and small governmental jurisdictions. This final rule will not have a significant impact on a substantial number of small entities because SIP approvals under section 110 and subchapter I, part D of the Clean Air Act do not create any new requirements, but simply approve requirements that the State is already imposing. Therefore, because the Federal SIP approval does not create any new requirements, I certify that this action will not have a significant economic impact on a substantial number of small entities. Moreover, due to the nature of the Federal-State relationship under the Clean Air Act, preparation of a flexibility analysis would constitute Federal inquiry into the economic reasonableness of State action. The Clean Air Act forbids EPA to base its actions concerning SIPs on such grounds. *Union Electric Co.* v. *U.S. EPA*, 427 U.S. 246, 255–66 (1976); 42 U.S.C. 7410(a)(2).

F. Unfunded Mandates

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

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

G. Submission to Congress and the Comptroller General

The Congressional Review Act, 5 U.S.C. section 801 *et seq.*, as added by the Small Business Regulatory Enforcement Fairness Act of 1996, generally provides that before a rule may take effect, the agency promulgating the rule must submit a rule report, which includes a copy of the rule, to each House of Congress and to the Comptroller General of the United States. EPA will submit a report containing this rule and other required information to the U.S. Senate, the U.S.

House of Representatives, and the Comptroller General of the United States prior to the publication of the rule in the **Federal Register**. This rule is not a ''major rule'' as defined by 5 U.S.C. section 804(2).

H. Petitions for Judicial Review

Under section 307(b)(1) of the Clean Air Act, petitions for judicial review of this action must be filed in the United States Court of Appeals for the appropriate circuit by April 12, 1999. Filing a petition for reconsideration by the Administrator of this final rule does not affect the finality of this rule for the purposes of judicial review nor does it extend the time within which a petition for judicial review may be filed, and shall not postpone the effectiveness of such rule or action. This action may not be challenged later in proceedings to enforce its requirements. (See section 307(b)(2).)

Nothing in this action should be construed as making any determination or expressing any position regarding Colorado's audit privilege and penalty immunity law, sections 13–25–126.5, 13–90–107, and 25–1–114.5, Colorado Revised Statutes, Colorado Senate Bill 94–139, effective June 1,1994, or its impact upon any approved provision in the SIP, including the revision at issue here. The action taken herein does not express or imply any viewpoint on the question or whether there are legal deficiencies in this or any other Clean Air Act program resulting from the effect of Colorado's audit privilege and immunity law. A state audit privilege and immunity law can affect only state enforcement and cannot have any impact on federal enforcement authorities. EPA may at any time invoke its authority under the Clean Air Act, including, for example, sections 113, 167, 205, 211, or 213, to enforce the requirements or prohibitions of the state plan, independently of any state enforcement effort. In addition, citizen enforcement under section 304 of the Clean Air Act is likewise unaffected by a state audit privilege or immunity law.

List of Subjects in 40 CFR Part 52

Environmental protection, Air pollution control, Hydrocarbons, Incorporation by reference, Intergovernmental relations, Ozone, Reporting and recordkeeping requirements, Volatile organic compounds.

Note: Incorporation by reference of the State Implementation Plan for the State of Colorado was approved by the Director of the Federal Register on July 1, 1980.

Dated: December 21, 1998.

William P. Yellowtail,

Regional Administrator, Region VIII.

40 CFR part 52 is amended as follows:

PART 52—[AMENDED]

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

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

Subpart G—Colorado

2. Section 52.320 is amended by adding paragraph (c)(83) to read as follows:

§ 52.320 Identification of plan.

* * * * *

(c) * * *

(83) A revision to the Colorado State Implementation Plan was submitted by the Governor of the State of Colorado on April 22, 1996. The revision consists of an amendment to Colorado Air Quality Control Commission Regulation No. 7, ''Regulation To Control Emissions of Volatile Organic Compounds,'' to provide an exemption for beer production and associated beer container storage and transfer operations involving volatile organic compounds under 1.5 psia from certain bottom or submerged filling requirements that Regulation No. 7 otherwise imposes. The revision consists of the addition of paragraph C to section III, ''General Requirements for Storage and Transfer of Volatile Organic Compounds,'' of Regulation No. 7.

(i) Incorporation by reference.

(A) Colorado Air Quality Control Commission Regulation No. 7, 5 CCR 1001–9, section III, paragraph C, adopted by the Colorado Air Quality Control Commission on March 16, 1995, State effective May 30, 1995.

* * * * *

[FR Doc. 99–2981 Filed 2–8–99; 8:45 am]

BILLING CODE 6560–50–P

ENVIRONMENTAL PROTECTION AGENCY

40 CFR Part 62

[Region 2 Docket No. NY30–188b, FRL–6231–7]

Approval and Promulgation of State Plans for Designated Facilities; New York

AGENCY: Environmental Protection Agency (EPA).

ACTION: Direct final rule.

SUMMARY: The Environmental Protection Agency (EPA) is taking direct final action on revisions to the State Plan submitted by New York to fulfill the requirements of sections 111(d)/129 of the Clean Air Act for Municipal Waste Combustors (MWC). The revisions concern the implementation and enforcement of the Emissions Guidelines, as amended by EPA on August 25, 1997, applicable to existing large MWC units with individual capacity to combust more than 250 tons per day of municipal solid waste. We are approving the State Plan which imposes revised emission limits for four pollutants (hydrogen chloride, sulfur dioxide, nitrogen oxides and lead) and compliance schedules for the existing MWC's in New York which will reduce the designated pollutants.

DATES: This rule is effective on April 12, 1999 without further notice, unless EPA receives adverse comment by March 11, 1999. If EPA receives such comment, EPA will publish a timely withdrawal in the **Federal Register** informing the public that this rule will not take effect.

ADDRESSES: All comments should be addressed to: Ronald J. Borsellino, Chief, Air Programs Branch, Environmental Protection Agency, Region 2 Office, 290 Broadway, 25th Floor, New York, New York 10007–1866.

Copies of the state submittal are available at the following addresses for inspection during normal business hours:

Environmental Protection Agency, Region 2 Office, Air Programs Branch, 290 Broadway, 25th Floor, New York, New York 10007–1866.

New York State Department of Environmental Conservation, Division of Air Resources, 50 Wolf Road, Albany, New York 12233.

Environmental Protection Agency, Air and Radiation Docket and Information Center, Air Docket (6102), 401 M Street, S.W., Washington, D.C. 20460.

FOR FURTHER INFORMATION CONTACT: Christine DeRosa or Kirk J. Wieber, Air Programs Branch, Environmental Protection Agency, Region 2 Office, 290 Broadway, 25th Floor, New York, New York 10007–1866, (212) 637–4249.

SUPPLEMENTARY INFORMATION:

A. Background

On December 19, 1995, pursuant to sections 111 and 129 of the Clean Air Act (Act), EPA promulgated new source performance standards (NSPS) applicable to new Municipal Waste Combustors (MWCs) and Emission Guidelines (EG) applicable to existing MWCs. The NSPS and EG are codified at 40 CFR part 60, subparts Eb and Cb, respectively, see 60 FR 65387. Subparts Cb and Eb regulate the following

designated pollutants: particulate matter, opacity, sulfur dioxide, hydrogen chloride, oxides of nitrogen, carbon monoxide, lead, cadmium, mercury, and dioxins and dibenzofurans.

On April 8, 1997, the United States Court of Appeals for the District of Columbia Circuit vacated subparts Cb and Eb as they apply to MWC units with capacity to combust less than or equal to 250 tons per day (tpd) of municipal solid waste (small MWCs), consistent with their opinion in Davis County Solid Waste Management and Recovery District v. EPA, 101 F.3d 1395 (D.C. Cir. 1996), as amended, 108 F.3d 1454 (D.C. Cir. 1997). As a result, Subparts Eb and Cb apply only to MWC units with individual capacity to combust more than 250 tpd of municipal solid waste (large MWC units). On August 25, 1997, EPA published changes to the emission guidelines to address the court decision (65 FR 45116). The amendments affect the applicability of the guidelines and standards, and add supplemental emission limits for four pollutants (hydrogen chloride, sulfur dioxide, nitrogen oxides, and lead) to the guidelines. Compliance with the supplemental emission limits is required by August 25, 2002 or three years after approval of a revised state plan incorporating these amendments, whichever is first. The amendments went into effect on October 24, 1997 and state plans incorporating those changes were due on August 25, 1998.

Under section 129 of the Act, emission guidelines are not federally enforceable. Section 129(b)(2) of the Act requires states to submit to EPA for approval State Plans that implement and enforce the emission guidelines. State Plans must be at least as protective as the EG, and become federally enforceable upon approval by EPA. The procedures for adoption and submittal of State Plans are codified in 40 CFR part 60, subpart B. EPA originally promulgated the Subpart B provisions on November 17, 1975. EPA amended subpart B on December 19, 1995, to allow the Subparts developed under section 129 to include specifications that supersede the general provisions in subpart B regarding the schedule for submittal of State Plans, the stringency of the emission limitations, and the compliance schedules, see 60 FR 65414. This action approves the revised State Plan submitted by New York to implement and enforce subpart Cb, as amended by EPA on August 25, 1997, applicable to existing large MWC units with individual capacity to combust more than 250 tpd of municipal solid waste.

B. State Submittal

On December 15, 1997, and supplemented on June 22, 1998, the New York State Department of Environmental Conservation (NYSDEC) submitted to EPA a section 111(d)/129 plan to implement 40 CFR part 60, subpart Cb—Emission Guidelines for existing large MWC units located in New York State. New York's submittal as supplemented included: the necessary legal authority; enforceable mechanisms; enforceable compliance schedules; inventory of MWC units; emissions inventory; testing, monitoring, recordkeeping, and reporting requirements; provision for annual state progress reports; and record of public hearing. EPA approved New York's submittal on August 4, 1998 (63 FR 41427).

On October 7, 1998, NYSDEC submitted to EPA, revisions to New York's State Plan for existing large MWC's. This submittal was supplemented by the NYSDEC on November 5, 1998. New York's submittal as supplemented includes only those required state plan elements that needed to be revised to address EPA's August 25, 1997 amendments. These include: enforceable mechanisms; enforceable compliance schedules; and record of public hearing, all other elements remain as approved by EPA on August 4, 1998 (63 FR 41427).

C. Review of State Submittal

New York has adopted by reference the requirements of the emissions guidelines (including emissions limitations, testing, monitoring, recordkeeping and reporting requirements) in Part 200 of title 6 of the New York Code of Rules and Regulations of the State of New York, entitled, ''General Provisions'' and will enforce the requirements under Part 201, entitled, ''Permits and Registration'' both effective October 1, 1998. By incorporating the EG by reference into Part 200, NYSDEC has the authority to include them as applicable requirements in permits of emission sources subject to such requirements and to enforce such requirements.

The schedules for compliance with the requirements incorporated by reference in Part 200 for each of the seven affected facilities were included as part of New York's submittal to EPA. These schedules are enforceable and have been incorporated into each facility's existing State operating permit and will also be incorporated into each facility's Title V permit. In addition, the Title V permits for each facility, once issued, will contain the applicable requirements of 40 CFR part 60, subpart Cb (EG for existing large MWC's) that were incorporated by reference in New York's Part 200. These include emission limitations, operating requirements, testing requirements and training requirements. The Title V permit process will include a public hearing for each affected facility.

D. Conclusion

EPA has evaluated the revised MWC State Plan submitted by New York for consistency with the Act, EPA guidelines and policy. EPA has determined that New York's State Plan meets all requirements and, therefore, EPA is approving New York's revised State Plan to implement and enforce subpart Cb, as amended by EPA on August 25, 1997, applicable to existing large MWC units with individual capacity to combust more than 250 tpd of municipal solid waste.

The EPA is publishing this rule without prior proposal because the Agency views this as a noncontroversial submittal and anticipates no adverse comments. However, in the proposed rules section of this **Federal Register** publication, EPA is publishing a separate document that will serve as the proposal to approve the State Plan revision should adverse comments be filed. This rule will be effective April 12, 1999 without further notice unless the Agency receives adverse comments by March 11, 1999.

If the EPA receives adverse comments, then EPA will publish a timely withdrawal in the **Federal Register** informing the public that the rule will not take effect. EPA will address all public comments in a subsequent final rule based on the proposed rule. The EPA will not institute a second comment period on this action. Any parties interested in commenting must do so at this time.

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

E. Administrative Requirements

Executive Order 12866

The Office of Management and Budget (OMB) has exempted this regulatory action from Executive Order (E.O.) 12866, entitled ''Regulatory Planning and Review.''

Executive Order 12875

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

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

Executive Order 13045

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

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

Executive Order 13084

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

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

Regulatory Flexibility Act

The Regulatory Flexibility Act (RFA) generally requires an agency to conduct a regulatory flexibility analysis of any rule subject to notice and comment rulemaking requirements unless the agency certifies that the rule will not have a significant economic impact on a substantial number of small entities. Small entities include small businesses, small not-for-profit enterprises, and small governmental jurisdictions.

This final rule will not have a significant impact on a substantial number of small entities because State Plan approvals under section 111 of the Act do not create any new requirements but simply approve requirements that the State is already imposing. Therefore, because the Federal State Plan approval does not impose any new requirements, I certify that this action will not have a significant economic impact on a substantial number of small entities. Moreover, due to the nature of the Federal-State relationship under the Clean Air Act, preparation of flexibility analysis would constitute Federal inquiry into the economic reasonableness of state action. The Clean Air Act forbids EPA to base its actions concerning State Plans on such grounds. *Union Electric Co.,* v. *U.S. EPA,* 427 U.S. 246, 255–66 (1976); 42 U.S.C. 7410(a)(2).

Unfunded Mandates

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

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

Submission to Congress and the General Accounting Office

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

Petitions for Judicial Review

Under section 307(b)(1) of the Act, petitions for judicial review of this action must be filed in the United States Court of Appeals for the appropriate circuit by April 12, 1999. Filing a petition for reconsideration by the Administrator of this final rule does not affect the finality of this rule for the purposes of judicial review nor does it extend the time within which a petition for judicial review may be filed, and shall not postpone the effectiveness of such rule or action. This action may not be challenged later in proceedings to

enforce its requirements. (See section 307(b)(2).)

List of Subjects in 40 CFR Part 62

Environmental protection, Air pollution control, Intergovernmental relations, Municipal waste combustors, Reporting and recordkeeping requirements.

Dated: January 28, 1999.

William J. Muszynski,

Deputy Regional Administrator, Region 2.

Part 62, chapter I, title 40 of the Code of Federal Regulations is amended as follows:

PART 62—[AMENDED]

1. The authority citation for part 62 continues to read as follows:

Authority: 42 U.S.C. 7401–7642.

Subpart HH—New York

2. Part 62 is amended by adding § 62.8103(c)

§ 62.8103 Identification of plan

* * * * *

(c) On October 7, 1998 and supplemented on November 5, 1998, the New York State Department of Environmental Conservation submitted revisions to the State Plan which incorporates emission limits and compliance schedules as amended by EPA on August 25, 1997 (65 FR 45116).

[FR Doc. 99–2983 Filed 2–8–99; 8:45 am]

BILLING CODE 6560–50–P

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Administration for Children and Families

45 CFR Parts 301, 302, 303, 304, and 305

RIN 0970–AB81

Child Support Enforcement Program; State Plan Approval and Grant Procedures, State Plan Requirements, Standards for Program Operations, Federal Financial Participation Audit and Penalty

AGENCY: Office of Child Support Enforcement (OCSE), HHS.

ACTION: Interim final rule with comment period.

SUMMARY: This rule eliminates regulations, in part or in whole, rendered obsolete by or inconsistent with, Pub. L. 104–193, the Personal Responsibility and Work Opportunity Reconciliation Act of 1996 (PRWORA), enacted August 22, 1996, and its technical amendments, Pub. L. 105–33, the Balanced Budget Act of 1997 (BBA), Pub. L. 105–89, the Adoption and Safe Families Act of 1997, and Pub. L. 105–200, the Child Support Performance and Incentive Act of 1998. These revisions are consistent with the President's Memorandum of March 4, 1995 to heads of Departments and Agencies which announced a government-wide Regulatory Reinvention Initiative to reduce or eliminate mandated burdens on States, other governmental agencies or the private sector.

DATES: These regulations are effective February 9, 1999. Consideration will be given to comments received by April 12, 1999.

ADDRESSES: Send comments to: Office of Child Support Enforcement, Administration for Children and Families, 370 L'Enfant Promenade, SW., 4th floor, Washington, DC 20447. Attention: Director, Policy and Planning Division, Mail Stop: OCSE/DPP. Comments will be available for public inspection Monday through Friday 8:30 a.m. to 5 p.m. on the 4th floor of the Department's offices at the above address.

You may also transmit written comments electronically via the Internet. To transmit comments electronically, or download an electronic version of the rule, you should access the Administration for Children and Families Welfare Reform Home Page at ''http://www.acf.dhhs.gov/hypernews/'' and follow any instructions provided.

FOR FURTHER INFORMATION CONTACT: Marilyn R. Cohen, Policy Branch, OCSE, (202) 401–5366, e-mail: mcohen@acf.dhhs.gov.

SUPPLEMENTARY INFORMATION:

Statutory Authority

These regulations are published under the authority granted to the Secretary by section 1102 of the Act. Section 1102 of the Act requires the Secretary to publish regulations that may be necessary for the efficient administration of the functions for which she is responsible under the Act.

Background

This rule is in response to the President's Memorandum of March 4, 1995 to heads of Departments and Agencies which announced a government-wide Regulatory Reinvention Initiative to reduce or eliminate mandated burdens on States, other governmental agencies or the private sector, and in compliance with section 204 of the Unfunded Mandates Reform Act of 1995, Pub. L. 104–4.

The Presidential Memorandum required agencies, by June 1, 1995, to conduct a page-by-page review of all regulations to eliminate or revise those that are outdated or otherwise in need of reform. OCSE formed a regulation reinvention workgroup to exchange views, information and advice with respect to the review of existing regulations in order to eliminate or revise those regulations that are outdated, unduly burdensome, or unproductive. This group is made up of representatives of Federal, State and local government staff elected officials. The workgroup conducted such a review which resulted in a final rule issued December 20, 1996 (61 FR 67235) which made both substantive and technical changes. In our analysis of existing regulations, we took a cautionary approach recognizing that significant legislation to overhaul the welfare system, including major reform to the child support enforcement program, was actively pending before the 104th Congress. Accordingly, numerous existing rules would potentially be affected. Therefore, we deferred recommending any changes in existing rules which might be impacted by enactment of a legislative change. We considered the changes in the final rule as only the first part of our response to the President's Regulation Reinvention Initiative.

Since the enactment of PRWORA, the workgroup has been reviewing the regulations to identify additional regulations which should be revised as obsolete or inconsistent with PRWORA. The workgroup surveyed our State partners who tended toward a regulatory philosophy under which Federal statutory mandates will not be reiterated in regulation, regulating beyond the statute will be minimized, and policy guidance to States will be developed collaboratively. In addition to the workgroup, we also held a series of meetings with advocacy groups to obtain their input on implementation of PRWORA. Further revisions were made with the enactment of the BBA. This rule reflects input from major stakeholders including the National Governors Association, the National Conference of State Legislatures and the American Public Human Services Association, formerly known as the American Public Welfare Association. This interim final rule eliminates identified regulatory requirements which were rendered obsolete by, or are inconsistent with, the child support provisions enacted under PRWORA, the BBA, and the Adoption and Safe

Families Act of 1997. For clarity in some sections, we are stating the entire regulation in order to review the revisions in context. However, we are accepting comments only on those portions that are revised.

Description of Regulatory Provisions

We are making technical revisions, including recodification, to the following regulations.

Section 301.1 General Definitions

The citations for ''Assigned support obligation'' and for ''Assignment'' ''under § 232.11 of this chapter'' are removed wherever they appear throughout 45 CFR part 301 of Chapter III and replaced with, ''section 408(a)(3) of the Act''. Section 232.11 of Chapter II was removed by ACF through rulemaking. Section 232.11 dealt with the AFDC program which has been repealed. Therefore, we are substituting a reference to the new statutory assignment provisions for the replacement program under title IV–A of the Act. We are updating the definition for ''Central registry'' by replacing ''URESA'' with ''UIFSA''. In addition, the term, ''AFDC'' is revised to ''title IV–A'' in the title and in the definition for ''Non-AFDC Medicaid recipient'' as PRWORA repealed the AFDC program.

Part 302 State Plan Requirements

The term ''absent parent'' is removed wherever it appears and replaced by ''noncustodial parent'', and the term ''absent parents'' is removed wherever it appears and replaced by ''noncustodial parents'' throughout 45 CFR part 302 of Chapter III for consistency with preferred statutory terminology adopted in PRWORA for title IV–D of the Act.

In addition, the term ''AFDC'' is removed wherever it appears and replaced by ''title IV–A'', and the term ''non-AFDC'' is removed wherever it appears and replaced by ''non-IV–A'' throughout 45 CFR part 302 of Chapter III. We are making these revisions as PRWORA repealed the AFDC program and substituted a new program under title IV–A.

Section 302.12 Single and Separate Organizational Unit

The authority for § 302.12 is section 1102 of the Act. We are revising paragraph (a)(1) by removing paragraph (a)(1)(i) and redesignating (a)(1)(ii) as (a)(1)(i) and (a)(1)(iii) as (a)(1)(ii). Paragraph (a)(1)(i) allows the single State agency designated to operate the IV–D program to be the agency, designated pursuant to § 205.100, that serves as the single State agency under the title IV–A program. We are making this revision as there is no longer a single State agency requirement under title IV–A and no agency designated pursuant to § 205.100.

Section 302.31 Establishing Paternity and Securing Support

The authority for section 302.31 is section 454(4) of the Act which provides for the establishment of paternity or the establishment, modification, or enforcement of child support obligations for recipients of titles IV–A, IV–E, XIX, and those Food Stamp recipients who must cooperate with the IV–D program, and section 454(5) of the Act which provides for distribution of support payments for individuals under title IV–A, and section 1102 of the Act which requires the Secretary to publish regulations that may be necessary for the efficient administration of the functions for which he is responsible under the Act. We are revising paragraph (a)(2) by removing ''and reciprocal arrangements adopted with other States when appropriate'', and replacing it with, ''regarding intrastate and interstate establishment and enforcement of support obligations''. We are making this revision because the Uniform Interstate Family Support Act (UIFSA) is not a ''reciprocal'' law. As specified by section 466(f) of the Act, States must have UIFSA in effect by January 1, 1998.

We are removing paragraph (a)(3) as the title IV–A State plan requirements in 45 CFR 233.20(a)(3)(v) regarding retained support were made obsolete by PRWORA. Therefore, proceedings for handling retained support for title IV–A cases are in accordance with State law. In paragraph (b), we are removing ''from the IV–A, IV–E or Medicaid agency that there has been'', and inserting ''of''. In addition, we are removing from paragraph (c), ''from the IV–A, IV–E or Medicaid agency'' and ''by the IV–A, IV–E or Medicaid agency, as appropriate''. The latter two revisions are necessary because PRWORA amended section 454(29) of the Act to allow each State the option of choosing either the title IV–D agency, or the title IV–A, IV–E, title XIX, or Food Stamp agency as having the responsibility of determining good cause.

Section 302.32 Collection and Disbursement of Support Payments by the IV–D Agency

The authorities for § 302.32 are section 454B of the Act which provides for collection and disbursement of support payments, section 457 of the Act which provides for the distribution of collected support, and section 1102 of the Act. We are revising the title by changing the term ''distribution'' to ''disbursement''. We are revising the introductory text to include the effective date by which States must establish a State disbursement unit (SDU) by October 1, 1998, or, if a State, which as of August 22, 1996, processed the receipt of child support payments through local courts, October 1, 1999. We are revising paragraph (a) by removing reference to ''§ 232.11'' and replacing it with ''section 408(a)(3) of the Act'' because certain AFDC program regulations were repealed, including § 232.11, by 62 FR 64301, the conforming regulations issued by OFA as a result of the repeal of the AFDC program.

Additionally, we are removing paragraphs (b), (c), (d), and (e) as new distribution requirements are set forth in section 457 of the Act and these regulatory paragraphs are inconsistent with the newly enacted distribution requirements for collections in Temporary Assistance for Needy Families program (TANF) cases. We are not setting forth the new distribution rules in regulation. Due to these revisions, we are redesignating paragraph (f) as paragraph (b). We are revising the title of paragraph (b) by replacing ''distribution'' with ''disbursement''. We are further revising paragraph (b)(1) by removing ''15 calendar'' and replacing it with the ''2 business'' days due to the requirement under section 454B that payments be disbursed within 2 business days of receipt by the SDU. Those States that do not meet SDU requirements until October 1, 1999 are to maintain timeframes from former 45 CFR 302.32(f)(1) in the meantime.

We are revising redesignated paragraph (b)(2) by removing ''§ 232.11 of this title'' and replacing it with ''section 408(a)(3)'' as § 232.11 is now obsolete; and by removing the end of the final sentence, ''distributed as follows:'' and replacing it with ''disbursed within the following timeframes''. In addition, we are removing paragraph (b)(2)(i) and replacing it with new paragraph (b)(2)(i) to read, ''Except as specified under paragraph (b)(2)(iv) of this section, if the SDU sends payment to the family (other than payments sent to the family from the State share of assigned support collections), the SDU must send these payments within 2 business days of the end of the month in which payment was received by the State.''

We are revising paragraph (b)(2)(ii) by changing the reference in the introductory text from ''(f)(2)(iv)'' to ''(b)(2)(iv)'', by removing subparagraph (A) in its entirety and removing the

designation ''(B)'', and by connecting the introductory text to the remaining text in ''(B)'', by changing the capital in ''When'' to lower case and replacing the ''15 calendar'' days with ''2 business'' days. Subparagraph ''(A)'' is removed to correspond to PRWORA's removal of former section 457(b)(3) directives in the Act. Former section 457(b)(3) required States to send collections in excess of the month's assistance payment and up to the amount of the monthly support obligation to the AFDC family. In addition, we are changing the reference from ''(f)(2)(iv)'' to ''(b)(2)(iv)''.

We are also revising paragraph (b)(2)(iv) by removing ''or State'' after ''Federal'' because section 457 of the Act requires State income tax refund offsets to be distributed like other collections, rather than like Federal income tax refund offsets. The citation ''§ 302.51(b)(5) of this part'' is replaced with ''section 457(a)(2)(iv) of the Act'' which specifies how Federal income tax refund offset collections must be distributed. The timeframe for distribution of Federal tax refunds is differentiated from the timeframe for periodic payments where the payment is distributed within 2 business days of receipt from the employer or other source of periodic income as specified in section 454B(c) on account of section 464 of the Act.

We are revising paragraph (b)(3), by adding the designation ''(i)'' followed by ''Except as provided under paragraph (b)(3)(ii) of this section'' before the introductory text where ''Amounts'' is changed to lower case, and by removing paragraphs (b)(3)(i) and (b)(3)(ii) in their entirety because they are inconsistent with requirements for distribution under section 457 of the Act and disbursement timeframes under section 454B of the Act. Paragraph (b)(3)(iii) is redesignated as (b)(3)(ii). We are also revising new paragraph (b)(3)(i) by removing ''as follows:'' and replacing it with ''pursuant to section 457 of the Act, within 2 business days of initial receipt in the State''. Additionally, to conform to section 457 of the Act's new distribution requirements for collection from Federal tax income refund offsets, we are revising new paragraph (b)(3)(ii), by removing ''or State'' after ''Federal'' income tax refund offset, and the citation ''§ 302.51(b)(5)'' and replacing it with ''section 457(a)(2)(iv) of the Act''.

Section 302.34 Cooperative Arrangements

Section 302.34 implements section 454(7) of the Act which provides the authority for State IV–D agencies to enter into cooperative arrangements with appropriate courts and law enforcement officials and Indian tribes or tribal organizations to assist the State agency in administering the child support State plan. Therefore, we are amending the first sentence of this section by replacing the ''and'' and the period with commas and adding ''Indian tribes or tribal organization'' as appropriate entities for the State IV–D agency to enter into cooperative arrangements. Also, we are amending this section by removing from the 3rd sentence the phrase, ''including the immediate transfer of the information obtained under § 235.70 of this title to the court or law enforcement official''. We are making this revision because that regulatory cite under the former AFDC program no longer exists and, therefore, no information is obtained pursuant to this section.

Section 302.35 State Parent Locator Service

Section 302.35 implements sections 454(8), 453 and 463 of the Act which require State IV–D agencies to establish State Parent Locator Services (SPLS) and specify provisions governing their use. The BBA revised section 454(8) of the Act to articulate the reasons the SPLS may be accessed and to refer to specific privacy safeguards. We are making several technical conforming amendments as follows.

We are revising paragraph (c)(1) by removing the phrase, ''or medical support obligations if an agreement is in effect under § 306.2 of this chapter'', thus ending the paragraph with ''State plan''. We are making this revision as part 306 was removed by final rule issued December 20, 1996 (61 FR 67235). We are revising paragraph (c)(2) by adding the phrase, ''or to serve as the initiating court in an action to seek an order'' after ''order'' to conform to section 453(c)(2) of the Act which defines authorized persons who may access the Federal Parent Locator Service (FPLS) and was amended in the BBA to add the same phrase.

We are revising paragraph (c)(4) by adding, '', visitation'' after ''kidnapping'' to conform to changes to section 463(d) of the Act defining persons authorized to access the FPLS for custody and visitation purposes. In addition, we are adding a new paragraph (c)(5) to conform to amendments made to section 454(8) by the BBA to section 453(c)(4) of the Act which expanded the definition of an ''authorized person''. Paragraph (c)(5) says, ''A State agency that is administering a program operated under a State plan under subpart 1 of part B, or a State plan approved under subpart 2 of part B or under part E.''

To conform to amendments made to section 454(8) by the BBA, we are adding a new subsection (d) which provides that ''The State PLS shall, subject to the privacy safeguards required under section 454(26) of the Act, disclose only the information described in sections 453 and 463 to the authorized persons specified in such sections for the purposes specified in such sections.''

Section 302.50 Support Obligations

Section 302.50 implements sections 456(a)(2) which provides that the amount of the child support obligation in the court order or the amount determined by the State in accordance with a formula approved by the Secretary determines the amount of the assigned support rights and 452(a)(3) of the Act which provides for Federal review and approval of State child support enforcement plans. We are revising the title of § 302.50 to read ''Assignment of rights'' to clarify that this section pertains only to those obligations with assigned rights; and revising paragraph (a)(1) by removing ''hearing'' because administrative processes do not necessarily require hearings. Additionally, we are revising paragraph (b)(1) by adding ''or administrative process'' after ''jurisdiction'' because both administrative and court orders are acceptable, and revising paragraph (b)(2) by adding ''or administrative'' after ''court''.

Section 302.51 Distribution of Support Collections

The authorities for § 302.51 are section 457 of the Act, which provides for the distribution of support collections in IV–D cases, and section 1102 of the Act. In paragraph (a)(1) we are making a technical edit by replacing the first mention of ''amount'' with ''amounts'' and ''represents'' with ''represent''.

The revised section 457 of the Act sets out the method for distributing child support collections. Section 457(a)(2)(iv) creates an exception for Federal tax refund collections. Thus, there is no basis not to follow the general rules for State income tax refund collections. Therefore, in paragraph (a)(3), governing distribution of Federal and State income tax refund offset collections, we are removing ''and State'' because State income tax refund offsets must first be applied to current support in accordance with section 457 of the Act. In this same paragraph, we are also removing the citations ''§§ 303.72(h) and 303.102(g) of this chapter, respectively'', and replacing

them with ''§ 303.72(h) of this chapter, and section 457(a)(2)(iv) of the Act''.

Section 454B(c)(1) of the Act, added by the BBA, defines the date of collection for distribution. Therefore, for consistency with that statutory section, we are deleting paragraph (a)(5) and redesignating paragraph (a)(4) as (a)(4)(i) to read as follows, ''Except as specified under subparagraph (ii), with respect to payments made through income withholding, the date of collection for distribution purposes in all IV–D cases must be the date the income is received by the SDU''. We are adding a new paragraph (a)(4)(ii), which includes this new language: ''If current support is withheld by an employer in the month when due, the date of withholding may be deemed to be the date of collection at the option of the State''. SDU requirements are effective October 1, 1998, unless the State qualifies for the one-year delay to continue to process the receipt of child support payments through local courts. States must continue to use the date of collection per former 45 CFR 302.51(a)(4) until there is an SDU which meets the requirements of section 454B of the Act. This paragraph is further revised by redesignating the second sentence in paragraph (a)(4) as paragraph (a)(4)(iii).

We are further amending redesignated paragraph (a)(4)(iii) by adding ''When the date of collection pursuant to this subparagraph is deemed to be the date the wage or other income was withheld'', before the remaining text. The changes to paragraph (a)(4) are in response to the State option concerning how to define the ''date of collection'' provided by the BBA's technical amendment to section 454B(c)(1) of the Act.

Additionally, we are removing paragraphs (b), (d), and (f) because they are inconsistent with section 457 of the Act and are redesignating paragraph (c) as paragraph (b), and paragraph (e) as paragraph (c). Finally, we are revising new paragraph (b) by replacing ''402(a)(26)'' with ''403(a)(8)''. This revision is made for consistency with the change in the citation of the assignment requirement from former section 402(a)(26) to new section 403(a)(8) of the Act.

Section 302.52 Distribution of Support Collected in Title IV–E Foster Care Maintenance Cases

This regulation implements section 457(f) of the Act which provides for distribution of support collected in title IV–E foster care cases. Section 457(f) of the Act is identical to former section 457(d) of the Act. However, we are removing the citation under paragraph (b)(5), ''§ 232.11 of this title and section 471(a)(17) of the Act'' and replacing it with ''sections 408(a)(3) and 471(a)(17) of the Act'' to reflect the revocation of § 232.11 and the change in the Act of the location of the assignment provisions.

Section 302.54 Notice of Collection of Assigned Support

This regulation implements section 454(5)(A) of the Act which requires notice of support collections to individuals receiving assistance under title IV–A. We are removing the citation under paragraph (a)(1) ''232.11 of this title'' and replacing it with ''section 408(a)(3) of the Act'' as the current citation is now obsolete.

Section 302.57 Procedures for the Payment of Support Through the IV–D Agency or Other Entity

This regulation is removed because PRWORA removed the language in former section 466(c) of the Act which authorized payment of support through the IV–D agency or other entity at State option, should a custodial or noncustodial parent request it. All collections in IV–D cases and income withholding collections in cases in which the order was initially issued or modified on or after January 1, 1994 are to be made through the State disbursement unit in accordance with section 466(a)(8)(B) of the Act.

Section 302.70 Required State Laws

Section 466(a) of the Act contains the required laws and procedures each State must implement as part of its State child support enforcement plan. States may implement provisions using regulation, procedure, or court rule, instead of law, if such regulation, procedure, or rule has the same force and effect as State law on the parties to whom it applies.

For clarification, we are revising paragraph (a) by adding ''and part 303 of this chapter'' after ''Act'', removing ''the following'' after ''implemented'', and adding commas after ''for'' and ''improve''.

We are revising paragraph (d)(1) by replacing ''paragraph (a) of this section'' with ''section 466 of the Act''. We are revising paragraph (d)(2) by replacing ''paragraph (a)(2) of this section'' with ''section 466(a)(2) of the Act''.

Section 302.75 Procedures for the Imposition of Late Payment Fees on Absent Parents Who Owe Overdue Support

This regulation implements section 454(21) of the Act which provides for the imposition of late payment fees. In paragraph (b)(4), we are removing the citation, ''232.11 of this title'' and replacing it with ''section 408(a)(3) of the Act'' as the former citation has been revoked.

Section 302.80 Medical Support Enforcement

This regulation implements section 452(f) of the Act. In paragraph (a), we are removing the second sentence to reflect removal of Part 306 made by rule issued December 20, 1996 (61 FR 67235).

Part 303 Standards for Program Operations

The term ''absent parent'' is removed wherever it appears and replaced with ''noncustodial parent'', the term ''absent parents'' is removed wherever it appears and replaced with ''noncustodial parents'', and the term ''absent parents''' is removed wherever it appears and replaced with ''noncustodial parents''' throughout this part for consistency with preferred statutory terminology and to conform to our emphasis on ''children first'' which focuses on the parent's relationship with the child rather than on a parent's absence.

We are also removing the term ''AFDC'' wherever it appears and replacing it with ''title IV–A'' and removing the term ''non-AFDC'' wherever it appears and replacing it with ''non-IV–A''. This revision is for consistency with PRWORA which repealed the AFDC program and substituted a new program under title IV–A.

In addition, we are removing the term ''IRS'' and replacing it with ''Secretary of the U. S. Treasury'' wherever it appears in this part, except for § 303.72(i) where ''IRS'' will be replaced with ''Department of Treasury''. We are making this revision to implement the Debt Collection Act of 1996 and Executive Order 13019 which transferred the responsibility for the Federal income tax refund offset program from the Internal Revenue Service to the Financial Management Service within the U. S. Treasury.

Section 303.3 Location of Absent Parents

This rule was issued under authority of section 454(8) and section 1102 of the Act. We are revising paragraph (b)(1) by adding ''and other sources'' at the end of the paragraph. This revision is for consistency with PRWORA's expansion of locate resources set forth in section 466(c)(1)(D) of the Act.

Section 303.5 Establishment of Paternity

This regulation implements section 466(a)(5) of the Act as amended by the Omnibus Budget Reconciliation Act of 1993, PRWORA and the BBA's technical changes. We are revising paragraph (d)(1) to read, ''Upon request of any party in a contested paternity case and in accordance with section 466(a)(5)(B) of the Act, and subject to the provisions of paragraph (b), the IV–D agency shall require all parties to submit to genetic tests unless, in the case of an individual receiving aid under the State's title IV–A, IV–E or XIX plan, or those recipients of the food stamp program, as defined under section 3(h) of the Food Stamp Act of 1977 who are required to cooperate with the child support program, there has been a determination of good cause for refusal to cooperate under section 454(29) of the Act.'' We are making this revision to conform with revised section 466(c)(1)(A) of the Act which gives the State agency authority to order genetic testing and with revised section 454(29) of the Act which addresses responsibility for determinations of good cause and cooperation.

We are also making a technical correction in paragraph (d)(2) by removing the term, ''legal''. In addition, we are amending paragraph (e)(1) by adding the phrase ''Except as provided in subparagraph (3)'' at the beginning of the paragraph, and revising paragraph (e)(3) to read, ''If paternity is established and genetic tests were ordered by the IV–D agency, the IV–D agency must pay the costs of such tests, subject to recoupment (if the agency elects) from the alleged father who denied paternity. If a party contests the results of an original test, the IV–D agency shall obtain additional tests but shall require the contestant to pay for the costs of any such additional testing in advance.'' These revisions are for consistency with section 466(a)(5)(B) of the Act which specifies that the State seek recoupment from the father for costs of genetic testing ordered by the agency if recoupment is sought and that the State must obtain additional testing in any case if an original test result is contested and require payment in advance.

Section 303.7 Provision of Services in Interstate IV–D Cases

The authorities for this regulation are sections 454(9) and 1102 of the Act. We are revising paragraph (a) by ending the first sentence with ''incoming interstate IV–D cases.'' and removing all remaining text in this subsection because the Uniform Reciprocal Enforcement of Support Act (URESA) has been replaced by the Uniform Interstate Family Support Act (UIFSA) which permits direct withholding requests from one State to an employer in another State, and August 22, 1988, the effective date for paragraph (a), has passed. Since all States have long-arm paternity establishment capability under section 201 of UIFSA, we are amending paragraph (b)(1) to require States to use their long-arm statute to establish paternity, when appropriate. We are amending paragraph (b)(2) by removing the language ''URESA petitions and'' due to the change from URESA to UIFSA. These revisions are consistent with PRWORA's mandate that, effective January 1, 1998, all States are required to enact UIFSA. In addition, we are revising paragraph (b)(3) by removing ''either the Interstate Child Support Enforcement Transmittal Form or the URESA Action Request Forms package as appropriate'' and replacing it with ''Federally-approved interstate forms'', and by adding the term, ''Federal'' before the last word, ''forms''. OCSE issued revised interstate forms via OCSE–AT–97–06 on May 2, 1997 to conform with UIFSA (OMB No. 0970–0085). We are revising paragraph (b)(6) by replacing the citation ''§ 303.8(f)(1)'' with ''§ 303.8'' to conform with revisions we are making in § 303.8.

In addition, we are revising paragraph (c)(4) by removing ''a URESA Action Request Form or other alternative State form''. This revision is needed because section 311(b) of UIFSA requires the use of Federally-approved interstate forms. We are amending paragraph (c)(7)(iii) by removing ''Uniform Reciprocal Enforcement of Support Act'' and replacing it with ''Uniform Interstate Family Support Act'' to conform with the requirement under section 466(f) of the Act that all States enact and implement UIFSA, and replacing ''through 303.105'' with ''through 303.102 and 303.104'' as §§ 303.103 and 303.105 are being removed by this rule, as discussed later in the document.

We are making a technical edit in paragraphs (c)(7)(ii) and (iii) by placing the regulatory citations in numerical order. For consistency with the requirement that the State disbursement unit (effective October 1, 1998, except for States as of August 22, 1996 which processed the receipt of child support payments through local courts, where it is effective October 1, 1999,) under section 454B of the Act process collections within 2 business days of receipt in the SDU, we are revising paragraph (c)(7)(iv) by removing the language which reads ''no later than 15 calendar days from'' and replacing it with ''within 2 business days of'' initial receipt in the responding State. In addition, we are revising this paragraph by adding ''State disbursement unit for the'' after ''receipt in the''.

For consistency with revised section 457 of the Act which eliminated the exception processing for payments collected via State Income Tax Refund Offset, we are removing the language in paragraph (c)(7)(iv) which reads, ''or that the payments were made through State income tax refund offset''. To conform to amendments we are making in § 303.8 in this interim final rule, we are revising paragraph (c)(7)(v) by removing the citation ''§ 303.8(f)(2)'' and replacing it with ''§ 303.8''. Finally, we are revising paragraph (d)(3) to read, ''If paternity is established in the responding State, the IV–D agency must attempt to obtain a judgment for the costs of genetic testing ordered by the IV–D agency from the alleged father who denied paternity. If the costs of initial or additional genetic testing are recovered, the responding State must reimburse the initiating State.'' This revision is for consistency with section 466(a)(5)(B) of the Act which specifies that the State seek recoupment from the father for costs of genetic testing ordered by the agency and that the State must obtain additional testing in any case if an original test result is contested and require payment in advance.

Section 303.8 Review and Adjustment of Child Support Orders

Section 303.8 implements section 466(a)(10) of the Act. We are amending these paragraphs to update sections that have become obsolete due to the passage of time and for consistency with PRWORA which revised section 466(a)(10) of the Act. These revisions included: (1) Reviews are conducted upon request only (there are no mandated reviews), (2) the State may choose one of three methods to conduct a review (guidelines, automated, cost-of-living adjustment (COLA)), (3) 3-year reviews require no proof of substantial change of circumstances but the States may offer more frequent reviews requiring such proof, (4) in the case of COLA or automated reviews, either party may contest the adjustment within 30 days of the notice of the adjustment, and (5) States must notify parents of their right to request a review not less than once every 3 years (instead of providing a one-time notice). In following the President's Initiative to limit regulations, we are not restating new statutory requirements in regulation.

In § 303.8, we are removing paragraphs (a)(1) and (a)(3) because the

definitions for ''adjustment'' and ''review'' are inconsistent with the automated and cost-of-living adjustment (COLA) methods of review authorized by the revised section 466(a)(10) of the Act; therefore, we are replacing the term ''definitions'' with ''definition'' in the introductory paragraph (a), and removing the designation ''(2)'' in front of ''parent''. We are removing paragraph (b) because it was superseded by paragraph (c) as of October 13, 1993. We are keeping in those paragraphs which are still applicable.

We are redesignating paragraph (c) as paragraph (b), revising the introductory text of paragraph (b) to read as follows: ''Pursuant to section 466(a)(10) of the Act, when providing services under this chapter, the State must:''. We are revising paragraph (b)(1) by removing ''in effect in the State'' and replacing with ''being enforced under title IV–D of the Act'' because section 466(a)(10) of the Act does not restrict review of orders to those in effect in a State. We are revising paragraph (b)(2) to read as follows: ''Not less than once every three years, the State shall notify each parent subject to a child support order in the State of the right to request a review of the order, and the appropriate place and manner in which the request should be made'' because section 466(a)(1) of the Act revised the one-time notice to notification not less than once every three years.

We are removing redesignated paragraph (b)(3) which was partially placed in the introductory text. We are removing redesignated paragraph (b)(4) because under revised section 466(a)(10) of the Act reviews are required only upon request. We are removing redesignated paragraph (b)(5) because reviews are not mandatory. PRWORA amended section 454(29) of the Act to allow each State the option of choosing either the title IV–D, IV–A, IV–E, XIX, or Food Stamp agency as having the responsibility of determining good cause. We are removing redesignated paragraphs (b)(6) and (7) because the revised section 466(a)(10) of the Act only provides for a contest in the case of a COLA or automated review and for a notice of the right to request a review but allows the State to use their own procedures for other aspects of due process. We are removing redesignated paragraph (b)(8) and paragraphs (d)(1)(i) and (ii) because automated processes and COLAs may also be used in addition to reviews based on guidelines.

We are redesignating paragraph (d)(2) as paragraph (c) which is revised by removing ''which results from application of the guidelines'' and replacing it with ''determined as a result of a review''. We are redesignating paragraph (d)(3) as paragraph (d). We are revising new paragraph (d) to remove the language ''to provide for the children's health care needs'' when it appears a second time, to remove the redundancy.

In addition, we are removing paragraphs (e)(1) and (e)(2) because the revised section 466(a)(10) of the Act eliminates mandatory 3-year reviews for cases with an assignment of support rights. We are redesignating paragraph (e)(3) as paragraph (e) and revising it to read as follows: ''Timeframes for review and adjustment.'' Within 180 calendar days of receiving a request for a review or locating the non-requesting parent, whichever occurs later, a State must conduct a review of the order and adjust the order or determine that the order should not be adjusted, in accordance with this section.'' We are making this revision to conform with the revised section 466(a)(10) of the Act which requires reviews upon request.

We are revising paragraph (f) by removing ''Effective October 13, 1993 or such earlier date the State may select:'', and replacing all of the language in (f)(1) with ''In interstate cases, the State with legal authority to adjust the order will conduct the review and adjust the order pursuant to this section when notified that a request has been made''. We revised (f)(1) and are removing paragraph (f)(2) because all States must enact and use UIFSA by January 1, 1998 which makes these paragraphs obsolete. Thus, paragraph (f)(3) is redesignated as new paragraph (f)(2).

Section 303.15 Agreements To Use the Federal Parent Locator Service (PLS) in Parental Kidnapping and Child Custody Cases

This regulation implements sections 454(17) and 463 of the Act as amended by the BBA to address the use of the FPLS for visitation purposes. We are revising paragraphs (a)(1)(i) and (ii) by adding ''or visitation'' after ''custody''. We are revising paragraph (a)(2) by adding ''or visitation'' after the first mention of ''custody'', and revising paragraph (b)(2) by adding ''or visitation'' after ''custody''. These revisions clarify that the FPLS may be used for locating individuals for the purpose of visitation enforcement pursuant to section 463 of the Act.

We are amending paragraph (b) by removing the language ''If the State enters'' and replacing it with ''A State shall enter'' and by removing the comma after ''regulations'' and replacing it with ''so that''. These revisions are consistent with the amendments in the BBA to sections 454(17) and 463(a) of the Act which require States to have agreements with the Secretary pursuant to section 463 of the Act. In addition, we are revising paragraph (c)(1) by removing ''an absent'' and replacing it with ''a''. This revision is for consistency with technical changes that expanded the use of the FPLS for locating either the custodial or noncustodial parent for the purposes specified in section 463 of the Act.

Section 303.20 Minimum Organizational and Staffing Requirements

The authority for this rule is section 452(a)(2) of the Act. In § 303.20, we are revising paragraph (b)(3) by removing ''Reciprocal Enforcement of Support Act'' and replacing it with ''Uniform Interstate Family Support Act'' for conformity with PRWORA requirements at section 466(f) of the Act.

Section 303.21 Safeguarding information

The authorities for this regulation were sections 454(26) and 1102 of the Act. Section 303.21 applies to ''information concerning applicants for and recipients of support enforcement services'' and places limitations on the use and disclosure of that information. Because amended sections 453(b)(2), 453(l), and 453(m) of the Act contain numerous new provisions regarding the use, disclosure and safeguarding of information concerning both custodial and noncustodial parents and the purposes for which that information may be used and disclosed, the limited scope of § 303.21 renders it inconsistent with the Act. We are removing § 303.21 and will develop comprehensive guidance consistent with PRWORA's provisions concerning safeguarding information, including any implementing regulations that may be necessary. OCSE issued a final rule August 21, 1998 (63 FR 44795) which included safeguarding information on automated systems. The provisions of the Act and other applicable statutes continue to govern the safeguarding, use and disclosure of information.

Section 303.30 Securing Medical Support

This rule implements section 452(f) of the Act which requires the Secretary to issue regulations to require State agencies to petition for inclusion of medical support in a child support order whenever health care coverage is available to the noncustodial parent at reasonable cost except as specified by 45 CFR 303.31(b)(1). We are removing paragraph (b), redesignating paragraph

(c) as paragraph (b), and revising it by replacing ''paragraphs'' with ''paragraph'' and by removing ''and (b)(1)''. This revision is for consistency with section 466(a)(19) of the Act which requires States to enact laws under which all child support orders enforced under title IV–D of the Act must include a provision for health care coverage of the child. Therefore, non-IV–A applicants or recipients of services under 45 CFR 302.33 no longer have the option, in receiving IV–D services, to refuse the inclusion of health insurance coverage in the order.

Section 303.31 Securing and Enforcing Medical Support Obligations

This rule implements sections 452(f) and 466(a)(19) of the Act. We are revising paragraph (c) by replacing ''are available'' with ''will be provided'' and by deleting paragraphs (c)(1) and (c)(2) because receipt of medical support services in IV–D cases is no longer an option for those receiving services under 45 CFR 302.33.

Section 303.70 Requests by the State Parent Locator Service (SPLS) for Information From the Federal Parent Locator Service (FPLS)

The authorities for this regulation are sections 453, 454(8), 454(17), 463, and 1102 of the Act. For consistency with revisions to sections 453 and 463 of the Act which expanded the purposes for which States may access the FPLS, we are revising paragraphs (c)(1) and (c)(2) by removing the word, ''absent''. For consistency with revisions to sections 453, 454(8), and 463 of the Act, we are revising paragraph (d)(1) by removing ''solely to locate an individual for the purpose of establishing paternity or securing support or in connection with a parental kidnapping or child custody case'' and replacing it with ''to obtain information or to facilitate the discovery of any individual in accordance with section 453(a)(2) of the Act for the purpose of establishing parentage or establishing, setting the amount of, modifying, or enforcing child support obligations, or for determining who has or may have parental rights with respect to a child, or in accordance with section 453(a)(3) of the Act, for enforcing a State law with respect to the unlawful taking or restraint of a child, or for making or enforcing a child custody or visitation determination as defined in section 463(d)(1) of the Act''. In paragraph (d)(2), we are removing ''of § 303.21 of this chapter'' and inserting ''of sections 453(b), 453(l), 454(8), 454(17), 454(26), and 463(c) of the Act.'' These references are to applicable Federal requirements for safeguarding information obtained through the FPLS.

Finally, section 316(f) of PRWORA adds to the Act new section 453(k)(3), requiring a State or Federal agency that receives information from the FPLS to reimburse the Federal Office of Child Support Enforcement for costs incurred in furnishing the information. The provision is consistent with Federal policy, standards and guidelines pertaining to cost recovery. Thus, we are revising § 303.70(e)(1)(i) by removing all the language after ''the Act'', revising paragraph (e)(1)(ii) by adding, ''or visitation'' after ''custody'', adding a new § 303.70(e)(1)(iii) to read, ''Section 453(k) of the Act.'', and revising § 303.70(e)(2)(i) by adding ''453(k)(3) or'' after ''453(e)(2),'' deleting ''and'', and adding '',except that the IV–D agency shall charge an individual specified in section 453(c)(3) of the Act the fee required under section 453(e)(2) of the Act'' after ''the Act''. This latter added language reflects the Act's mandate that private individuals seeking information from the FPLS be charged a fee. We also added references to section 453(k)(3) in paragraphs (e)(3) and (e)(4) and removed the word ''location'' in paragraph (e)(4)(i) to reflect the availability of more than just location information from the FPLS.

Section 303.71 Requests for Full Collection Services by the Secretary of the Treasury

We are removing the term ''Representative'' wherever it occurs in § 303.71 and replacing it with ''Office''. We are making this technical change to update the section to current terminology for Federal Regional Offices. In addition, we are updating paragraph (b) by replacing ''1954'' with ''1986''.

Section 303.72 Requests for Collection of Past-due Support by Federal Tax Refund Offset

In § 303.72, we are revising paragraphs (a)(1) and (2) by removing the citation ''§ 232.11 of this title'' and replacing it with ''section 408(a)(3) of the Act''. We are revising paragraph (h)(1) by removing the phrase, ''under § 302.51(b)(4) and (5) and (e) of this chapter'' because those subsections are removed by this interim final rule, and replacing it with ''in accordance with section 457 of the Act'' for consistency with the new distribution requirements under PRWORA. In paragraph (h)(3), we are removing ''under § 232.11 of this title, 42 CFR 433.146, or section 471(a)(17) of the Act'' and in paragraph (h)(4), we are removing the phrase ''§ 302.51(b)(4) and (5) and (e) or § 302.52(b)(3) and (4) of this chapter'' and replacing it with ''section 457 of the Act''. We are removing these citation phrases for the reasons stated above.

Section 303.80 Recovery of Direct Payments

We are removing § 303.80 because the regulatory basis for the recovery of direct child support payments in IV–A cases was made obsolete when PRWORA ended the AFDC program. This is consistent with the removal of §§ 302.31(a)(3) and (4) which were removed for the same reason. Recovery of direct payments will be in accordance with State law.

Section 303.100 Procedures for Wage or Income Withholding

This regulation implements sections 466(a)(1), 466(a)(8) and 466(b) of the Act. Changes to the income withholding requirements in these sections of the Act necessitate numerous changes in this regulation. We are revising the title by removing ''wage or'', and revising paragraph (a) by removing the term, ''wages'' and replacing it with ''income as defined in sections 466(b)(1) and (8) of the Act'', as section 466(a)(8) applies to more than solely wages. We are also removing paragraph (a)(9), which allows States to include forms of income other than wages in its withholding, as it is no longer applicable. This revision necessitates redesignating paragraph (a)(10) as (a)(9). Due to the change in definition, we are also making additional revisions by replacing the two mentions of ''wages'' in paragraph (b)(1) with ''income'' and replacing ''wage'' in paragraph (b)(2)(i) with ''income''.

We are making a technical change in paragraph (c) by removing ''wages'' in the introductory text and replacing it with ''income'', and in paragraph (c)(1) by removing ''wages or'' and replacing it with ''income of''. In addition, we are removing paragraph (c)(2) as PRWORA revised section 466(b)(4) to remove the requirement of an advance notice of initiated income withholding. This revision necessitates redesignating paragraph (c)(3) as (c)(2).

We are revising the introductory language in paragraph (d) to read as follows: ''Notice to the noncustodial parent in cases of initiated withholding. The State must send a notice to the noncustodial parent regarding the initiated withholding. The notice must inform the noncustodial parent:'' This revision is in compliance with section 466(b)(4) which, as stated above, does not require an advance notice. We are adding in a new paragraph (d)(1) a requirement that the notice to the

noncustodial parent include a statement that the withholding has commenced. Accordingly, paragraphs (d)(1)(i) to (iii) are renumbered as new (d)(2) to (4). We removed paragraphs (d)(1)(iv) and (v), paragraph (d)(2) and paragraph (e) because the elimination of the advance notice requirement means that a contest is now after the fact so these paragraphs are no longer applicable.

We are adding a new paragraph (d)(5) which states, ''Of the information provided to the employer, pursuant to subsection (e) of this section''. The notice requirement in new paragraph (d)(5) is required by section 466(b)(4)(B) of the Act. States can meet this new requirement by providing the noncustodial parent with a copy of the withholding order that is sent to the employer.

Paragraph (f) is redesignated as paragraph (e). We are revising new paragraph (e)(1) by adding ''using the standard Federal format'' after the word ''notice''. We are making this revision to conform to section 466(b)(6)(A)(iii) of the Act, which requires the States to issue income withholding notices in a standard format prescribed by the Secretary. On January 27, 1998, the Office of Child Support Enforcement distributed this standard income withholding form to the States in OCSE–AT–98–03 (OMB No. 0970–0154).

We are revising the new paragraph (e)(1)(i) by removing the citation ''(f)(1)(iii)'' and replacing it with ''(e)(1)(iii)''; and revising new paragraph (e)(1)(ii) by removing ''10 working'' and replacing it with ''7 business'', removing ''wages'' and replacing it with ''income'' and by replacing ''State (or such other individual or entity as the State may direct)'' with ''SDU'' in both occurrences; and revising new paragraph (e)(1)(vi) by removing both mentions of ''wages'' and replacing them with ''income''. We are revising paragraphs (e)(1)(vii) and (viii) by removing ''wages'' and replacing it with ''income''. We are revising paragraph (e)(1)(ix) to read as follows: ''(ix) That the employer must withhold from the noncustodial parent's income the amount specified in the notice and pay such amount to the State disbursement unit within 7 business days after the date the noncustodial parent is paid.'' This change is necessitated by revisions to section 466(b)(6) of the Act which require delivery of the withheld income to the State disbursement unit within 7 (rather than 14) days of the date of withholding.

We are also revising paragraph (e)(2) to conform it to new section 453A of the Act, by removing the citation to ''(f)(1)'' and replacing it with ''(e)(1)'', and removing ''entered'' and replacing it with ''received''.

In addition, we are removing paragraph (g) governing administration of withholding because section 466(b)(5) of the Act was revised to eliminate the requirement that the States designate a public entity for the administration of income withholding. This revision necessitates redesignation of paragraph (h) as paragraph (f).

We are revising redesignated paragraph (f), Interstate withholding, to provide updated standards for program operations for both the traditional two-state interstate income withholding remedy and UIFSA's new one-state direct income withholding remedy. Redesignated paragraph (f) incorporates PRWORA's revisions to section 466(b)(6) of the Act which was revised to recognize the direct income withholding procedures at section 502 of UIFSA. UIFSA provided the first legal authority for the issuance of interstate withholding orders across State lines to employers in another State. Section 466(f) of the Act mandates the States to enact UIFSA. Paragraph (f)(1) is revised to state the general interstate income withholding requirement that State law must require employers to honor income withholding orders issued by any State.

Redesignated paragraph (f)(2) is revised to implement the choice of law rules governing direct income withholding appearing at section 466(b)(6)(A)(i) of the Act. This provision of the Act contains the exception to the general rule under which the employer is required to withhold funds as directed in the withholding order. This exception, as stated in new paragraph (f)(2), applies in direct income withholding and requires the employer to follow the income withholding law of the State of the employee's work-state to determine the appropriate processing fees, withholding limits, time periods for implementing and remitting payments, and the priorities for withholding and allocation of income for multiple claims.

Redesignated paragraph (f)(3) is revised to contain the existing requirements for the traditional two-state interstate income withholding, rather than direct income withholding. Paragraph (f)(3)(i) derives from former paragraph (h)(1) and allows States to require registration of out-of-state orders provided the sole purpose of the registration is to obtain jurisdiction of the order for enforcement purposes. Paragraph (f)(3)(ii) derives from former paragraph (h)(3) and contains the applicable time frames and referral requirements placed upon the initiating State in an interstate income withholding action. Paragraph (f)(3)(iii) derives from former paragraph (h)(4) and requires the State responding to a request for interstate income withholding to implement it in accordance with this section's general income withholding requirements. Paragraph (f)(3)(iv) derives from former paragraph (h)(5)(iv) and requires the State responding to the interstate income withholding request to notify the initiating State when the noncustodial parent is no longer employed in that State.

We are redesignating paragraph (i) as paragraph (g) and revising it by removing ''between October 1, 1985, and January 1, 1994, or modified after January 1, 1994,'' and replacing it with ''whether or not being enforced under the State IV–D plan,''. We are making this revision because this portion of paragraph (g) became outdated. We are also revising new paragraph (g) by removing ''in order to ensure that withholding as a means of support is available if arrearages occur without the necessity of filing an application for IV–D services'' because this language merely restates the requirements of section 466(a)(8)(A).

Section 303.101 Expedited Processes

This regulation implements sections 466(a)(2) and 466(c) of the Act. We are revising this section for consistency with PRWORA's revisions to the required expedited processes detailed at sections 466(a)(2) and (c) of the Act. We are revising paragraph (a) to read as follows: ''Definition.'' Expedited processes means administrative and judicial procedures (including IV–D agency procedures) required under section 466(a)(2) and (c) of the Act.'' We are revising paragraph (b)(1) by adding ''modify,'' after ''establish,'' due to PRWORA's revisions to section 466(a)(2) of the Act extending expedited processes to include modification actions. Additionally, we are removing paragraphs (c)(4) and (5), redesignating paragraph (c)(6) as paragraph (c)(4), and revising the new paragraph (c)(4) by adding ''administrative or'' before ''judicial''. These revisions are for consistency with the language of section 466(c)(1) which does not require the use of presiding officers and the flush language following section 466(c)(1) of the Act that allows for an appeal on the record to an administrative or judicial tribunal.

Section 303.102 Collection of Overdue Support by State Income Tax Refund Offset

The authorities for this regulation are sections 1102 and 466(a)(3) of the Act under which the States must implement procedures to offset State income tax refunds for past-due child support debts. We are revising paragraph (a)(1) by removing ''§ 232.11 of this title or'' and replacing it with ''section 408(a)(3) of the Act''. For better flow of subject matter, we are redesignating paragraph (c) as paragraph (d), paragraph (d) as (e) and paragraph (e) as (c). Former section 466(a)(3)(B) specified that State tax must be distributed as arrearages. That section was amended to refer only to distribution under section 457. Section 457(a)(2)(iv) specifies that Federal income tax refund offsets are applied to past-due support. However, section 457 does not direct State tax refund offsets to be applied in the same manner. Therefore, we are revising new paragraph (d) by removing paragraph (d)(2), removing the denotation for paragraph (d)(1), thus making it introductory text, removing the citation to ''§ 302.51(e)'' and replacing it with ''§ 302.51(c)'', and by removing ''; and'' at the end of the paragraph and replacing it with a period. This conforms § 303.102 to requirements under section 457 of the Act. For the same reason, we are also revising paragraph (g) by removing subparagraphs (1)(i) through (iii), placing the denotation ''(i)'' directly after ''(g)(1)'', adding ''in accordance with section 457 of the Act'' to the end of paragraph (g)(1), redesignating paragraph (g)(1)(iv) as (g)(1)(ii), and removing the citation to ''§ 302.51(e)'' in (g)(1)(ii) and replacing it with ''§ 302.51(c)''.

Section 303.103 Procedures for the Imposition of Liens Against Real and Personal Property

The authorities for this section are sections 466(a)(4) and 1102 of the Act and the matter following section 466(a)(19) of the Act. We are removing this section for two reasons. First, paragraph (b) is inconsistent with the revised 466(a)(4) of the Act under which liens arise by operation of law and liens arising in other States are entitled to full faith and credit in the State where the property is located. Second, paragraph (a) merely restates the law and we are following the President's Initiative to limit regulations and are not restating new statutory requirements in regulations.

Section 303.105 Procedures for Making Information Available to Consumer Reporting Agencies

We are removing this section as portions of it are inconsistent with the revised section 466(a)(7) of the Act which requires obligors with any child support arrearage to be reported to consumer reporting agencies. Consistent with the President's Initiative to limit regulatory burden, we are not imposing mandates beyond those in statute or restating statutory requirements and, therefore, are removing the remaining portions.

Part 304 Federal Financial Participation

We are making several technical revisions to update and correct this part. We are removing the term ''absent parent'' wherever it appears and replacing it with ''noncustodial parent'' and removing the term ''absent parents'' wherever it appears and replacing it with ''noncustodial parents'' for consistency with preferred statutory terminology. In addition, we are removing the term ''AFDC'' wherever it appears and replacing it with ''title IV–A'', except for 45 CFR 304.26. We are removing the term ''non-AFDC'' wherever it appears and replacing it with ''non-IV–A''. These revisions are for consistency with PRWORA which repealed the AFDC program and substituted a new program under title IV–A.

Section 304.12 Incentive Payments

In § 304.12(a), we are removing the two citations of ''§ 232.11 of this title'' and replacing them with ''section 408(a)(3) of the Act''.

Section 304.20 Availability and Rate of Federal Financial Participation

The authority for this section is section 455 of the Act. We are removing paragraph (b)(1)(viii)(C) for two reasons. First, the cross reference to 45 CFR 232.12 is now obsolete as a result of PRWORA. Secondly, new section 454(29)(A) of the Act requires that the IV–D agency make the determination and redetermination for cooperation of applicants and recipients of title IV–A. This determination was previously required to be made by the IV–A agency. Therefore, paragraph (b)(1)(viii)(D) is redesignated as paragraph (b)(1)(viii)(C). Similarly, we are removing paragraph (b)(1)(ix)(C) regarding the establishment of agreements with Medicaid agencies for the determination of whether individuals receiving Medicaid are cooperating adequately as PRWORA requires the IV–D agency instead of the Medicaid agency to make the determination of cooperation in title XIX cases pursuant to section 454(29)(A) of the Act. This revision necessitates paragraph (b)(1)(ix)(D) to be redesignated as paragraph (b)(1)(ix)(C). The IV–D agency may continue to work with the IV–A and Medicaid agencies to determine cooperation and establish any necessary agreements pursuant to paragraph (b)(1)(iii).

Further, we are revising this newly designated paragraph by changing the citation, ''§ 302.51(e)'' to ''§ 302.51(c)''. Finally, we are revising paragraph (b)(3)(iv) by removing ''wage withholding'' and replacing it with ''income withholding'' for consistency with PRWORA.

Section 304.21 Federal Financial Participation in the Costs of Cooperative Arrangements with Courts and Law Enforcement Officials

The authority for this section is section 454(7) of the Act. We are revising § 304.21(a) by removing the first word of the last sentence, ''Then'' and replacing it with ''When'' for accuracy.

Section 304.26 Determination of Federal Share of Collections

This section implements portions of section 457 of the Act. We are revising this section to include references to foster care maintenance payments under title IV–E of the Act. We are also revising this section to be consistent with the revised language of sections 457(c)(2) and (3) of the Act that specifies the use of the Federal Medical Assistance Percentage (FMAP) formula in calculating the Federal share of child support collections. Section 457(c)(2) specifies that the Federal share is the amount resulting from the application of the FMAP in effect for the year the amount is distributed, to the amount collected. The FMAP is currently in use for the foster care maintenance program, but not for the program under title IV–A of the Act. Section 457(c)(3) specifies the FMAP to be used under title IV–A of the Act. Section 457(c)(3)(A) authorized 75 percent with respect to Puerto Rico, the Virgin Islands, Guam, and America Samoa and is part of the FMAP definition. For all other jurisdictions the rate is the FMAP in effect on September 30, 1995. With the repeal of the AFDC program, the use of the AFDC FFP formula rate is no longer valid. States only can use the FMAP formula. Accordingly, we are deleting the two references to ''AFDC'' in paragraph (a) and are substituting ''title IV–A'', and are deleting paragraphs ''(a)(1)'', ''(a)(1)(i)'', ''(a)(1)(ii)'', ''(a)(1)(ii)(A)'', ''(a)(1)(ii)(B)'', ''(a)(2)'', ''(a)(2)(i)'', and ''(a)(2)(ii)''. Paragraph (a) will contain

only references to the FMAP in computing the Federal share. We are adding a new paragraph (c) indicating that if a hold harmless payment is made pursuant to section 457(d) in the Act, the payment will be made from the Federal share of collections following payment of the incentive amount as described by 45 CFR 304.26(b).

Section 304.29 Application of Other Regulations

The authorities for this section are sections 1102 and 1116 of the Act. We are revising § 304.29 by removing ''Regional Representative which refers to the Regional Representatives of the Office of Child Support Enforcement'' and replacing it with ''Regional Administrator which refers to the Regional Administrator of the Administration for Children and Families''. This revision is made to update the section.

Section 304.40 Repayment of Federal Funds by Installments

This regulation is authorized under the Secretary's general rulemaking authority under section 1102 of the Act. We are revising § 304.40(a)(2) by removing ''Representative'' and replacing it with ''Office'', and revising paragraph (b)(2) by removing ''OCSE–OA–25'' and replacing it with ''required financial reports'', and removing ''(as shown on the latest OCSE–OA–25)''. These revisions are made to update the section.

PART 305—Audit and Penalty: Section 305.0 Scope, Section 305.1 Definitions, Section 305.10 Timing and Scope of Audit, Section 305.11 Audit Period, Section 305.12 State Comments, Section 305.13 State Cooperation in Annual Audit, Section 305.20 Effective Support Enforcement Program, Section 305.98 Performance Indicators and Audit Criteria, Section 305.99 Notice and Corrective Action Period, and Section 305.100 Penalty For Failure to Have an Effective Support Enforcement Program.

We are removing and reserving part 305. We are removing this part because it was based on former sections 403(h) and 452(a)(4) of the Act which were revised under PRWORA and the BBA to provide for audits of data and calculations transmitted by State agencies, review of State annual reports, and other audits as deemed appropriate by HHS. Separate regulations will be published to address the new audit and penalty provisions in sections 403(h) and 452(a)(4) of the Act.

Waiver of Proposed Rulemaking

These regulations are being published in final form with a comment period. The Administrative Procedure Act, 5 U.S.C. 553(b)(B), provides that, if the Department for good cause finds that a notice of proposed rulemaking is unnecessary, impracticable or contrary to the public interest, it may dispense with the notice if it incorporates a brief statement in the final regulations of the reasons for doing so.

The Department finds that there is good cause to dispense with proposed rulemaking procedures with respect to these changes for the following reasons. First, we are making changes merely to remove inconsistencies with the revised statute. The regulations will be updated and are noncontroversial. Secondly, the changes to the Act were enacted on August 22, 1996. We would like to revise our rules as quickly as possible to be consistent with these changes. Therefore, we are eliminating a proposed rule for the sake of expediency.

For these reasons, OCSE believes that there is sufficient cause to dispense with proposed rulemaking. Nonetheless, we wish to have the advantage of the information and opinions we may receive through public comments. We will consider any comments received and revise the regulations if necessary. We will issue a final document confirming that this interim final rule is final and will add any revisions, as needed, from the comments.

Paperwork Reduction Act

Part 302 contains an information collection requirement as required by the Paperwork Reduction Act of 1995 (44 U.S.C. 3507 (d)).

Title: State Plan for Child Support Collection and Establishment of Paternity Under Title IV–D of the Social Security Act.

Summary: The State plan preprint and amendments serve as a contract with OCSE in outlining the activities the States will perform as required by law in order for States to receive Federal funds to meet the costs of these activities. This interim final rule serves to eliminate regulations, in part or in whole, which were rendered obsolete by or inconsistent with, the Personal Responsibility and Work Opportunity Reconciliation Act of 1996 (PRWORA), the Balanced Budget Act of 1997 (BBA) and the Adoption and Safe Families Act of 1997. All of the required new and revised State plan preprints were approved by OMB July 7, 1997 and February 18, 1998, both under OMB No. 0970–0017. Also new forms were approved by OMB Nos. 0970–0085 (Standard Interstate Forms), 0970–0152 (Lien and Subpoena Forms), and 0970–0154 (Wage Withholding Form). An additional information collection burden consists of updating the State plan by removing the State plan preprint page for Section 3.12, Payment of Support through the IV–D agency or Other Entity, due to removal of 45 CFR 302.57, Procedures for payment of support through the IV–D agency or other entity. The effect of removing section 302.57 reduces the information collection burden relating to State plan requirements by 38 annual hours, from 1,316 annual burden hours to 1,278 annual burden hours. The information collected on the State plan pages is necessary to enable OCSE to monitor compliance with the requirements in title IV–D of the Social Security Act and implementing regulations.

Respondents: States and Territories.

Instrument	Number of respondents	Number of responses per respondent	Average burden hours per response	Total burden hours
OCSE–100 (Section 302.57)	54	1	43 minutes	38

Estimated Revised Total Annual Burden Hours: 1,278.

The Administration for Children and Families will consider comments by the public on this proposed collections(s) of information in—

- Evaluating whether the proposed collection(s) is [are] necessary for the proper performance of the functions of ACF, including whether the information will have practical utility;

- Evaluating the accuracy of the ACF's estimate of the burden of the proposed collection(s) of information, including the validity of the methodology and assumptions used;

• Enhancing the quality, usefulness, and clarity of the information to be collected; and

• Minimizing the burden of the collection of information on those who are to respond, including through the use of appropriate automated, electronic, mechanical, or other technology, e.g., permitting electronic submission of responses.

In compliance with the requirements of section 3506(c)(2)(A) of the Paperwork Reduction Act of 1995, the Administration for Children and Families is soliciting public comment on the specific aspects of the information collection described above. Copies of the proposed collection of information can be obtained and comments may be forwarded by writing to the Administration for Children and Families, Office of Information Services, Division of Information Resource Management Services, 370 L'Enfant Promenade, SW, Washington, DC 20447, Attn: ACF Reports Clearance Officer. All requests should be identified by the title of the information collection. Consideration will be given to comments received within sixty days of this notice.

Regulatory Flexibility Analysis

The Secretary certifies, under 5 U.S.C. 605(b), as enacted by the Regulatory Flexibility Act (Pub. L. 96–354), that this rule will not result in a significant impact on a substantial number of small entities. The primary impact is on State governments and individuals and results from restating the provisions of the statute. State governments are not considered small entities under the Act.

Regulatory Impact Analysis

Executive Order 12866 requires that regulations be reviewed to ensure that they are consistent with the priorities and principles set forth in the Executive Order. The Department has determined that this rule is consistent with these priorities and principles. No costs are associated with this rule as it merely ensures consistency between the statute and regulations.

Unfunded Mandates Reform Act of 1995

Section 202 of the Unfunded Mandates Reform Act of 1995 requires that a covered agency prepare a budgetary impact statement before promulgating a rule that includes any Federal mandate that may result in the expenditure by State, local, and Tribal governments, in the aggregate, or by the private sector, of $100 million or more in any one year.

If a covered agency must prepare a budgetary impact statement, section 205 further requires that it select the most cost-effective and least burdensome alternative that achieves the objectives of the rule and is consistent with the statutory requirements. In addition, section 203 requires a plan for informing and advising any small governments that may be significantly or uniquely impacted by the interim final rule.

We have determined that the interim final rule will not result in the expenditure by State, local, and Tribal governments, in the aggregate, or by the private sector, of more than $100 million in any one year. Accordingly, we have not prepared a budgetary impact statement, specifically addressed the regulatory alternatives considered, or prepared a plan for informing and advising any significantly or uniquely impacted small governments.

Congressional Review

This interim final rule is not a major rule as defined in 5 U.S.C., Chapter 8.

List of Subjects

45 CFR Part 301

Child support, Grant programs/social programs.

45 CFR Part 302

Child support, Grant programs/social programs, Reporting and recordkeeping requirements.

45 CFR Parts 303 and 304

Child support, Grant programs/social programs, Reporting and recordkeeping requirements.

45 CFR Part 305

Accounting, Child support, Grant programs/social programs, Reporting and recordkeeping requirements.

(Catalog of Federal Domestic Assistance Programs No. 93.563, Child Support Enforcement Program)

Dated: January 15, 1999.

Olivia A. Golden,

Assistant Secretary for Children and Families.

For the reasons discussed above, we are amending title 45 chapter III of the Code of Federal Regulations as follows:

PART 301—STATE PLAN APPROVAL AND GRANT PROCEDURES

1. The authority citation for part 301 continues to read as set forth below:

Authority: 42 U.S.C. 651 through 658, 660, 664, 666, 667, 1301, and 1302.

§ 301.1 [Amended]

2. In § 301.1, the definitions of ''Assigned support obligation'' and ''Assignment'' are amended by removing ''§ 232.11 of this chapter'' and adding ''section 408(a)(3) of the Act'' in its place, the definition for ''Central registry'' is amended by removing ''URESA'' and adding ''UIFSA'' in its place, and by removing the term ''AFDC'' and adding the term ''title IV–A'' in its place in the title and definition for ''Non-AFDC Medicaid recipient.''

PART 302—STATE PLAN REQUIREMENTS

3. The authority citation for part 302 continues to read as follows:

Authority: 42 U.S.C. 651 through 658, 660, 664, 666, 667, 1302, 1396a(a)(25), 1396b(d)(2), 1396b(o), 1396b(p), 1396(k).

4. In part 302, the term ''absent parent'' is removed wherever it appears and the term ''noncustodial parent'' is added in its place, and the term ''absent parents'' is removed wherever it appears and the term ''noncustodial parents'' is added in its place.

5. In part 302, the term ''AFDC'' is removed wherever it appears and the term ''title IV–A'' is added in its place, and the term ''non-AFDC'' is removed wherever it appears and the term ''non-IV–A'' is added in its place.

§ 302.12 [Amended]

6. In § 302.12, paragraph (a)(1) is amended by removing paragraph (a)(1)(i) and redesignating paragraph (a)(1)(ii) as (a)(1)(i) and paragraph (a)(1)(iii) as (a)(1)(ii).

§ 302.31 [Amended]

7. In § 302.31:

a. Paragraph (a)(2) is amended by removing ''and reciprocal arrangements adopted with other States when appropriate'', and ''regarding intrastate and interstate establishment and enforcement of support obligations'' is added in its place;

b. Paragraph (a)(3) is removed and reserved;

c. Paragraph (b) is amended by removing ''from the IV–A, IV–E or Medicaid agency that there has been'' and adding in its place ''of''; and

d. Paragraph (c) is amended by removing ''from the IV–A, IV–E or Medicaid agency'' and ''by the IV–A, IV–E or Medicaid agency, as appropriate''.

8. Section 302.32 is revised to read as follows:

§ 302.32 Collection and disbursement of support payments by the IV–D Agency.

The State plan shall provide that effective October 1, 1998 (or October 1, 1999, for States which paid support through courts on August 22, 1996,):

(a) In any case in which support payments are collected for a recipient of

aid under the State's title IV–A plan with respect to whom an assignment under section 408(a)(3) of the Act is effective, such payments shall be made to the State disbursement unit and shall not be paid directly to the family.

(b) Timeframes for disbursement of support payments by State disbursement unit (SDU) under section 454B of the Act.

(1) In interstate IV–D cases, amounts collected by the responding State on behalf of the initiating State must be forwarded to the initiating State within 2 business days of the initial point of receipt by the SDU in the responding State, in accordance with § 303.7(c)(7)(iv).

(2) Amounts collected by the IV–D agency on behalf of recipients of aid under the State's title IV–A or IV–E plan for whom an assignment under sections 408(a)(3) or 471(a)(17) of the Act is effective shall be disbursed by the SDU within the following timeframes:

(i) Except as specified under paragraph (b)(2)(iv) of this section, if the SDU sends payment to the family (other than payments sent to the family from the State share of assigned support collections), the SDU must send these payments within 2 business days of the end of the month in which the payment was received by the SDU. Any payment passed through to the family from the State share of assigned support collections must be sent to the family within 2 business days of the date of receipt by the SDU.

(ii) Except as specified under paragraph (b)(2)(iv) of this section, when the SDU sends collections to the family for the month after the month the family becomes ineligible for title IV–A, the SDU must send collections to the family within 2 business days of the date of initial receipt in the State.

(iii) Except as specified under paragraph (b)(2)(iv) of this section, when the SDU sends collections to the IV–E foster care agency under § 302.52(b)(2) and (4) of this part, the SDU must send collections to the IV–E agency within 15 business days of the end of the month in which the support was initially received in the State.

(iv) Collections as a result of Federal income tax refund offset paid to the family under section 457(a)(2)(iv) of the Act or distributed in title IV–E foster care cases under § 302.52(b)(4) of this part, must be sent to the IV–A family or IV–E agency, as appropriate, within 30 calendar days of the date of initial receipt by the IV–D agency, unless State law requires a post-offset appeal process and an appeal is filed timely, in which case the SDU must send any payment to the IV–A family or IV–E agency within 15 calendar days of the date the appeal is resolved.

(3)(i) Except as provided under paragraph (b)(3)(ii) of this section, amounts collected on behalf of individuals receiving services under § 302.33 of this part shall be disbursed by the SDU pursuant to section 457 of the Act, within 2 business days of initial receipt in the State.

(ii) Collections due the family under section 457(a)(2)(iv) of the Act as a result of Federal income tax refund offset must be sent to the family within 30 calendar days of the date of initial receipt in the IV–D agency, except:

(A) If State law requires a post-offset appeal process and an appeal is timely filed, in which case the SDU must send any payment to the family within 15 calendar days of the date the appeal is resolved; or

(B) As provided in § 303.72(h)(5) of this chapter.

§ 302.34 [Amended]

9. Section 302.34 is amended by removing the word ''and'' and the period and adding in its place, commas and adding ''Indian tribes or tribal organizations'' at the end of the first sentence; and by removing the phrase, ''including the immediate transfer of the information obtained under § 235.70 of this title to the court or law enforcement official'' in the third sentence.

10. In § 302.35:

a. Paragraph (c)(1) is amended by removing the phrase ''or medical support obligations if an agreement is in effect under § 306.2 of this chapter'';

b. Paragraph (c)(2) is amended by adding the phrase, ''or to serve as the initiating court in an action to seek an order'' after ''order'';

c. Paragraph (c)(4) is amended by adding, '', visitation'' after ''kidnapping'';

d. New paragraphs (c)(5) and (d) are added to read as follows:

§ 302.35 State parent locator service.

* * * * *

(c) * * *

(5) A State agency that is administering a program operated under a State plan under subpart 1 of part B, or a State plan approved under subpart 2 of part B or under part E.

(d) The State PLS shall, subject to the privacy safeguards required under section 454(26) of the Act, disclose only the information described in sections 453 and 463 of the Act to the authorized persons specified in such sections for the purposes specified in such sections.

11. Section 302.50 is revised to read as follows:

§ 302.50 Assignment of rights.

The State plan shall provide as follows:

(a) An assignment of support rights, as defined in § 301.1 of this chapter, constitutes an obligation owed to the State by the individual responsible for providing such support. Such obligation shall be established by:

(1) Order of a court of competent jurisdiction or of an administrative process; or

(2) Except for obligations assigned under 42 CFR 433.146, other legal process as established by State laws, such as a legally enforceable and binding agreement.

(b) The amount of the obligation described in paragraph (a) of this section shall be:

(1) The amount specified in the order of a court of competent jurisdiction or administrative process which covers the assigned support rights.

(2) If there is no court or administrative order, an amount determined in writing by the IV–D agency as part of the legal process referred to in paragraph (a)(2) of this section in accordance with the requirements of § 302.56; or

(c) The obligation described in paragraph (a) of this section shall be deemed for collection purposes to be collectible under all applicable State and local processes.

(d) Any amounts which represent support payments collected from an individual responsible for providing support under the State plan shall reduce, dollar for dollar, the amount of his obligation under this section.

(e) No portion of any amounts collected which represent an assigned support obligation defined under § 301.1 of this chapter may be used to satisfy a medical support obligation unless the court or administrative order designates a specific dollar amount for medical purposes.

12. Section 302.51 is revised to read as follows:

§ 302.51 Distribution of support collections.

The State plan shall provide as follows:

(a)(1) For purposes of distribution in a IV–D case, amounts collected, except as provided under paragraph (a)(3) of this section, shall be treated first as payment on the required support obligation for the month in which the support was collected and if any amounts are collected which are in excess of such amount, these excess amounts shall be treated as amounts which represent payment on the required support obligation for previous months.

(2) In title IV–A and title IV–E foster care cases in which conversion to a monthly amount is necessary because support is ordered to be paid other than monthly, the IV–D agency may round off the converted amount to whole dollar amount for the purpose of distribution under this section and § 302.52 of this part.

(3) Amounts collected through Federal income tax refund offset must be distributed as arrearages in accordance with § 303.72(h) of this chapter, and section 457(a)(2)(iv) of the Act.

(4)(i) Effective October 1, 1998 (or October 1, 1999 if applicable) except with respect to those collections addressed under paragraph (a)(3) of this section and except as specified under paragraph (a)(4)(ii) of this section, with respect to amounts collected and distributed under title IV–D of the Act, the date of collection for distribution purposes in all IV–D cases is the date of receipt in the State disbursement unit established under section 454B of the Act.

(ii) If current support is withheld by an employer in the month when due, and received by the State in a month other than the month when due, the date of withholding may be deemed to be the date of collection.

(iii) When the date of collection pursuant to this subparagraph is deemed to be the date the wage or other income was withheld, and the employer fails to report the date of withholding, the IV–D agency must reconstruct that date by contacting the employer or comparing actual amounts collected with the pay schedule specified in the court or administrative order.

(b) If an amount collected as support represents payment on the required support obligation for future months, the amount shall be applied to such future months. However, no such amounts shall be applied to future months unless amounts have been collected which fully satisfy the support obligation assigned under section 403(a)(8) of the Act for the current month and all past months.

(c)(1) The amounts collected by the IV–D agency which represent specific dollar amounts designated in the support order for medical purposes that have been assigned to the State under 42 CFR 433.146 shall be forwarded to the Medicaid agency for distribution under 42 CFR 433.154.

(2) When a family ceases receiving assistance under the State's title XIX plan, the assignment of medical support rights under section 1912 of the Act terminates, except for the amount of any unpaid medical support obligation that has accrued under such assignment. The IV–D agency shall attempt to collect any unpaid specific dollar amounts designated in the support order for medical purposes. Under this requirement, any medical support collection made by the IV–D agency under this paragraph shall be forwarded to the Medicaid agency for distribution under 42 CFR 433.154.

§ 302.52 [Amended]

13. In § 302.52(b)(5), the citation ''§ 232.11 of this title and section 471(a)(17) of the Act'' are removed and ''sections 408(a)(3) and 471(a)(17) of the Act'' is added in its place.

§ 302.54 [Amended]

14. In § 302.54(a)(1), the citation ''§ 232.11 of this title'' is removed and ''section 408(a)(3) of the Act'' is added in its place.

§ 302.57 [Removed]

15. Section 302.57 is removed.

§ 302.70 [Amended]

16. In § 302.70:

a. Paragraph (a) introductory text, is amended by adding ''and part 303 of this chapter'' after ''Act''; removing ''the following'' after ''implemented''; and adding commas after ''for'' and ''improve'';

b. Paragraph (d)(1) is amended by removing ''paragraph (a) of this section'' and adding ''section 466 of the Act'' in its place; and

c. Paragraph (d)(2) is amended by removing ''paragraph (a)(2) of this section'' and adding ''section 466(a)(2) of the Act'' in its place.

§ 302.75 [Amended]

17. In § 302.75(b)(4), the citation, ''§ 232.11 of this title'' is removed and ''section 408(a)(3) of the Act'' is added in its place.

§ 302.80 [Amended]

18. In § 302.80(a), the second sentence is removed.

PART 303—STANDARDS FOR PROGRAM OPERATIONS

19. The authority citation for part 303 continues to read as follows:

Authority: 42 U.S.C. 651 through 658, 660, 663, 664, 666, 667, 1302, 1396a(a)(25), 1396b(d)(2), 1396b(o), 1396b(p), and 1396(k).

20. In part 303, the term ''absent parent'' is removed wherever it appears, except for § 303.15(c) (1), and the term ''noncustodial parent'' is added in its place, the term ''absent parents'' is removed wherever it appears and the term ''noncustodial parents'' is added in its place, and the term ''absent parent's'' is removed wherever it appears, except for § 303.70(c)(1) and (2), and the term ''noncustodial parent's'' is added in its place.

21. In part 303, the term ''AFDC'' is removed wherever it appears and the term ''title IV–A'' is added in its place, and the term ''non-AFDC'' is removed wherever it appears and the term ''non-IV–A'' is added in its place.

22. In part 303, the term ''IRS'' is removed wherever it appears and the term ''Secretary of the U. S. Treasury'' is added in its place, except for § 303.72(i) where the term ''Department of Treasury'' is added in its place.

§ 303.3 [Amended]

23. In § 303.3(b)(1) ''and other sources'' is added at the end of the paragraph.

24. In § 303.5:

a. Paragraph (d)(1) is revised to read as follows:

§ 303.5 Establishment of paternity. [Amended]

* * * * *

(d)(1) Upon request of any party in a contested paternity case in accordance with section 466(a)(5)(B) of the Act, and subject to the provisions of paragraph (b) of this section, the IV–D agency shall require all parties to submit to genetic tests unless, in the case of an individual receiving aid under the State's title IV–A, IV–E or XIX plan, or those recipients of the food stamp program, as defined under section 3(h) of the Food Stamp Act of 1977 who are required to cooperate with the child support program, there has been a determination of good cause for refusal to cooperate under section 454(29) of the Act.

* * * * *

b. Paragraph (d)(2) is amended by removing the term, ''legal'';

c. Paragraph (e)(1) is amended by adding the phrase ''Except as provided in paragraph (e)(3) of this section,'' at the beginning of the paragraph, and the capital ''T'' in the word ''The'' is removed and a lower case ''t'' is added in its place;

d. Paragraph (e)(3) is revised to read as follows:

* * * * *

(e) * * *

(3) If paternity is established and genetic tests were ordered by the IV–D agency, the IV–D agency must pay the costs of such tests, subject to recoupment (if the agency elects) from the alleged father who denied paternity. If a party contests the results of an original test, the IV–D agency shall obtain additional tests but shall require the contestant to pay for the costs of any such additional testing in advance.

§ 303.7 [Amended]

25. In § 303.7:

a. Paragraph (a)(1) is amended by ending the sentence with ''incoming interstate IV–D cases'' and removing all matter thereafter;

b. Paragraph (b)(2) is amended by removing ''URESA petitions and'';

c. Paragraph (b)(3) is amended by removing ''either the Interstate Child Support Enforcement Transmittal Form or the URESA Action Request Forms package as appropriate'' and adding ''Federally-approved interstate forms'' in its place, and adding the term, ''Federal'' before the last word ''forms'';

d. Paragraph (b)(6) is amended by removing the citation ''§ 303.8(f)(1)'' and adding § 303.8'' in its place;

e. Paragraph (c)(4) is amended by removing ''a URESA Action Request Form or other alternative State form'';

f. Paragraph (c)(7)(iii) is amended by removing ''Uniform Reciprocal Enforcement of Support Act'' and adding ''Uniform Interstate Family Support Act'' in its place, and by removing ''through 303.105'' and adding ''through 303.102 and 303.104'' in its place;

g. Paragraph (c)(7)(iv) is amended by removing ''no later than 15 calendar days from the date of initial receipt in the responding State'' and ''or that the payments were made through State income tax refund offset'';

h. Paragraph (c)(7)(v) is amended by removing the citation ''§ 303.8(f)(2)'' and adding ''§ 303.8'' in its place; and

i. Paragraph (d)(3) is revised to read as follows:

* * * * *

(d) * * *

(3) If paternity is established in the responding State, the IV–D agency must attempt to obtain a judgment for the costs of genetic testing ordered by the IV–D agency from the alleged father who denied paternity. If the costs of initial or additional genetic testing are recovered, the responding State must reimburse the initiating State.

* * * * *

26. Section 303.8 is revised to read as follows:

§ 303.8 Review and adjustment of child support orders.

(a) *Definition:* For purposes of this section, *Parent* includes any custodial parent or non-custodial parent (or for purposes of requesting a review, any other person or entity who may have standing to request an adjustment to the child support order).

(b) Pursuant to section 466(a)(10) of the Act, when providing services under this chapter, the State must:

(1) Have in effect and use a process for review and adjustment of child support orders being enforced under title IV–D of the Act, including a process for challenging a proposed adjustment or determination.

(2) Not less than once every three years, notify each parent subject to a child support order in the State of the right to request a review of the order, and the appropriate place and manner in which the request should be made.

(c) The State may establish a reasonable quantitative standard based upon either a fixed dollar amount or percentage, or both, as a basis for determining whether an inconsistency between the existent child support award amount and the amount of support determined as a result of a review is adequate grounds for petitioning for adjustment of the order.

(d) The need to provide for the child's health care needs in the order, through health insurance or other means, must be an adequate basis under State law to petition for adjustment of an order, regardless of whether an adjustment in the amount of child support is necessary. In no event shall the eligibility for or receipt of Medicaid be considered to meet the need to provide for the child's health care needs in the order.

(e) *Timeframes for review and adjustment.* Within 180 calendar days of receiving a request for a review or locating the non-requesting parent, whichever occurs later, a State must: conduct a review of the order and adjust the order or determine that the order should not be adjusted, in accordance with this section.

(f) *Interstate review and adjustment.* (1) In interstate cases, the State with legal authority to adjust the order will conduct the review and adjust the order pursuant to this section.

(2) *Applicable laws and procedures.* The applicable laws and procedures for review and adjustment of child support orders, including the State guidelines for setting child support awards, established in accordance with § 302.56 of this chapter, are those of the State in which the review and adjustment, or determination that there be no adjustment, take place.

§ 303.15 [Amended]

27. In § 303.15: ′

a. Paragraphs (a)(1) (i) and (ii) are amended by adding ''or visitation'' after ''custody'';

b. Paragraph (a)(2) is amended by adding ''or visitation'' after the first mention of ''Custody'' and before ''Determination'';

c. Paragraph (b) is amended by removing ''If the State enters'' and adding ''A State shall enter'' in its place, and by removing the comma after ''regulations'' and adding ''so that'' in its place;

d. Paragraph (b)(2) is amended by adding ''or visitation'' after ''custody''; and

e. Paragraph (c)(1) is amended by removing ''an absent'' and adding ''a'' in its place.

§ 303.20 [Amended]

28. In § 303.20 paragraph (b)(3) is amended by removing ''Reciprocal Enforcement of Support Act'' and adding ''Uniform Interstate Family Support Act'' in its place.

§ 303.21 [Removed]

29. Section 303.21 is removed.

§ 303.30 [Amended]

30. In § 303.30:

a. Paragraph (b) is removed; and

b. Paragraph (c) is redesignated as paragraph (b), and amended by removing ''paragraphs'' and adding ''paragraph'' in its place, and by removing ''and (b)(1)''.

§ 303.31 [Amended]

31. In § 303.31, paragraph (c), introductory text, is amended by removing ''are available'' and adding ''will be provided'' in its place, and by removing the colon at the end of the paragraph and adding a period in its place; and by removing paragraphs (c)(1) and (c)(2).

§ 303.70 [Amended]

32. In § 303.70:

a. Paragraphs (c)(1) and (c)(2) are amended by removing the word, ''absent'';

b. Paragraph (d)(1) is amended by removing ''solely to locate an individual for the purpose of establishing paternity or securing support or in connection with a parental kidnapping or child custody case'' and adding ''to obtain information or to facilitate the discovery of any individual in accordance with section 453(a)(2) of the Act for the purpose of establishing parentage or establishing, setting the amount of, modifying, or enforcing child support obligations, or for determining who has or may have parental rights with respect to a child, or in accordance with section 453(a)(3) of the Act for enforcing a State law with respect to the unlawful taking or restraint of a child, or for making or enforcing a child custody or visitation determination as defined in section 463(d)(1) of the Act'' in its place;

c. Paragraph (d)(2), is amended by removing ''of § 303.21 of this chapter''

and adding ''of sections 453(b), 453(l), 454(8), 454(17), 454(26), and 463(c) of the Act'' in its place;

d. Paragraph (e)(1)(i) is amended by removing all the language after ''the Act'' and adding a semicolon after ''Act'';

e. Paragraph (e)(1)(ii) is amended by adding ''or visitation'' after ''custody'' and by removing the period and adding a semicolon in its place;

f. A new paragraph (e)(1)(iii) is added to read as follows:

* * * * *

(e) * * *

(1) * * *

(iii) Section 453(k) of the Act.

g. Paragraph (e)(2)(i) is amended by adding a comma and ''453(k)(3) or'' after ''453(e)(2)'', removing ''and'', and adding '', except that the IV–D agency shall charge an individual specified in section 453(c)(3) of the Act the fee required under section 453(e)(2) of the Act'' after ''the Act'' in its place;

h. Paragraph (e)(3) is amended by adding '', 453(k)(3)'' after ''453(e)(2)''; and

i. Paragraph (e)(4)(i) is amended by adding '', and furnishing information under section 453(k)(3) of the Act,'' after ''Act'' and by removing the word ''location'' in the second sentence.

§ 303.71 [Amended]

33. In § 303.71:

a. Paragraph (b) is amended by removing ''1954'' and adding ''1986'' in its place.

b. Paragraphs (f) and (g) are amended by removing ''Representative'' wherever it appears and adding ''Office'' in its place; and

§ 303.72 [Amended]

34. In § 303.72:

a. Paragraphs (a)(1) and (2) are amended by removing the citation ''§ 232.11 of this title'' and adding ''section 408(a)(3) of the Act'' in its place;

b. Paragraph (h)(1) is amended by removing ''under § 302.51(b)(4) and (5) and (e) of this chapter'' and adding ''in accordance with section 457 of the Act'' in its place;

c. Paragraph (h)(3) is amended by removing ''under § 232.11 of this title, 42 CFR 433.146, or section 471(a)(17) of the Act'';

d. Paragraph (h)(4) is amended by removing ''§ 302.51(b)(4) and (5) and (e) or § 302.52(b)(3) and (4) of this chapter'' and adding ''section 457 of the Act'' in its place.

§ 303.80 [Removed]

35. Section 303.80 is removed.

§ 303.100 [Amended]

36. In § 303.100:

a. The heading is amended by removing ''wage or'';

b. Paragraph (a)(1) is amended by removing the term, ''wages'' and adding ''income as defined in sections 466(b)(1) and (8) of the Act'' in its place;

c. Paragraph (a)(9) is removed;

d. Paragraph (a)(10) is redesignated as paragraph (a)(9);

e. Paragraph (b)(1) is amended by removing the two mentions of ''wages'' and adding ''income'' in its place;

f. Paragraph (b)(2)(i) is amended by removing the term ''wage'' and adding the term ''income'' in its place.

g. The introductory text of paragraph (c) is amended by removing ''wages'' and adding ''income'' in its place;

h. Paragraph (c)(1), introductory text, is amended by removing ''wages or'' and adding ''income of'' in its place;

i. Paragraph (c)(2) is removed;

j. Paragraph (c)(3) is redesignated as paragraph (c)(2);

k. The introductory text of paragraph (d) and paragraph (d)(1) are revised to read as follows:

§ 303.100 Procedures for income withholding.

* * * * *

(d) *Notice to the noncustodial parent in cases of initiated withholding.* The State must send a notice to the noncustodial parent regarding the initiated withholding. The notice must inform the noncustodial parent:

(1) That the withholding has commenced;

* * * * *

l. Paragraphs (d)(1)(iv), (d)(1)(v) and (d)(2) are removed and paragraphs (d)(1)(i) to (iii) are redesignated as paragraphs (d)(2) to (4);

m. A new paragraph (d)(5) is added to read as follows:

§ 303.100 Procedures for income withholding.

* * * * *

(d) * * *

(5) Of the information provided to the employer, pursuant to paragraph (e) of this section.

* * * * *

n. Paragraph (e) is removed and paragraph (f) is redesignated as paragraph (e);

o. Newly redesignated paragraph (e)(1) introductory text, is amended by adding, ''using the standard Federal format'' after the word ''notice'';

p. Newly redesignated paragraph (e)(1)(i) is amended by removing the citation ''(f)(1)(iii)'' and adding ''(e)(1)(iii)'' in its place;

q. Newly redesignated paragraph (e)(1)(ii) is amended by removing ''10 working'' and adding ''7 business'' in its place, by removing ''wages'' and adding ''income'' in its place; and by removing ''State (or such other individual or entity as the State may direct)'' and adding ''SDU'' in its place in both occurrences.

r. Newly redesignated paragraph (e)(1)(vi) is amended by removing both mentions of ''wages'' and adding the term ''income'' in its place;

s. Newly redesignated paragraphs (e)(1)(vii) and (viii) are amended by removing ''wages'' and adding the term with ''income'' in its place;

t. Newly redesignated paragraph (e)(1)(ix) is revised to read as follows:

§ 303.100 Procedures for income withholding.

* * * * *

(e) * * *

(1) * * *

(ix) That the employer must withhold from the noncustodial parent's income the amount specified in the notice and pay such amount to the State disbursement unit within 7 business days after the date the income would have been paid to the noncustodial parent.

u. Newly redesignated paragraph (e)(2) is amended by removing the citation ''(f)(1)'' and adding ''(e)(1)'' in its place, and removing ''entered'' and adding ''received'' in its place;

v. Newly redesignated paragraph (e)(3) is revised to read as follows:

§ 303.100 Procedures for income withholding.

* * * * *

(e) * * *

(3) In the case of initiated withholding, the State must send the notice to the employer required under paragraph (e)(1) of this section within 15 calendar days of the date specified in paragraph (c)(1) of this section if the employer's address is known on that date, or, within 15 calendar days of locating the employer's address.

w. Paragraph (g) is removed;

x. Paragraph (h) is redesignated as paragraph (f) and revised to read as follows:

§ 303.100 Procedures for income withholding.

* * * * *

(f) *Interstate withholding.*

(1) The State law must require employers to comply with a withholding notice issued by any State.

(2) When an out-of-State IV–D agency requests direct withholding, the employer must be required to withhold funds as directed in the notice but to apply the income withholding laws of

the noncustodial parent's principal place of employment to determine:

(i) The employer's fee for processing the withholding notice;

(ii) The maximum amount that may be withheld from the noncustodial parent's income;

(iii) The time periods to implement the withholding notice and to remit the withheld income;

(iv) The priorities for withholding and allocating income withheld for multiple child support obligees; and

(v) Any withholding term or conditions not specified in the withholding order.

(3) In other than direct withholding actions:

(i) A State may require registration for orders from other States for purposes of enforcement through withholding only if registration is for the sole purpose of obtaining jurisdiction for enforcement of the order; does not confer jurisdiction on the court or agency for any other purpose (such as modification of the underlying or original support order or resolution of custody or visitation disputes); and does not delay implementation of withholding beyond the timeframes established in paragraphs (e)(2) and (e)(3) of this section.

(ii) Within 20 calendar days of a determination that withholding is required in a particular case, and, if appropriate, receipt of any information necessary to carry out withholding, the initiating State must notify the IV–D agency of the State in which the noncustodial parent is employed to implement interstate withholding. The notice must contain all information necessary to carry out the withholding, including the amount requested to be withheld, a copy of the support order and a statement of arrearages, if appropriate. If necessary, the State where the support order is entered must provide the information necessary to carry out the withholding within 30 calendar days of receipt of a request for information by the initiating State.

(iii) The State in which the noncustodial parent is employed must implement withholding in accordance with this section upon receipt of the notice from the initiating State required in paragraph (f)(3)(ii) of this section.

(iv) The State in which the noncustodial parent is employed must notify the State in which the custodial parent is receiving services when the noncustodial parent is no longer employed in the State and provide the name and address of the noncustodial parent and new employer, if known.

* * * * *

y. Paragraph (i) is redesignated as paragraph (g) and is amended by removing ''between October 1, 1985, and January 1, 1994, or modified on or after January 1, 1994,'' and adding ''whether or not being enforced under the State IV–D plan,'' in its place; and by removing ''In order to ensure that withholding as a means of support is available if arrearages occur without the necessity of filing an application for IV–D services''.

37. In § 303.101:

a. Paragraph (a) is revised to read as follows:

§ 303.101 Expedited processes.

(a) *Definition Expedited processes* means administrative and judicial procedures (including IV–D agency procedures) required under section 466(a)(2) and (c) of the Act;

* * * * *

b. Paragraph (b)(1) is amended by removing ''establish and enforce'' and adding ''establish, modify, and enforce'' in its place;

c. Paragraphs (c)(4) and (5) are removed; and

d. Paragraph (c)(6) is redesignated as paragraph (c)(4) and is amended by adding ''administrative or'' before ''judicial''.

§ 303.102 [Amended]

38. In § 303.102:

a. Paragraph (a)(1) is amended by removing ''§ 232.11 of this title or'' and adding ''section 408(a)(3) of the Act'' in its place;

b. Paragraph (c), (d) and (e) are redesignated as paragraphs (d), (e) and (c);

c. Newly redesignated paragraph (d) is amended by removing paragraph (d)(2), removing the designation for paragraph (d)(1) and adding the text after ''advance:'' removing the colon after ''advance'', removing the citation ''§ 302.51(e)'' and adding ''§ 302.51(c)'' in its place, and removing ''; and'' at the end of the paragraph and adding a period in its place; and

f. Paragraph (g) is amended by removing paragraphs (g)(1)(i) through (iii), adding the designation ''(i)'' directly after ''(g)(1)''; in paragraph (g)(1)(i) adding ''in accordance with section 457 of the Act'' to the end of the paragraph; redesignating paragraph (g)(1)(iv) as (g)(1)(ii); and removing the citation to ''§ 302.51(e)'' in (g)(1)(ii) and adding ''§ 302.51(c)'' in its place.

§ 303.103 [Removed]

39. Section 303.103 is removed.

§ 303.105 [Removed]

40. Section 303.105 is removed.

PART 304—FEDERAL FINANCIAL PARTICIPATION

41. The authority citation for part 304 continues to read as follows:

Authority: 42 U.S.C. 651 through 655, 657, 1302, 1396a(a)(25), 1396b(d)(2), 1396b(o), 1396(p), and 1396(k).

42. In part 304, the term ''absent parent'' is removed wherever it appears and the term ''noncustodial parent'' is added in its place, and the term ''absent parents'' is removed wherever it appears and the term ''noncustodial parents'' is added in its place.

43. In part 304, the term, ''AFDC'' is removed wherever it appears and the term ''title IV–A'' is added in its place, except for § 304.26. The term ''non–AFDC'' is removed wherever it appears and the term ''non–IV–A'' is added in its place.

§ 304.12 [Amended]

44. In § 304.12, paragraph (a) and the definition of ''Non–IV–A collections'' are amended by removing the citation of ''§ 232.11 of this title'' and adding ''section 408(a)(3) of the Act'' in its place.

§ 304.20 [Amended]

45. In § 304.20:

a. Paragraph (b)(1)(viii)(C) is removed;

b. Paragraph (b)(1)(viii)(D) is redesignated as paragraph (b)(1)(viii)(C);

c. Paragraph (b)(1)(ix)(C) is removed;

d. Paragraph (b)(1)(ix)(D) is redesignated as paragraph (b)(1)(ix)(C);

e. Newly redesignated paragraph (b)(1)(ix)(C) is amended by revising the citation, ''§ 302.51(e)'' to read ''§ 302.51(c)''; and

f. Paragraph (b)(3)(iv) is amended by removing ''wage withholding'' and adding ''income withholding'' in its place.

§ 304.21 [Amended]

46. In § 304.21, paragraph (a), introductory text, is amended by removing the first word of the last sentence, ''Then'' and adding ''When'' in its place.

47. Section 304.26 is revised to read as follows:

§ 304.26 Determination of Federal share of collections.

(a) From the amounts of support collected by the State and retained as reimbursement for title IV–A payments and foster care maintenance payments under title IV–E, the State shall reimburse the Federal government to the extent of its participation in the financing of the title IV–A and title IV–E payment. In computing the Federal share of support collections, the State

shall use the Federal medical assistance percentage (FMAP) as defined in section 457(c)(3) of the Act in computing the Federal share of collections under title IV–A and the FMAP in effect for the fiscal year in which the amount is distributed for amounts under title IV–E.

(b) If an incentive payment is made to a jurisdiction under § 304.12 of this chapter for the enforcement and collection of support obligations, the payment shall be made from the Federal share of collections computed in paragraph (a) of this section.

(c) If a hold harmless payment is made to a jurisdiction pursuant to section 457(d) of the Act, the payment shall be made from the remaining Federal share of collections following the incentive payment made in paragraph (b) of this section.

§ 304.29 [Amended]

48. Section 304.29 is amended by removing, ''Regional Representative'' which refers to the Regional Representatives of the Office of Child Support Enforcement and replacing with, ''Regional Administrator'' which refers to the Regional Administrator of the Administration for Children and Families.

§ 304.40 [Amended]

49. In § 304.40, paragraph (a)(2) is amended by removing ''Representative'' and adding ''Office'' in its place, and paragraph (b)(2) is amended by removing ''OCSE–OA–25'' and adding ''required financial reports'' in its place, and by removing ''(as shown on the latest OCSE–OA–25)''.

PART 305—[REMOVED AND RESERVED]

50. Part 305 is removed and reserved.

[FR Doc. 99–3007 Filed 2–8–99; 8:45 am]

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FEDERAL COMMUNICATIONS COMMISSION

47 CFR Part 80

[FCC 98–296]

Waiver of GMDSS Rules for Small Passenger Vessels and Fishing Vessels

AGENCY: Federal Communications Commission.

ACTION: Partial waiver of rules.

SUMMARY: On November 20, 1998, the Commission issued an Order waiving certain of its Rules implementing the Global Maritime Distress and Safety System (GMDSS) as applied to fishing vessels until it can conclude a rule making proceeding to determine what GMDSS equipment is appropriate for fishing vessels. In the same order, the Commission waived certain of its Rules implementing the GMDSS as applied to small passenger vessels until the United States Coast Guard has notified the Commission that Sea Areas A1 and A2 have been established.

DATES: Waiver is effective Feburary 1, 1999.

FOR FURTHER INFORMATION CONTACT: Michael J. Wilhelm, or Jim Shaffer, Public Safety and Private Wireless Division, Wireless Telecommunications Bureau, Federal Communications Commission, 2025 M Street, NW, Washington, DC 20554 or by telephone at (202) 418–0680 or by e-mail to, respectively, mwilhelm@fcc.gov or jshaffer@fcc.gov.

SUPPLEMENTARY INFORMATION: This is a summary of the Commission's *Order* released November 20, 1998.

I. Introduction and Executive Summary

1. By this *Order* we grant temporary, conditional waivers pursuant to Part II of Title III of the Communications Act of certain Commission rules implementing the provisions of the Safety of Life at Sea (SOLAS) Convention for small passenger vessels and fishing vessels.[1] The waivers affect fishing vessels[2] and small passenger vessels that make short voyages in certain narrowly-defined waters. Absent the action taken herein, fishing vessels and small passenger vessels would be required to fully implement the Global Maritime Distress and Safety System (GMDSS) on February 1, 1999.[3] We are granting the waiver for small passenger vessels *inter alia* because the short-based stations necessary for GMDSS short-range and medium-range digital selective calling (DSC) communications are not yet fully implemented in the United States. Consequently, were small passenger vessels required to fully conform to the GMDSS rules, those vessels would have to install the equipment necessary for long-range communication. The long-range equipment would be costly and unnecessary from a safety standpoint for small passenger vessels. In the case of fishing vessels, at the behest of representatives of the fishing industry, we are granting a temporary, conditional waiver from compliance with certain of the Commission's GMDSS rules pending completion of a rule making proceeding addressed to the issue of whether fishing vessels should be required to comply fully with the Commission's GMDSS rules. The waivers herein affect only rules that were to take effect on February 1, 1999. As a result, nothing herein should be construed as a waiver of GMDSS rules which already are in effect.

II. Background

2. *GMDSS Implementation.* In the *GMDSS R&O*,[4] the Commission established a schedule, consistent with the one adopted internationally, under which the GMDSS would be phased-in for United States vessels. The current GMDSS rules require that all United States compulsory vessels[5] must be equipped with a full GMDSS installation for alerting and communications purposes by February 1, 1999.[6] The Commission's GMDSS rules require all compulsory vessels to carry a complement of basic GMDSS equipment which includes a VHF installation with digital selective calling (DSC), a NAVTEX receiver, a float-free satellite EPIRB, one or more search and rescue radar transponders (SARTs), and two or more VHF portable radios. In addition, these vessels must carry certain other communications equipment depending on the ''Sea Area'' in which a vessel operates.[7] There are four possible Sea Areas (designated Sea Areas A1–A4).[8] Sea Areas A3 and

[1] *See* Consolidated Text of the International Convention for the Safety of Life at Sea, 1974, and its Protocol of 1978: Articles, Annexes and Certificates, Incorporating all Amendments in Effect from 1 July 1997, International Maritime Organization, London, 1997 (*SOLAS Convention*).

[2] ''Fishing vessels'' for the purposes of this *Order* are commercial vessels that catch and/or process fish and other marine life. *C.f. SOLAS Convention,* Part A, Regulation 2(i).

[3] *See* 47 CFR Subpart W.

[4] *See* Amendment of Parts 13 and 80 of the Commission's Rules to Implement the Global Maritime Distress and Safety System to Improve the Safety of Life at Sea, PR Docket No. 90–480, Report and Order, 7 FCC Rcd 951 (1992) (GMDSS R&O), petition for reconsideration denied, Memorandum Opinion and Order, FCC 98–180 (released August 10, 1998), 63 FR 49870 (September 18, 1998).

[5] Compulsory vessels are cargo ships of 300 gross tons or over travelling in the open sea, and all passenger ships, irrespective of size, that carry more than 12 passengers when travelling in the open sea. *See* 47 CFR 80.1065(b).

[6] *See* 47 CFR 80.1065.

[7] *See* 47 CFR 80.1089—80.1093.

[8] The GMDSS Sea Areas are defined as follows: *Sea Area A1*—an area within the radiotelephone coverage of at least one VHF coast station in which continuous DSC alerting is available (this would normally extend approximately 20–30 miles from shore); *Sea Area A2*—an area, excluding Sea Area A1, within the radiotelephone coverage of at least one MF coast station in which continuous DSC alerting is available (this would normally extend up to 75–150 miles from shore); *Sea Area A3*—an area, excluding Sea Areas A1 and A2, within the coverage of an INMARSAT geostationary satellite in

Continued

A4 are currently established and in use world-wide and rely, for their operation, on ship borne DSC-equipped high frequency (HF) transceivers or INMARSAT satellite terminals. In the United States, Sea Areas A1 and A2 are not established because the requisite shore-based VHF and MF DSC equipment is not in place. Accordingly, absent a waiver, compulsory ships in United States waters must be fitted with Sea Area A3 or A4 equipment in order to participate in the ship-to-shore and shore-to-ship portion of the GMDSS. The Sea Area A3 and A4 equipment, intended for long ocean-going voyages, is significantly more expensive than the Sea Area A1 and A2 equipment.

III. Discussion

3. Permitting small passenger vessels to defer GMDSS compliance until Sea Areas A1 and A2 are established serves the public interest by avoiding the need for short-range vessels to unnecessarily purchase and install the equipment appropriate for long-range communication. The public interest is likewise served by not finalizing the GMDSS equipment requirements for fishing vessels until the Commission has had the opportunity to consider, in a rule making context, whether there are characteristics of fishing vessels that dictate making special provisions for fishing vessels in the GMDSS rules.

4. The general exemption rule for small passenger vessels, § 80.933 of the Commission's Rules, provides that, prior to February 1, 1999, certain small passenger vessels are exempt from: (a) the radiotelegraph carriage requirements of the Communications Act; (b) the MF radiotelephone requirements of the Commission's Rules; and (c) Regulations 7 through 11 of Chapter IV of the *SOLAS Convention*.[9] The general exemption, § 80.933(c),[10] is narrowly drawn in geographic terms [11] and applies only to United States small passenger vessels that operate not more than 20 nautical miles from land, or alternatively, 200 nautical miles between consecutive ports. The current exemption expires on January 31, 1999 because, effective February 1, 1999, the Commission's GMDSS rules, only portions of which are currently in effect, would be fully implemented for all compulsory vessels.[12]

5. We note that the expiration date set for the small passenger vessel exemption in § 80.933 of the Commission's Rules was premised on the shore-based terrestrial portions of the GMDSS being in place by February 1, 1999.[13] Accordingly, it was anticipated that on February 1, 1999, small passenger vessels would be fully in compliance with the GMDSS rules if they were fitted with VHF–DSC and/or MF–DSC equipment in addition to the GMDSS equipment already required. However, because Sea Areas A1 and A2 have not been established, small passenger vessels would require Sea Area A3 or A4 equipment to comply with the GMDSS rules unless the small passenger vessel exemption *supra* is extended pending establishment of Sea Areas A1 and A2 in the United States.

6. We do not believe it would further the public interest to require small passenger vessels to be fitted with costly equipment that would be of little or no utility once Sea Areas A1 and A2 are established. Given the route and conditions of the voyages routinely made by these small passenger vessels, we find that it is reasonable to grant these small passenger vessels a temporary, conditional waiver of certain of the Commission's GMDSS rules by extending the termination date of the general exemption *supra*. Thereby we exempt these small passenger vessels both from the carriage of radiotelegraph equipment and certain equipment specified in the Commission's GMDSS rules, provided that these vessels carry the equipment specified in the general exemption rule, § 80.933. In so doing, we are substituting the equipment specified in § 80.933 of the Commission's Rules for that specified in Regulations 7 through 11 of Chapter IV of the *SOLAS Convention*, pursuant to Regulation 5 of Chapter I of the *SOLAS Convention* which permits substitution of equivalent equipment when such equipment will be at least as effective as that specified in the *SOLAS Convention*.[14] The small passenger vessel waiver will be terminated by the Commission once the Coast Guard has notified the Commission that shore-based Sea Area A1 and A2 coverage is established, at which time, small passenger vessels will be required to fully comply with the Commission's GMDSS rules.[15]

7. *Fishing Vessels.* Traditionally, fishing vessels have been treated as cargo vessels for the purposes of the Commission's Rules. They are considered cargo vessels because the Communications Act defines ''cargo ship'' as ''any ship not a passenger ship.'' [16] Accordingly, fishing vessels have been required to carry the radiotelegraph and radiotelephone equipment, including GMDSS equipment, specified for cargo ships in the Communications Act and in the Commission's Rules.[17] As a result, since August 1, 1993, fishing vessels of 300 gross tons or more have been required to carry a NAVTEX receiver for the reception of maritime safety information and a float-free satellite EPIRB,[18] and, since February 1, 1995, such ships have been required to carry specified survival craft radio equipment.[19] Thus, to date, fishing vessels of 300 gross tons or more have been subject to the Commission's GMDSS rules.[20]

8. Representatives of the fishing industry [21] have claimed to the

which continuous alerting is available (the area between 70° North Latitude and 70° South Latitude, which is within the footprint of the INMARSAT system); *Sea Area A4*—an area outside Sea Areas A1, A2, and A3 (essentially the polar regions). *See* 47 CFR 80.1069.

[9] Regulations 7 through 11 of Chapter IV of the SOLAS Convention define the basic radio equipment required for GMDSS-compliant ships and the additional equipment required for operation in Sea Areas A1–A4.

[10] 47 U.S.C. 80.933(c).

[11] *See* 47 CFR 80.933(c)(4)(i)–(iii), (d)(1)–(3).

[12] *See* 47 CFR 80.1065(b)(3),(4). Note, however, that in the instant *Order*, the provisions of certain GMDSS rules as they apply to fishing vessels also are waived. *See* para. *infra*.

[13] Amendment of Parts 13 and 80 of the Commission's Rules to Implement the Global Maritime Distress and Safety System (GMDSS) to Improve the Safety of Life at Sea, PR Docket No. 90–480, *Notice of Proposed Rule Making,* 5 FCC Rcd 6212, 6214 (1990).

[14] *See* Amendment of Part 80 of the Commission's Rules Concerning the General Exemption for Large Cargo Oceangoing Cargo Vessels and Small Passenger Vessels, WT Docket No. 93–133, *Report and Order*, FCC 95–447 (released Nov. 8, 1995) at ¶ 22, 60 FR 58243 (November 27, 1995).

[15] The Commission intends to provide at least six months notice before terminating the waiver of certain of the GMDSS rules as they apply to small passenger vessels.

[16] 47 U.S.C. § 153(39)(C).

[17] *See* 47 U.S.C. 351–363; 47 CFR 80.801–80.879, 80.951–80.1135.

[18] All compulsory ships were required to comply with 47 CFR 80.1085(a)(4) and 80.1085(a)(6) by August 1, 1993, and with 47 CFR 80.1095 by February 1, 1995. *See* 47 CFR 80.1065(b)(1), 80.1065(b)(2).

[19] *See* 47 CFR 80.1065(2), 80.1095.

[20] *See* 47 CFR 80.1065(b).

[21] *See* Letter dated September 1, 1998, from Fishing Industry Task Force on GMDSS/DSC (Messrs. Thorn Smith, et al.) to William E. Kennard, Chairman, Federal Communications Commission; Letter dated April 21, 1998, to the Hon. Ted Stevens from the Kodiak Vessel Owners' Association, Alaska Groundfish Data Bank, United Catcher Boats, Deep Sea Fishermen's Union, Aleutians East Borough, Alaska Longline Fish Association, Unisea, Inc., Tyson Seafood Group, Inc, NorQuest Seafoods, Inc. Petersburg Vessel Owners, Pacific Seafood Processing Association, United Fishermen's Marketing Association, Inc., Alaska Draggers Association, North Pacific Longline Association, Fishing Vessel Owners' Association, Alaska Crab Coalition, At-Sea Processors Association, and Groundfish Forum (*Stevens Letter*); Letter dated April 20, 1998, to the Hon. Slade Gorton from the North Pacific Fishing Vessel Owners' Association, Yardarm Knot, Inc. and Snopac Products, Inc. (*Gorton Letter*).

Commission [22] and to members of Congress [23] that requiring fishing vessels to comply with the DSC communications requirements of the GMDSS rules by February 1, 1999, would constitute an unnecessary financial burden.[24] In this connection, they argue that, because of the lack of shore coverage to support Sea Areas A1 and A2, fishing vessels would be required to carry more expensive Sea Area A3 or A4 equipment.[25] Moreover, they urge that the Commission revisit its GMDSS rules, as they apply to fishing vessels, because the *SOLAS Convention* specifically exempts fishing vessels from the SOLAS GMDSS regulations.[26] Further, they contend that, if the GMDSS is implemented on compulsory vessels—which then discontinue standing watch on the current distress channels (VHF Channel 16 and MF frequency 2182 kHz)—smaller vessels, lacking DSC capability, will have difficulty contacting the GMDSS-equipped vessels in the event of an emergency.[27] In order to more fully examine these issues, we believe it best to issue a temporary, conditional waiver of certain of the Commission's GMDSS rules applicable to fishing vessels until we conclude a rule making proceeding addressing the concerns of the fishing industry and such other parties who may elect to participate. Accordingly, by this *Order*, we grant a temporary, conditional waiver, until a date to be announced in the future, of the requirement that fishing vessels comply with certain provisions of Part 80, Subpart W of the Commission's Rules requiring installation and use of GMDSS equipment. This waiver is conditioned on the requirement that, during the duration of the waiver, fishing vessels of 300 gross tons or greater shall continue to comply with Commission GMDSS rules currently in effect, namely §§ 80.1085(a)(4) (NAVTEX receiver), 80.1085(a)(6) (EPIRB) and 80.1095 (survival craft equipment) of the Commission's Rules. Moreover, this waiver does not relieve fishing vessels from compliance with the provisions of Subparts Q and R of Part 80 of the Commission's Rules.

9. *Ship Radio Certificates.* Without the relief afforded in this *Order*, the ship radio certificates for small passenger ships on short voyages and fishing vessels would have expired on February 1, 1999, unless GMDSS systems had been installed on those vessels. However, with the relief afforded herein, those radio certificates will remain valid until the expiration dates contained thereon or the expiration of any renewal terms thereof; provided, however, that such ship radio certificates shall expire with respect to a vessel on the date the Commission terminates the waiver granted hereby with respect to such vessel. Moreover, Commission-authorized inspectors will renew ship radio certificates, or issue new ship radio certificates, to small passenger ships and fishing vessels that lack GMDSS installations, provided those vessels meet the conditions imposed herein and otherwise comply with the Commission's Rules.

IV. Ordering Clauses

10. *It is ordered* that, pursuant to the authority contained in sections 4(i) and 303(r) of the Communications Act of 1934, as amended, 47 U.S.C. 154(i) and 303(r), that Subpart W of Part 80 of the Commission's rules *is temporarily waived* as it applies to small passenger vessels on the short voyages defined in § 80.933 of the Commission's Rules,[28] *Provided that* such vessels comply with the provisions of § 80.933 of the Commission's Rules, notwithstanding the expiration dates therein. *It is further ordered* that authority is delegated to the Chief of the Wireless Telecommunications Bureau to terminate said temporary, conditional waiver as it applies to small passenger vessels at such time as the Chief of the Wireless Telecommunications Bureau deems appropriate after the Coast Guard has notified the Commission that shore-based Sea Area A1 and A2 coverage is established but no sooner than six months following the establishment of shore-based coverage for Sea Areas A1 and A2.

It is further ordered that Subpart W of Part 80 of the Commission's Rules *is temporarily and partially waived* as it applies to fishing vessels, as discussed herein [29] *Provided that* fishing vessels shall abide by the provisions of §§ 80.1085(a)(4), 80.1085(a)(6) and 80.1095 of the Commission's Rules.[30]

Federal Communications Commission.

Magalie Roman Salas,

Secretary.

[FR Doc. 99–2620 Filed 2–8–99; 8:45 am]

BILLING CODE 6712–01–P

[22] *See* Letter dated July 15, 1998, from the Hon. Frank Murkowski to William E. Kennard, Chairman, Federal Communications Commission.

[23] *Id. See also* Amendment to the Department of Commerce, Justice and State, the Judiciary and Related Agencies Appropriations Act of 1999, remarks of the Hon. Frank Murkowski, 144 Cong. Rec. S8854.

[24] *See Stevens Letter* at 1.

[25] *Id.*

[26] *See SOLAS Convention,* Chapter I, Regulation 3 (a)(vi).

[27] *See Gorton Letter* at 1, 2.

[28] 47 CFR 80.933.

[29] *See* n. *supra.*

[30] 47 CFR 80.1085(a)(4), 80.1085(a)(6) and 80.1095.

Proposed Rules

Federal Register
Vol. 64, No. 26
Tuesday, February 9, 1999

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.

SMALL BUSINESS ADMINISTRATION

13 CFR Part 107

Small Business Investment Companies

AGENCY: Small Business Administration.

ACTION: Proposed rule.

SUMMARY: In order to encourage small business investment companies (SBICs) to invest in inner cities and rural areas and in businesses that serve such areas, the Small Business Administration (SBA) is proposing to introduce a new SBIC investment category called low and moderate income investments (LMI Investments). For each SBIC financing that qualifies as an LMI Investment, SBA proposes to modify its regulations on control of the small business, ''cost of money'' of the financing, and term of the financing. SBA is also proposing to make available a patient form of debenture leverage that could be issued only by SBICs that make LMI Investments. These incentives would apply only to LMI Investments made after the effective date of a final rule.

DATES: Comments must be submitted on or before March 11, 1999.

ADDRESSES: Written comments should be addressed to Don A. Christensen, Associate Administrator for Investment, U.S. Small Business Administration, 409 3rd Street, S.W., Suite 6300, Washington, D.C. 20416.

FOR FURTHER INFORMATION CONTACT: Saunders Miller, Investment Division, at (202) 205–3646.

SUPPLEMENTARY INFORMATION: Since its creation in 1958, the SBIC Program has proven to be an extremely effective mechanism for serving the capital needs of tens of thousands of small businesses. However, there are many eligible small businesses that have not yet been reached by either the SBIC Program or the private marketplace. Many of these businesses are located in inner cities and rural areas around the country. SBA has made a commitment to increase access to its programs, including the SBIC Program, by these businesses.

Small businesses located in inner cities and rural areas appear to have greater difficulty raising capital than small businesses located elsewhere. Explanations for this may vary, but surely include the perceived risks associated with investing in any previously untapped market. Especially when the untapped market is in an area of above-average unemployment and poverty, the perceived risks may overshadow the real opportunities.

SBA is proposing a program of narrowly-tailored regulatory and financial incentives to overcome those perceptions and to encourage SBICs to expand their investment activity into inner cities and rural areas. The incentives would be available to any SBIC making qualified investments (LMI Investments) in qualified small businesses (LMI Enterprises) that are located in or that provide employment for inner cities and rural areas (LMI Zones). The proposed incentives fall into two categories. First, SBA would allow SBICs greater regulatory flexibility when structuring and making LMI Investments. Second, SBA would make available a deferred-interest debenture exclusively for the financing of LMI Investments.

Defining Low and Moderate Income Zones (LMI Zones)

The Federal Government has already identified five different and, in some cases, overlapping geographic areas in need of special attention: (1) Historically underutilized business zones or HUBZones) (as defined in 13 CFR § 126.103), (2) Urban Empowerment Zones (as designated by the Secretary of the Department of Housing and Urban Development (Sec'y-HUD)) and Rural Empowerment Zones (as designated by the Secretary of the Department of Agriculture (Sec'y-AG)), (3) Urban Enterprise Communities (as designated by the Sec'y-HUD) and Rural Enterprise Communities (as designated by the Sec'y-AG), (4) Low and Moderate Income areas (as recognized by the Federal Financial Institutions Examination Council), and (5) Persistent Poverty counties (as classified by the Economic Research Service of the Department of Agriculture). These areas share a shortage of investment capital and a critical need for job creation. These areas also conform generally to what would be considered inner cities and rural areas. For the purposes of the SBIC Program, SBA is proposing to consolidate all of these areas into a single category to be named Low and Moderate Income Zones, or LMI Zones. A new defined term, LMI Zone, would be added.

Each of the five areas that would comprise LMI Zones has an electronic address-database associated with it. These databases are Government-operated and are accessible to the general public via the Internet. An SBIC can determine whether an address is located in an LMI Zone by going to one of the Government websites listed below and inputting the address. If the address is not in that database's defined area, the SBIC can go to the next Government website on the list. If the address is located in a HUBZone, an Empowerment Zone, an Enterprise Community, a Low or Moderate Income area, or a Persistent Poverty county, it will be considered to be located in an LMI Zone.

The Government databases for the five areas are:

1. HUBZones: www.sba.gov/hubzone/hubqual.html
2. Empowerment Zones: www.hud.gov/ezec/locator/
3. Enterprise Communities: same as for Empowerment Zones
4. Low and Moderate Income areas: www.ffiec.gov/geocode
5. Persistent Poverty counties: www.econ.ag.gov/epubs/other/typolog

SBA is exploring the possibility of consolidating these databases into a single electronic database at SBA. The final rule will contain further information on this subject.

Defining LMI Enterprise

SBA is proposing to add a new defined term, LMI Enterprise. The definition would include any eligible small business with a principal place of business in an LMI Zone at the time the business applies for SBIC financing. In addition, SBA recognizes that businesses located outside of LMI Zones can be an important source of employment for persons residing within LMI Zones. To reach these important sources of employment, the proposed definition of LMI Enterprise would also include any eligible small business, regardless of its location, that has at least 35 percent of its full time employees residing in LMI Zones at the

time the business applies for SBIC financing. The percentage requirement is based on SBA's HUBZone Program (15 U.S.C. 632(p)).

Under proposed Section 107.610(e), each LMI Enterprise would be required to certify to the investing SBIC as to the location of either its principal place of business or the primary residences of all of its full-time employees. The certification would be dated no earlier than the date the small business applies for the SBIC financing. The SBIC would keep the certification in its files, along with the SBIC's own certification that the small business qualifies as an LMI Enterprise and the basis for such qualification. To make this certification, the SBIC would have to access the electronic databases to verify that the addresses of the small business or 35 percent of its full-time employees are within an LMI Zone.

Defining LMI Investment

SBA wants to ensure that the SBIC Program is used to promote true venture capital financing in LMI Zones, not just high-interest lending. SBA is also concerned that the assets of LMI Enterprises not be placed unduly at risk as a result of receiving financing from SBICs. SBA is therefore proposing that LMI Investments be defined to include only those SBIC financings that are in the form of equity securities (as defined in § 107.800) or debt securities (as defined in § 107.815) which are subordinated to all borrowings of the business from financial institutions. As a further requirement, LMI Investments in the form of debt securities would be required to be unsecured, although the SBIC would be permitted to accept a guarantee of the debt security if the guarantee were itself unsecured. The SBIC would be an unsecured creditor of the LMI Enterprise, with all the legal remedies available to unsecured creditors.

Regulatory and Financial Incentives

From SBA's discussions with community development venture capital managers, including managers of Specialized SBICs, and from SBA's observations of SBIC and private venture activity, it appears that SBA regulations may not encourage and may actually deter investment in LMI Zones. SBA regulations do not permit some of the financing structures and protections favored by the groups currently investing in inner cities and rural areas. Furthermore, the type of SBA financial assistance available to most SBICs—the SBA guaranteed debenture—does not match well with the type of venture capital financing that SBA wants to encourage in LMI Zones.

After careful consideration, SBA has concluded that certain of its regulations need to be modified and a more patient form of debenture needs to be created if SBICs are to be expected to actively pursue investments in LMI Zones.

1. Temporary Control of the LMI Enterprise

Many businesses located in or serving LMI Zones are at an earlier stage in their development than the businesses customarily financed by SBICs. These businesses may be perceived as having a higher degree of risk. Venture capital managers investing in inner cities and rural areas typically insist on a high degree of influence over the small business' operations. Often this takes the form of a controlling equity position in the company.

In the SBIC Program, SBICs are not permitted to assume control over a small business. Over the years, though, SBA has identified four circumstances under which temporary control over a small business may be warranted. These are set forth in current Section 107.865(d). SBA is today proposing to add a fifth circumstance to the list—the making of an LMI Investment. Under the proposal, an SBIC would be permitted to take temporary control of each business in which it makes an LMI Investment.

SBA makes this proposal with some hesitation. SBA's statutory mission is to protect small businesses. This mission must not be compromised. However, when SBA policies adopted to protect small businesses have the unintended effect of foreclosing opportunities for those businesses to grow and to modernize, SBA must reconsider its policies. If, as SBA has concluded, the regulations deter SBICs from making many LMI Investments because of the prohibition against taking control, then owners of LMI Enterprises are being denied the opportunity to choose to give up (or share) control of the business temporarily in exchange for SBIC financing. Under SBA's proposal, owners of LMI Enterprises would be given the opportunity to make that choice. It would be the small business owner, not SBA, who would decide whether the risk of losing temporary control over the business was worth the benefits of the financing. SBA recognizes the importance of this issue and encourages readers to submit comments.

Under SBA's proposal, control over the LMI Enterprise would be permitted only for the term of the financing. As discussed below, the term of an LMI Investment may be less than the 5 years typically required for SBIC investments.

If an SBIC assumes control over an LMI Enterprise that participates in SBA's 8(a) Program or SBA's Small Disadvantaged Business Program, the LMI Enterprise will lose its eligibility for those Programs.

2. Royalties and Cost of Money

SBA is proposing to exclude royalty payments on LMI Investments from the calculation of ''Cost of Money'' under Section 107.855. Cost of Money is the term for the sum of the interest rate and other charges that an SBIC imposes on a small business. The Cost of Money to the small business must not exceed the SBIC's Cost of Money ceiling, as computed under Section 107.855(c).

The computation of Cost of Money already excludes certain fees, charges, and other payments made by the small business, as set forth in Section 107.855(g)(1)–(11). This proposed rule would add royalty payments under an LMI Investment as one more exclusion from Cost of Money.

To qualify for the exclusion, the royalty would have to be based on improvement in the performance of the LMI Enterprise after the date of the financing. The royalty could be expressed, for example, as a percentage of any *increase* in an underlying unit of measurement (e.g., revenues or sales) after the date of the financing.

If the SBIC accepts a royalty payment from an LMI Enterprise that is expressed as a percentage of the business' overall revenues, the royalty payment will be included in the Cost of Money calculation. If, on the other hand, the royalty is expressed as a percentage of any increase in the business' revenues after the date of the financing, the royalty payment will be excluded from the Cost of Money calculation. If an exact measurement of revenues or sales is not possible on (or even ''as of'') the date of the financing, the parties may use an estimate instead.

SBA believes that this proposed change is necessary to encourage SBICs to actively pursue investments in inner cities and rural areas. If adopted, this change would allow greater flexibility in structuring LMI Investments since LMI Enterprises would have the opportunity to offer royalty payments to an SBIC rather than bring the SBIC in as a new shareholder. This would result in more financing choices for the small business.

3. Minimum Term of LMI Investment

SBA is proposing a one-year minimum term for LMI Investments. As a general rule, SBIC financings must be for a minimum period of 5 years. Four

exceptions to the rule currently exist and are found in Section 107.835. SBA proposes to add LMI Investments as a fifth exception. SBA believes that this proposed change, in combination with the proposed changes discussed above, would provide the necessary encouragement for SBICs to aggressively seek out LMI Enterprises to finance.

A conforming change is being proposed to Section 107.850(a). Currently, this section prohibits the mandatory redemption of equity securities by a small business within 5 years from the date of the first closing of the financing. Under the proposed change, an SBIC could not require an LMI Enterprise to redeem an equity security LMI Investment within 1 year from the date of the first closing of the financing.

4. Deferred Interest Debenture

SBA recognizes that some uncertainty naturally accompanies an investor's first efforts in any previously untapped market. SBA does not want SBICs to be deterred from making those efforts in LMI Zones solely because the SBIC managers are concerned about being able to make current interest payments on SBA guaranteed debentures. SBA is prepared to allow SBICs to finance LMI Investments with a more patient-type of debenture (called an LMI Debenture in this proposed rule).

The LMI Debenture currently under consideration would be a ten-year, non-amortizing debenture issued at a discount so as to be, in effect, ''zero coupon'' for the first 5 years. The LMI Debenture would require semi-annual interest payments on the face amount for the last 5 years. For example, an SBIC issuing a $100,000 debenture at a 6 percent interest rate would receive approximately $75,000 upon issuance, and would make no interest payments for the first 5 years. Starting with the sixth year, the SBIC would make semi-annual interest payments based on an annual rate of 6 percent on the debenture's face amount of $100,000. At maturity (or sooner in the event of prepayment), the SBIC would pay the $100,000 face amount of the debenture. SBA leverage fees would not be deferred; they would be paid as required under current Section 107.1130.

Each SBIC that is licensed and eligible to issue debentures under current regulations would be eligible to issue LMI Debentures to the extent it makes LMI Investments. To ensure that LMI Debenture funds are used to support LMI Investments only, an SBIC's eligibility for these debentures would be limited by the amount of its outstanding LMI Investments (made after the effective date of the final rule).

More specifically, an SBIC's eligibility for an LMI Debenture would be determined in two ways. First, the SBIC would have to be eligible to issue leverage in an amount equal to the face amount of the LMI Debenture. Eligibility for this purpose is determined under Sections 107.1120–1160. Second, the SBIC would have to have LMI Investments in an amount approximating the net proceeds of the LMI Debenture. Since the actual amount of the net proceeds of an LMI Debenture will depend on interest rates in effect at the time of its issuance and cannot be known at the time of the SBIC's leverage application, SBA is considering using a fixed multiple of 1.5 to make this second eligibility determination. An SBIC would be eligible for an LMI Debenture with a face amount equal to 1.5 times the amount of the SBIC's LMI Investments at the time of application. In the above example, the SBIC would be required to have $66,666 of LMI Investments in its portfolio at the time the SBIC applied to issue the $100,000 LMI Debenture.

No regulatory changes are necessary to implement this new type of debenture.

Compliance With Executive Orders 12612, 12778 and 12866, the Regulatory Flexibility Act (5 U.S.C. 601, et seq.), and the Paperwork Reduction Act (44 U.S.C. Ch. 35).

SBA certifies that this proposed rule may constitute a significant regulatory action within the meaning of Executive Order 12866, since it raises a new policy issue reflecting the President's priorities.

SBA certifies that this proposed rule does not 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.* This proposed rule would change some requirements to encourage SBICs to make additional qualified investments in low and moderate income zones. In FY 1998, SBICs invested in 2700 small businesses. While the proposed rule may increase the number of small businesses receiving SBIC investments because SBICs may make investments in smaller increments, the number of small businesses eligible for SBIC investments would not change.

For purposes of the Paperwork Reduction Act, 44 U.S.C. CH. 35, SBA is requesting a modification of SBA Forms 468 and 1031 that will permit participating SBICs to report the information they are required to maintain by the proposed rule. The proposed rule will require SBICs that make LMI Investments to keep track of their LMI Investments and periodically report them SBA. To determine whether an SBIC is making an LMI Investment, the SBIC will have to verify the location of the LMI Enterprise or its employees using the databases discussed in this proposed rule. SBA estimates that the time necessary to verify the location of an LMI enterprise or its employees will average less than one hour per LMI Investment. The reporting requirements are de minimis since current forms will only be changed to reflect LMI investments. SBA further estimates that SBICs may make approximately 500 LMI Investments per year. SBA is seeking comment on whether this information is necessary for the proper performance of the function of the agency, accuracy of burden estimate, in addition to ways to minimize this estimate, and ways to enhance the quality. Please send comments to Saunders Miller, SBA, Investment Division, 409 3rd Street, SW., Washington, DC 20416 and to David Rostker, Office of Management and Budget, Office of Information and Regulatory Affairs, 725 17th Street, NW., Washington, DC 20503.

For purposes of Executive Order 12612, SBA certifies that this rule would not have any federalism implications warranting the preparation of a Federalism Assessment.

For purposes of Executive Order 12778, SBA certifies that this rule is drafted, to the extent practicable, in accordance with the standards set forth in Section 2 of that Order.

List of Subjects in 13 CFR Part 107

Investment companies, Loan programs-business, Reporting and recordkeeping requirements, Small businesses.

For the reasons set forth above, SBA proposes to amend 13 CFR part 107 as follows:

PART 107—SMALL BUSINESS INVESTMENT COMPANIES

1. The authority citation for part 107 continues to read as follows:

Authority: 15 U.S.C. 681 *et seq.*, 683, 687(c), 687b, 687d, 687g and 687m.

2. Amend § 107.50 to add definitions of LMI Enterprise, LMI Investment, and LMI Zone, to read as follows:

§ 107.50 Definitions of terms.

* * * * *

LMI Enterprise means, at the time of application for SBIC financing, a Small Business:

(1) That has its principal place of business in an LMI Zone, or

(2) In which at least 35 percent of the full-time employees have primary residences in LMI Zone(s).

LMI Investment means a financing of an LMI Enterprise, made after March 15, 1999, in the form of equity securities or debt securities that are subordinated to all other borrowings of the business from financial institutions. The debt securities may be guaranteed, but neither the debt securities nor the guarantee may be collateralized or otherwise secured.

LMI Zone means any area located within a HUBZone (as defined in § 126.103 of this chapter), an Urban Empowerment Zone or Urban Enterprise Community (as designated by the Secretary of the Department of Housing and Urban Development), a Rural Empowerment Zone or Rural Enterprise Community (as designated by the Secretary of the Department of Agriculture), an area of Low Income or Moderate Income (as recognized by the Federal Financial Institutions Examination Council), or a county with Persistent Poverty (as classified by the Economic Research Service of the Department of Agriculture).

* * * * *

3. Amend § 107.610 to add paragraph (e) to read as follows:

§ 107.610 Required certifications for Loans and Investments.

* * * * *

(e) For each LMI Investment:

(1) A certification by the concern as to its principal place of business or the principal residences of its full-time employees, as applicable, dated no earlier than the date of application for SBIC financing, and

(2) A certification by the SBIC that the concern qualifies as an LMI Enterprise as of the date of the concern's certification and the basis for such qualification.

4.–5. Amend § 107.835 to redesignate paragraph (d) as paragraph (e) and add paragraph (d) to read as follows:

§ 107.835 Exceptions to minimum duration/term of Financing.

* * * * *

(d) An LMI Investment with a term of at least one year; or

* * * * *

6. Amend § 107.850 to revise the introductory text of paragraph (a) to read as follows:

§ 107.850 Restrictions on redemption of Equity Securities.

(a) A Portfolio Concern cannot be required to redeem Equity Securities earlier than 5 years (or 1 year in the case of an LMI Investment) from the date of the first closing unless:

* * * * *

7. Amend § 107.855 to add paragraph (g)(12) to read as follows:

§ 107.855 Interest rate ceiling and limitations on fees charged to Small Businesses (''Cost of Money'').

* * * * *

(g) * * *

(12) Royalty payments received under any LMI Investment if the royalty is based on improvement in the performance of the Small Business after the date of the financing.

* * * * *

8. Amend § 107.865 to remove the ''or'' at the end of paragraph (d)(3), replace the period at the end of paragraph (d)(4) with ''; or'', add paragraph (d)(5) and revise paragraph (e)(3) to read as follows:

§ 107.865 Restrictions on Control of a Small Business by a Licensee.

* * * * *

(d) * * *

(5) If your financing of the Small Business is an LMI Investment.

(e) * * *

(3) Your agreement to relinquish Control within 5 years (although you may, under extraordinary circumstances, request SBA's approval of an extension beyond 5 years). In the case of an LMI Investment with a term of less than 5 years, you must agree to relinquish Control within the term of the financing.

* * * * *

Dated: January 13, 1999.

Aida Alvarez,

Administrator.

[FR Doc. 99–2915 Filed 2–8–99; 8:45 am]

BILLING CODE 8025–01–P

DEPARTMENT OF TRANSPORTATION

Federal Aviation Administration

14 CFR Part 39

[Docket No. 98–NM–340–AD]

RIN 2120–AA64

Airworthiness Directives; McDonnell Douglas Model MD–90–30 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 McDonnell Douglas Model MD–90–30 series airplanes. This proposal would require a one-time inspection to measure clearance and detect interference between the elevator cable pulley and the shroud frame of the ventral stairway, and modification of the shroud frame of the ventral stairway. This proposal is prompted by reports of pitch oscillation of several Model MD–90–30 series airplanes. The actions specified by the proposed AD are intended to prevent interference between the elevator cable pulley and the shroud frame of the ventral stairway, which could result in pitch oscillation of the airplane, and consequent damage to the elevator cable pulley and reduced controllability of the airplane.

DATES: Comments must be received by March 26, 1999.

ADDRESSES: Submit comments in triplicate to the Federal Aviation Administration (FAA), Transport Airplane Directorate, ANM–114, Attention: Rules Docket No. 98–NM–340–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 Boeing Commercial Airplane Group, Long Beach Division, 3855 Lakewood Boulevard, Long Beach, California 90846, Attention: Technical Publications Business Administration, Dept. C1–L51 (2–60). This information may be examined at the FAA, Transport Airplane Directorate, 1601 Lind Avenue, SW., Renton, Washington; or at the FAA, Transport Airplane Directorate, Los Angeles Aircraft Certification Office, 3960 Paramount Boulevard, Lakewood, California.

FOR FURTHER INFORMATION CONTACT: Jon Mowery, Aerospace Engineer, Airframe Branch, ANM–120L, FAA, Transport Airplane Directorate, Los Angeles Aircraft Certification Office, 3960 Paramount Boulevard, Lakewood, California 90712–4137; telephone (562) 627–5322; fax (562) 627–5210.

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–340–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–340–AD, 1601 Lind Avenue, SW., Renton, Washington 98055–4056.

Discussion

The FAA has received reports indicating that pitch oscillation has occurred on several McDonnell Douglas Model MD–90–30 series airplanes. Investigation revealed that insufficient clearance exists between the elevator cable pulley and the shroud frame of the ventral stairway. Interference between the elevator cable pulley and the shroud frame of the ventral stairway restricts transmission of elevator servo inputs to the elevator. Such interference, if not corrected, could result in pitch oscillation of the airplane, and consequent damage to the elevator cable pulley and reduced controllability of the airplane.

Explanation of Relevant Service Information

The FAA has reviewed and approved McDonnell Douglas Service Bulletin No. MD90–27–026, dated September 30, 1998, which describes procedures for a one-time visual inspection to measure clearance and detect interference between the elevator cable pulley and the shroud frame of the ventral stairway. The service bulletin also describes procedures for modification of the shroud frame of the ventral stairway. The modification involves installation of a brace that attaches to the shroud frame of the ventral stairway and the outboard ring frame of the ventral stairway. This modification is intended to stabilize the shroud frame of the ventral stairway and prevent it from rotating toward the elevator cable pulley. Accomplishment of the actions specified in the service bulletin is intended to adequately address the identified unsafe condition.

Explanation of Requirements of Proposed Rule

Since an unsafe condition has been identified that is likely to exist or develop on other products of this same type design, the proposed AD would require accomplishment of the actions specified in the service bulletin described previously, except as discussed below.

Differences Between the Proposed Rule and the Service Bulletin

Operators should note that, although the service bulletin recommends accomplishment of the modification of the shroud frame of the ventral stairway at the operator's earliest practical maintenance period if the clearance is within the specified limits and no interference is detected, the FAA has determined that such an interpretive compliance time would not address the identified unsafe condition in a timely manner. In developing an appropriate compliance time for this proposed AD, the FAA considered not only the manufacturer's recommendation, but the degree of urgency associated with addressing the subject unsafe condition, the average utilization of the affected fleet, the accessibility of the area to be modified, and the time necessary to accomplish the modification (approximately two work hours). In light of all of these factors, the FAA finds an 18-month compliance time for completion of the proposed modification to be warranted, in that it represents an appropriate interval of time allowable for affected airplanes to continue to operate without compromising safety.

Cost Impact

There are approximately 58 airplanes of the affected design in the worldwide fleet. The FAA estimates that 58 airplanes of U.S. registry would be affected by this proposed AD.

It would take approximately 1 work hour per airplane to accomplish the proposed inspection, at an average labor rate of $60 per work hour. Based on these figures, the cost impact of the inspection proposed by this AD on U.S. operators is estimated to be $3,480, or $60 per airplane.

It would take approximately 2 work hours per airplane to accomplish the proposed modification, at an average labor rate of $60 per work hour. Required parts would be provided by the manufacturer at no cost to the operators. Based on these figures, the cost impact of the modification proposed by this AD on U.S. operators is estimated to be $6,960, or $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:

McDonnell Douglas: Docket 98–NM–340–AD.

Applicability: Model MD–90–30 series airplanes, as listed in McDonnell Douglas Service Bulletin No. MD90–27–026, dated September 30, 1998; 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, unless accomplished previously.

To prevent interference between the elevator cable pulley and the shroud frame of the ventral stairway, which could result in pitch oscillation of the airplane, and consequent damage to the elevator cable pulley and reduced controllability of the airplane, accomplish the following:

(a) Within 12 months after the effective date of this AD, perform a one-time visual inspection to measure clearance and detect interference between the elevator cable pulley and the shroud frame of the ventral stairway in accordance with Phase 1 of McDonnell Douglas Service Bulletin No. MD90–27–026, dated September 30, 1998.

(1) If clearance is greater than or equal to 0.5 inch, and if no interference is detected: Within 18 months after performing the inspection, accomplish the requirements of paragraph (b) of this AD.

(2) If clearance is less than 0.5 inch, or if any interference is detected: Prior to further flight, accomplish the requirements of paragraph (b) of this AD.

(b) Modify the shroud frame of the ventral stairway in accordance with Phase 2 of McDonnell Douglas Service Bulletin No. MD90–27–026, dated September 30, 1998.

(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, Los Angeles Aircraft Certification Office (ACO), FAA, Transport Airplane Directorate. Operators shall submit their requests through an appropriate FAA Principal Maintenance Inspector, who may add comments and then send it to the Manager, Los Angeles ACO.

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

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

Issued in Renton, Washington, on February 2, 1999.

John J. Hickey,

Acting Manager, Transport Airplane Directorate, Aircraft Certification Service.

[FR Doc. 99–3034 Filed 2–8–99; 8:45 am]

BILLING CODE 4910–13–U

SECURITIES AND EXCHANGE COMMISSION

17 CFR Parts 210, 228, 229, 230, 239, 240, 249 and 260

[Release Nos. 33–7637; 34–41014; International Series Release No. 1182; File No. S7–3–99]

RIN 3235–AH62

International Disclosure Standards

AGENCY: Securities and Exchange Commission.

ACTION: Notice of proposed rulemaking.

SUMMARY: The Securities and Exchange Commission (the ''Commission'') is proposing to improve the comparability of information provided to investors and securities markets by issuers offering or listing securities in multiple markets. To achieve this goal, we are proposing to revise our disclosure requirements for foreign private issuers to conform to the international disclosure standards endorsed by the International Organization of Securities Commissions in September 1998. Under this proposal, the international disclosure standards would replace most of the non-financial statement disclosure requirements of Form 20–F, the basic disclosure document for foreign private issuers. We would make conforming changes to the registration statements used by foreign private issuers under the Securities Act of 1933, to reflect the changes in Form 20–F. We also are taking this opportunity to propose changes in the definition of ''foreign private issuer'' to give clearer guidance on how foreign companies should determine whether their shareholders are U.S. residents.

DATES: You should send us your comments so that they arrive at the Commission on or before April 12, 1999.

ADDRESSES: You should send three copies of your comments to Jonathan G. Katz, Secretary, U.S. Securities and Exchange Commission, 450 Fifth Street, N.W., Stop 6–9, Washington, D.C. 20549. You also may submit your comments electronically to the following electronic mail address: **rule-comments@sec.gov.** All comment letters should refer to File No. S7–3–99; you should include this file number in the subject line if you use electronic mail. Comment letters will be available for public inspection and copying at our Public Reference Room, 450 Fifth Street, N.W., Washington, D.C. 20549. We will post electronically submitted comment letters on our Internet Web site (**http://www.sec.gov).**

FOR FURTHER INFORMATION CONTACT: Sandra Folsom Kinsey, Senior International Counsel, or Rani Doyle, Staff Attorney, in the Office of International Corporate Finance, Division of Corporation Finance at (202) 942–2990.

SUPPLEMENTARY INFORMATION: We propose amendments to Form 20–F [1] under the Securities Exchange Act of 1934.[2] As part of those amendments, we propose to delete Rule 3–19 under Regulation S–X.[3] We propose amendments to Rule 3–20 under Regulation S–X,[4] Items 402, 512, and 601 of Regulation S–K,[5] Rules 175, 434 and 463 of Regulation C,[6] Forms F–1, F–2, F–3, F–4, F–6 and S–11 [7] under the Securities Act of 1933,[8] Exchange Act Rules 3b–6, 13a–10 and 15d–10,[9] and Rule 0–11 under the Trust Indenture Act of 1939 [10] to correct references to the items in Form 20–F which would be revised in connection with the amendments to Form 20–F. We propose amendments to Rules 3–01, 3–02 and 3–12 under Regulation S–X [11] and to Item 310 of Regulation S–B [12] to correct references to Rule 3–19. We also propose to revise the definition of foreign private issuer in Securities Act Rule 405 [13] and Exchange Act Rule 3b–4.[14]

I. Executive Summary

It is becoming more common for companies to increase their global presence and lower their cost of capital by listing on foreign securities markets and raising capital outside their home

[1] 17 CFR 239.220f (''Form 20–F'').

[2] 15 U.S.C. §§ 78a *et seq.* (the ''Exchange Act'').

[3] 17 CFR 210.3–19.

[4] 17 CFR 210.3–20.

[5] 17 CFR 229.402, 17 CFR 229.512 and 17 CFR 229.601.

[6] 17 CFR 230.175, 17 CFR 230.434 and 17 CFR 230.463.

[7] *See* 17 CFR 239.31, CFR 239.32, 17 CFR 239.33, 17 CFR 239.34, 17 CFR 239.36 and 17 CFR 239.18.

[8] 15 U.S.C. §§ 77a *et seq.* (the ''Securities Act'').

[9] 17 CFR 240.3b–6, 17 CFR 240.13a–10 and 17 CFR 240.15d–10.

[10] 17 CFR 260.0–11.

[11] 17 CFR 210.3–01, 17 CFR 210.3–02, and 17 CFR 210.3–12.

[12] 17 CFR 228.310.

[13] 17 CER 230.405.

[14] 17 CER 240.3b–4.

country. When companies offer or list their securities outside their home market, however, they often face a variety of different, and sometimes conflicting, regulatory systems. The Commission has recognized this problem, and many of our initiatives for foreign issuers have had the goal of reducing barriers to cross-border offerings and listings in the United States. We have long believed that investors in the United States benefit when they have a wide range of investment choices, and we have sought to increase their investment opportunities in foreign companies while preserving the protections they have come to expect under the federal securities laws.

The Commission, as a member of the International Organization of Securities Commissions (referred to as IOSCO), also participates in a number of international initiatives intended to make the world's securities markets safer and more efficient for investors. In particular, IOSCO has been working for years to facilitate the cross-border flow of securities and capital by promoting the use of a single disclosure document that would be accepted in multiple jurisdictions. IOSCO recently endorsed a core set of disclosure standards for the non-financial statement portions of a disclosure document, and encouraged its members to take whatever steps are necessary in their own jurisdictions to accept disclosure documents prepared in accordance with those standards.[15] As a member of IOSCO, the Commission played an active role in the development of these standards.

In 1979, when the Commission adopted Form 20–F, the basic disclosure document for foreign private issuers, we said that our action ''represent[ed] an important step, but only a step, in the harmonization of international disclosure standards.'' [16] In our 1988 policy statement on the regulation of international securities markets, we noted that ''[t]he ultimate goal should be the development of an integrated international disclosure system.'' [17] Today we are proposing to take another significant step in that direction by revising our existing foreign issuer integrated disclosure system to incorporate fully IOSCO's international disclosure standards.

We believe the international disclosure standards represent a strong international consensus on fundamental disclosure topics and that they can be used to produce offering and listing documents that will contain the same high level of information as is called for by our current requirements. The proposed revisions to Form 20–F in no way decrease the amount or quality of information investors will receive. Using the international disclosure standards, issuers would find it easier to offer or list securities outside their home country by preparing a core disclosure document that, with a minimum of national tailoring, may be accepted in multiple jurisdictions. This disclosure document would serve as an ''international passport'' to the world's capital markets by reducing the barriers to cross-border offerings and listings. Adopting this approach would provide a means for expanding the investment opportunities available to U.S. investors, while still ensuring that they receive a high level of information comparable to that provided by U.S. companies.

The international disclosure standards would replace most, but not all, of the current requirements of Form 20–F, the combined registration and annual report form for foreign private issuers under the Exchange Act. Foreign private issuers also would use the international disclosure standards in preparing the registration forms designated for their use under the Securities Act. Although the international disclosure standards were drafted specifically for use only for offerings and listings of equity securities for cash, we propose to expand their scope, consistent with our existing foreign issuer requirements and the current usage of Form 20–F, to cover all types of registration statements regardless of the type of securities or form of consideration, and to cover annual reports. Our proposal would eliminate Rule 3–19 of Regulation S–X, which governs the financial statements of foreign private issuers, since the requirements of that rule are addressed in the international disclosure standards.

We also are proposing to revise the definition of ''foreign private issuer'' found in the rules under the Securities Act and the Exchange Act.[18] Whether or not an issuer satisfies the foreign private issuer definition determines its eligibility to use particular forms under the Securities Act and the Exchange Act. Foreign private issuers also are not subject to the proxy rules under Section 14 of the Exchange Act, and their company insiders are not required to file reports of beneficial ownership or comply with the short-swing trading rules under Section 16 of the Exchange Act.[19] The foreign private issuer definition, which is the same under both Acts, is based in part on whether a majority of the issuer's outstanding voting securities are held of record by U.S. residents. Issuers may not be applying the definition as intended, however, because of the increased prevalence of offshore nominees and custodial accounts. For guidance in calculating U.S. ownership, we are proposing to direct issuers to Exchange Act Rule 12g3–2(a), which requires issuers to look through the bank, broker-dealer or other nominee holder to determine the residence of the account holder. We also propose to require the issuer to take into consideration the residence information reported by investors on beneficial ownership reports that are provided to the issuer or filed publicly, as well as information otherwise provided to the issuer. We believe that these methods of calculation will give a better picture of whether or not a company incorporated outside the United States is entitled to the accommodations available to foreign private issuers.

II. Discussion

A. Background

The Commission historically has sought to balance the information needs of investors with our awareness that the interest of the public is served by opportunities to invest in a variety of securities, including foreign securities.[20] In our 1988 policy statement, we noted that ''[t]he goal in addressing international disclosure and registration problems should be to minimize regulatory impediments without compromising investor protection.'' [21] The globalization of the securities markets and new technological developments have challenged securities regulators around the world to adapt to the needs of market participants while maintaining their current levels of investor protection and preserving market integrity. Investors increasingly are interested in investing in foreign companies, and technological advances have made it easier for them to do so.

[15] You can find the full text of the standards endorsed by IOSCO, as well as other IOSCO documents cited in this release, on the IOSCO Internet Web site <http://www.iosco.org>.

[16] Exchange Act Release No. 16371 (Nov. 29, 1979) [44 FR 70132 at 70133].

[17] Securities Act Release No. 6807 (Nov. 14, 1988) [53 FR 46963 at 46965].

[18] *See* Securities Act Rule 405, 17 CFR 230.405, and Exchange Act Rule 3b–4, 17 CFR 240.3b–4.

[19] *See* Exchange Act Rule 3a12–3, 17 CFR 240.3a12–3.

[20] Securities Act Release No. 6360 (Nov. 20, 1981) [46 FR 58511].

[21] Securities Act Release No. 6807 (Nov. 14, 1988) [53 FR 16965].

As these market forces have accelerated, the Commission periodically has reexamined its approach to regulating the U.S. securities markets, keeping in mind the fundamental need for investor protection.

Because of the flow of capital across borders, we and other securities regulators around the world have an interest in ensuring that a high level of information is available to investors in all markets. Our 1988 policy statement noted that ''all securities regulators should work together diligently to create sound international regulatory frameworks that will enhance the vitality of capital markets.'' That approach has proven useful in a number of instances in the past, and it is equally useful in the context of disclosure requirements for cross-border offerings and listings. Worldwide regulatory consensus on high level disclosure requirements means that companies complying with those requirements will find open doors to capital markets around the world. For this reason, we have been actively involved in IOSCO's efforts to develop a set of high quality international disclosure standards.

B. IOSCO Development of the International Disclosure Standards

IOSCO is an international, non-profit association of securities regulatory organizations. It has approximately 160 ordinary, associate and affiliate members and works on a variety of projects of interest to securities regulators around the world. The Commission has been a member of IOSCO for several years.[22] IOSCO's two key committees are the Technical Committee and the Emerging Markets Committee. The Technical Committee is composed of 16 regulatory agencies that regulate some of the world's largest, more developed and internationalized securities markets; its objective is to review major regulatory issues related to international securities and futures transactions and to coordinate practical responses to these concerns. The Commission is a member of this Committee.

In 1987, IOSCO's Technical Committee began a study of the then emerging methods of offering securities on a multinational basis and the problems associated with multiple listings. As a result of this study, IOSCO issued a report in 1989 making a number of recommendations to facilitate multinational capital raising. Among other things, the report recommended that ''regulators be encouraged, where consistent with their legal mandate and the goal of investor protection, to facilitate the use of single disclosure documents, whether by harmonization of standards, reciprocity or otherwise.'' [23] Since that time, IOSCO has sought to increase the efficiency of the capital raising process for issuers that offer or list securities in more than one jurisdiction. Although IOSCO has devoted much of its energies to an ongoing project on accounting standards,[24] it also has focused on the non-financial statement disclosures in offering and listing documents, such as the description of the issuer's business, its management and the securities it plans to offer or list. Members of the IOSCO Technical Committee first compared their existing national disclosure requirements to identify areas of commonality.[25] The next step was to develop a consensus on high quality disclosure on a number of topics and prepare standards that reflected that consensus. After consultation with the Emerging Markets Committee, IOSCO's Technical Committee published a formal consultation document relating to this project in May 1998 for review by the IOSCO membership.

In September 1998, IOSCO endorsed the Technical Committee's ''Disclosure Standards to Facilitate Cross-Border Offerings and Listings by Multinational Issuers'' and recommended that IOSCO members take all appropriate steps in their home jurisdictions to accept documents prepared in accordance with the standards.[26] In adopting the standards, IOSCO stated:

Issuers will benefit directly from being able to prepare a single non-financial statement disclosure document for capital raising and listing in more than one jurisdiction at a time. At the same time, investors will benefit from the comprehensive nature of the required disclosures and the enhanced comparability of information. These Standards represent an important step forward in reducing the costs of cross-border capital raising without sacrificing investor protection.[27]

IOSCO also noted that, although the standards were approved only in the context of cross-border offerings by foreign issuers, they might provide a point of reference for jurisdictions considering changes in their standards for domestic issuers.[28] The standards were not intended to be part of a mutual recognition system, and IOSCO specifically noted that disclosure documents prepared in compliance with the standards would remain subject to host country review or approval processes.

The international disclosure standards consist of ten core disclosure items and a glossary of defined terms. The ten core items are:

Item 1. Identity of Directors, Senior Management and Advisors.

Item 2. Offer Statistics and Expected Timetable.

Item 3. Key Information. This item includes requirements for selected financial data, the reasons for the offer and the expected use of proceeds, and information about risk factors.

Item 4. Information on the Company. This item includes requirements for a description of the issuer's business and properties.

Item 5. Operating and Financial Review and Prospects. This item corresponds to the current requirement for management's discussion and analysis of financial condition and results of operations.

Item 6. Directors, Senior Management and Employees. This item includes requirements relating to compensation and shareholdings.

Item 7. Major Shareholders and Related Party Transactions.

Item 8. Financial Information. In addition to requirements relating to the

[22] Other U.S. members of IOSCO include the Commodity Futures Trading Commission and the North American Securities Administrators Association as associate members and the National Association of Securities Dealers—Regulation and the New York Stock Exchange as affiliate members.

[23] *International Equity Offers—Summary,* International Organization of Securities Commission, 8 (Sept. 1989).

[24] In a separate project, IOSCO has agreed with the International Accounting Standards Committee (''IASC'') that, upon successful completion of a work program on a core set of international accounting standards, IOSCO will consider endorsement of those standards for use in cross-border offerings and listings. In April 1996, the Commission issued a statement in support of the efforts of IOSCO and the IASC and indicated that, If the IASC successfully completes the agreed-upon work program and if the core standards satisfy the criteria set forth in our statement, we will consider accepting the core standards for use by foreign issuers in cross-border securities offerings and listings in the United States. IOSCO's assessment of the IASC core standards currently is underway.

[25] *Comparative Analysis of Disclosure Regimes,* International Organization of Securities Commissions (Sept. 1991).

[26] IOSCO actions are not binding on its members, and many IOSCO members must take further action at the national level to implement any IOSCO initiatives.

[27] Final Communiqué of the 23rd Annual Conference of the International Organization of Securities Commissions (Sept. 18, 1998).

[28] Securities regulatory authorities in several emerging market jurisdictions have indicated that they expect to look to the IOSCO standards for guidance in revising their requirements for domestic issuers. For example, press reports indicate that a governmental commission in Singapore recently recommended that Singapore move to a disclosure-based regulatory system and suggested that disclosure requirements for listed companies could be based on the IOSCO standards. In addition, we understand that some European Union countries are considering incorporating the IOSCO standards into shelf registration or continuous disclosure systems.

presentation of financial statements, this item contains requirements that correspond to current Rule 3–19 of Regulation S–X, as well as requirements relating to legal proceedings.

Item 9. The Offer and Listing. This item includes requirements for a description of the offering, including the plan of distribution, trading markets, selling shareholders, dilution and expenses.

Item 10. Additional Information. This item includes requirements for, among other things, a description of the issuer's share capital, significant provisions of its articles of incorporation and bylaws, its material contracts, and applicable taxes.

These core disclosure requirements, which are the subject of this proposal, are contained in Part I of the international disclosure standards. Part II of the standards contains a sample compilation of national requirements that issuers will be expected to comply with in certain jurisdictions. Several additional requirements under the U.S. federal securities laws are referenced in Part II, and there would be no change in those requirements.

C. Reasons for the Proposals

We are proposing to revise our disclosure standards for foreign private issuers to incorporate the international disclosure standards in their entirety. We are doing this for several reasons. We believe that the increasing globalization of the securities markets makes it important for securities regulators to work together to promote and maintain high quality disclosure standards. The recent volatility in securities markets around the world has highlighted the need for increased transparency in the information that public companies make available to the capital markets. IOSCO, with its broad membership and common goal of investor protection, is well-situated to move forward in this area, and its efforts are likely to receive international support.[29] Broad acceptance of the international disclosure standards may raise the level of disclosure in some capital markets, particularly if developing markets begin to modify their domestic disclosure requirements to conform more closely to the standards.

We support international initiatives that raise the level of information available to investors, facilitate the flow of capital and reduce the regulatory burdens on foreign issuers, if they do so in a manner that is consistent with our mandate to protect investors. We believe the best way to promote the use of the international disclosure standards is to incorporate them fully into our existing foreign issuer integrated disclosure system.[30] We do not believe that investor protection would be jeopardized by using the international disclosure standards because we expect no change in the quality of disclosure that investors receive.

We believe U.S. investors would benefit from this proposal in a number of ways. The disclosure documents they receive from foreign private issuers would be based on updated disclosure standards that more closely reflect current international practice. Investors in the United States would benefit from increased investment opportunities if the proposal reduces regulatory burdens on foreign issuers and results in an increase in the number of foreign companies that offer or list securities in the U.S. capital markets. If the IOSCO standards are broadly accepted (particularly if they prompt changes in domestic disclosure requirements in developing markets), they would raise the level of disclosure available to U.S. investors regardless of whether they invest in foreign companies in the U.S. securities markets or in foreign markets.

We believe that foreign issuers will benefit from being able to prepare one core disclosure document that may be accepted in multiple jurisdictions. This should reduce the cost of capital raising for issuers and allow them to make decisions about where to raise capital or list their securities with less concern about the costs and burdens of complying with multiple regulatory systems.

We request comment on whether our assumptions about the benefits of this proposal are valid. Are the anticipated benefits to U.S. investors likely to be realized? Are the proposals likely to reduce the costs that foreign issuers incur in satisfying the regulatory requirements of different jurisdictions? Will foreign issuers realize significant efficiencies by preparing a single core disclosure document even though some additional disclosures may be required to satisfy specific national requirements? Will U.S. issuers and their access to capital be affected by these changes? How will U.S. small businesses be affected?

We believe the international disclosure standards are of comparable quality and will produce disclosure of at least the same high level of information as our existing requirements. In some cases, the international disclosure standards require more disclosure than our current Form 20–F. For example, they require disclosure of beneficial ownership at a five percent level, rather than the 10 percent level currently required by Form 20–F. To the extent the international disclosure standards differ from our current disclosure requirements, we believe they do not compromise investor protection, and therefore would fulfill the requirement in Section 7(a) of the Securities Act that the information required be ''fully adequate for the protection of investors.'' We also believe that incorporating the international disclosure standards into Form 20–F will bring our foreign issuer disclosure requirements closer in line with the best practices from major securities markets around the world. For example, the five percent level for disclosing beneficial ownership reflects an international consensus arrived at through discussions with foreign securities regulators. By revising Form 20–F to incorporate the international disclosure standards, we at the same time conformed our beneficial ownership disclosure requirement for foreign issuers with the current requirement for U.S. companies.

We request comment on whether the proposed amendments to Form 20–F, taken as a whole, are comparable in quality to the current disclosure requirements for foreign private issuers. Specifically, if Form 20–F and the Securities Act registration forms for foreign private issuers are amended as proposed, are foreign issuers likely to prepare registration statements and reports that provide at least as high a level of disclosure as those produced under the current versions of those forms? Will the information be sufficiently comparable to that required of U.S. companies to enable investors and other market participants to assess foreign and U.S. companies on an equal basis? Are there specific differences between the current disclosure requirements and the proposed requirements that either would impose undue burdens on foreign registrants or would deprive investors of important information? If so, which differences would have that effect?

The international disclosure standards were intended to be used by issuers seeking to register or list their securities in multiple jurisdictions. By incorporating the text of the international disclosure standards fully into Form 20–F, foreign issuers would

[29] *See* note 28, *id.*

[30] We are proposing to preserve the original wording of the international disclosure standards to the maximum extent possible. We think this approach will promote consistent use of the standards and will help foreign issuers recognize them as a national version of the IOSCO standards accepted in other jurisdictions.

be required to comply with the standards even if the United States is the only jurisdiction outside their home country where they register or list their securities. We do not believe, however, that this approach will burden those registrants unduly, because the proposed standards generally are similar to our current disclosure requirements for foreign private issuers.

We considered the alternative of creating a two-tiered system of disclosure requirements that would preserve the current foreign issuer integrated disclosure system, but offer foreign issuers the option of complying with the international disclosure standards if they are seeking to access more than one securities market. Introducing a two-tiered system would mean foreign issuers would have to ''elect'' which category of the system they fall into based on whether they plan to access more than one foreign jurisdiction; these issuers might encounter delays if their plans changed in the future. We also believe that our proposal promotes regulatory simplification and that use of the standards will be more widespread if they become an integral part of our disclosure system for foreign issuers.

We request comment, however, on whether a more limited adoption of the standards is preferable. Will compliance with the requirements of revised Form 20–F be unduly burdensome to foreign issuers that do not offer or list their securities in multiple jurisdictions? If so, would this burden be offset in whole or in part by the benefits of a single, uniform disclosure system for foreign issuers in the United States and by the goal of promoting international acceptance of high quality disclosure standards?

The proposed changes to our disclosure requirements apply to foreign private issuers and would not affect our requirements for U.S. issuers. They also would not affect the requirements that apply when an issuer prepares financial statements on the basis of accounting principles other than U.S. generally accepted accounting principles. Thus, this proposal would not affect the financial statement reconciliation requirements in Items 17 and 18 of Form 20–F.

Although we propose to change our rules and forms to reflect the wording of the standards endorsed by IOSCO in September 1998, if these proposals are adopted the standards would become part of the U.S. federal securities laws and would be interpreted and enforced in the same manner as other Commission rules and forms. We do not intend for this proposal to alter any individual's or entity's liabilities under the federal securities laws or change the procedures for offering or listing securities in the United States. This proposal also would not change our current procedures and practices for reviewing and commenting on filed documents. We request comment on whether the proposals require clarification on these points.

D. Revisions to Form 20–F

Form 20–F is the primary source of the disclosure requirements for foreign private issuers under the federal securities laws. It is used as an initial registration statement under the Exchange Act and as an annual report form for foreign private issuers required to file annual reports pursuant to Section 13 or 15(d) of the Exchange Act. Unlike many Commission forms, the disclosure requirements for Form 20–F are set forth in the form itself, rather than referencing the central body of disclosure requirements in Regulation S–K. The Securities Act registration forms designated for use by foreign private issuers primarily refer to the items of Form 20–F, although in some cases they refer to items of Regulation S–K.

We are proposing to replace current Items 1–14 of Form 20–F (excluding Item 9A) with ten new items that track the wording of the IOSCO disclosure standards.[31] Existing Item 9A (Quantitative and Qualitative Disclosures about Market Risk) of Form 20–F would be renumbered and retained. Disclosure about market risk is an important part of our disclosure requirements, but it is not an area where there currently is international consensus, and so was not addressed in the international disclosure standards. Existing Item 15 (Defaults Upon Senior Securities) and Item 16 (Changes in Securities and Changes in Security for Registered Securities) of Form 20–F also would be renumbered and retained, and the wording would be revised to reflect ''plain English'' drafting principles. These two items apply only when Form 20–F is used as an annual report form, and would continue to apply only to annual reports under this proposal.

Existing Items 17 and 18 of Form 20–F would be retained but would not be renumbered; these items explain the financial statement requirements for registration statements and reports and the different types of reconciliation to U.S. GAAP that must be provided by issuers who prepare financial statements using accounting principles other than U.S. GAAP. Currently, the text of Item 18 is largely the same as the text of Item 17 with few, but important, differences. We propose to revise Item 18 to eliminate the redundant text and highlight the differences. These revisions are intended only to simplify the way the Item 18 requirements are presented and are not intended to change the substantive requirements of that Item.

Although the international disclosure standards were intended to cover only equity securities, we propose to adapt them for use with securities other than equity. The primary modification we propose for this purpose is to add a supplemental item to Form 20–F containing the ''description of securities'' requirements for securities other than equity, which currently are not included in the standards.[32] We propose to simplify existing Item 19 (Financial Statements and Exhibits) by deleting the requirement for a separate list of the financial statements included with the filing. We are proposing to revise the General Instructions to Form 20–F to reflect plain English drafting principles and to expand the instructions to include the defined terms used in the IOSCO standards.[33] We also are proposing to revise the ''Instructions As To Exhibits'' to conform the exhibit requirements for Form 20–F with the exhibit requirements for registration statements filed by U.S. issuers under the Exchange Act and to reflect plain English drafting principles. For example, we are proposing to add exhibit requirements

[31] Although the terminology of the international disclosure standards reflects the international backgrounds of their drafters, we believe the meaning of unfamiliar terms will be clear to readers. For example, the standards use the term ''financials year'' to mean the same thing as the term ''fiscal year'' under our rules and regulations. The glossary of defined terms will assist readers, and in some cases we have added instructions to clarify our interpretation of the standards.

[32] See proposed Item 12 of Form 20–F. The requirements of this new item are equivalent to the comparable requirements currently found in Item 14 of Form 20–F and Item 202 of Regulation S–K. Securities other than equity also would be subject to the other disclosure requirements of Form 20–F, as applicable.

[33] To the very limited extent that a defined term in Form 20–F also is defined under the Exchange Act or the Securities Act, foreign private issuers would look to the definition in revised Form 20–F. The term ''affiliate'' is defined in Securities Act Rule 405 and in Exchange Act Rule 12b–2, as well as in the international disclosure standards, but there is no substantive difference in the definitions. The term ''equity security'' is defined in Securities Act Rule 405 and Exchange Act Rule 3a11–1, while the term ''equity securities'' is defined in the international disclosure standards. These definitions do not conflict, since the definition in the international disclosure standards primarily serves to narrow the scope of those standards. Under our proposed amendments to Form 20–F, the standards will apply to all types of securities, so the limitations in the international disclosure standards definition generally will not be relevant.

for indentures, voting trust agreements, and statements describing how earnings per share and ratios of earnings to fixed charges were calculated. We also propose to add expanded requirements for management compensation plans and an exhibit reference for any additional exhibits the issuer wishes to file and any documents not otherwise filed with the Commission that are incorporated by reference. All of these exhibit requirements currently are required for domestic issuers filing a registration statement on Form 10 or an annual report on Form 10–K. We request comment on whether these additional exhibit requirements would be unduly burdensome to foreign issuers.

We are not proposing any changes to ''Appendix A to Item 2(b)—Oil and Gas,'' other than to correct item references, because we are considering whether to revise our extractive industry disclosure requirements for foreign registrants. We also are not proposing any changes to the existing Industry Guides. Companies in various industries such as banking (Guide 3) and insurance (Guide 6) must continue to comply with the applicable Industry Guide.

E. Revisions to Securities Act Registration Forms

Forms F–1, F–2, F–3 and F–4, the Securities Act registration forms designated for use by foreign private issuers, currently cross-reference the disclosure requirements of Form 20–F and, to a lesser extent, Regulation S–K. We are proposing to revise the cross-references in these Securities Act registration forms so that they will refer to revised Form 20–F wherever possible. Some items in these Securities Act registration forms will continue to refer to Regulation S–K; these items would be renumbered, but otherwise would be unchanged.

There are certain offering-related disclosure requirements in the international disclosure standards that normally would not be found in an Exchange Act registration statement or Form 20–F annual report. Examples include proposed Items 2 (Offer Statistics and Expected Timetable) and 9.B. (Plan of Distribution). Under our current disclosure requirements, these topics are covered in Regulation S–K. We considered inserting the text of these requirements in Forms F–1, F–2, F–3 and F–4, but concluded that this would be inconsistent with the way Securities Act registration forms have developed under our integrated disclosure system, as well as with the approach we recently proposed in the Securities Act Reform Release.[34] We also considered inserting these requirements in Regulation S–K, but believed that it was preferable to keep the core disclosure items together as a unit in Form 20–F, thereby preserving that form as the central reference point for foreign issuers' disclosure requirements. This structure is convenient for foreign private issuers and is familiar to those issuers who currently use Form 20–F and the Securities Act registration forms. The structure also will help prospective registrants recognize the Form 20–F requirements as the U.S. version of the international disclosure standards that are accepted in other jurisdictions. We are proposing, therefore, to include these offering-related items in Form 20–F with instructions that they apply only if referenced by a Securities Act registration statement and not if the form is being used solely as an Exchange Act registration statement or an annual report. We request comment on this proposed organization.

We are proposing to amend Form F–6, the form used for registering American depositary shares, so the requirement for a description of the American depositary shares will cross-reference Form 20–F rather than Regulation S–K. We also are proposing to amend Form S–11, the form used by certain real estate companies, to correct cross-references to Form 20–F.

F. Revisions to Regulation S–X

Rule 3–19 of Regulation S–X currently specifies the content, age and other requirements for financial statements applicable to filings by foreign private issuers. We are proposing to eliminate Rule 3–19 because the requirements of the rule would be addressed in new Item 8 of Form 20–F. We believe the requirements in new Item 8 are clearer and more understandable than Rule 3–19.

The substantive requirements currently contained in Rule 3–19 essentially would be unchanged in Item 8, except for the provisions of the rule that relate to the age of financial statements. Under Rule 3–19, the financial statements and U.S. GAAP information must be as of a date within ten months of the effective date of the registration statement, and the audited financial statements for the most recent completed fiscal year (including U.S. GAAP information) must be included in registration statements declared effective more than six months after fiscal year-end. Under this rule it is possible, depending on the timing, for a foreign private issuer's registration statement to be declared effective with audited financial statements as old as 18 months, with the most recent interim financial statements as old as 10 months.

Proposed Item 8 of Form 20–F would require that audited financial statements be no older than 15 months at ''the time of the offering or listing,'' which generally means the effective date of the registration statement. In the case of the issuer's initial public offering, the audited financial statements also must be as of a date not older than 12 months at the time the offering document is filed. This stricter rule for initial public offerings would not apply to foreign issuers offering securities in the United States for the first time, however, if they already are public in their home country.[35] Proposed Item 8 also provides that if the date of a registration statement is more than nine months after the end of the issuer's last fiscal year, the registration statement must contain interim financial statements (including U.S. GAAP information), which may be unaudited, covering at least the first six months of the issuer's fiscal year.

With respect to the 15-month audit requirement, it became apparent in the course of developing the international disclosure standards that many securities regulators require audited financial statements used in connection with offerings or listings to be more current than Rule 3–19 requires. Because an issuer would have to comply with stricter home country requirements, there are likely to be limited circumstances in which a foreign issuer from these countries would need to take advantage of the extended time permitted under Rule 3–19.[36] Issuers would be able to avoid a

[34] Securities Act Release No. 7606A (Nov. 13, 1998) [63 FR 67174]. The Securities Act Reform Release proposes sweeping changes to the offering registration process. If adopted, those proposals would change the registration forms used by foreign private issuers, but would not affect the substantive disclosure requirements proposed in this release.

[35] Since many foreign issuers already are public companies when they file their first registration statement in the United States, we believe the 12-month rule would apply only in very limited circumstances. Even in those circumstances, we would consider waiving the requirement if the issuer can represent adequately to us that no jurisdiction outside the United States imposes the 12-month requirement and that complying with the requirement is impracticable or presents undue hardship.

[36] The effect would be to leave a ''blackout period'' starting three months after the close of an issuer's fiscal year during which its audited financial statements for the past fiscal year will no longer satisfy the Item 8 requirements and its audited financial statements for the most recent completed fiscal year would not yet be required to be filed on Form 20–F. The maximum extent of this

''blackout period'' and satisfy new Item 8, however, by preparing audited financial statements as of a more current date than the close of their prior fiscal year or by filing their annual financial statements prior to the six-month deadline permitted under the Exchange Act. Although we do not believe that, as a practical matter, reducing the permitted age of financial statements will unduly burden foreign issuers, we request comment on whether that is the case. In particular, we would be interested in knowing how often issuers actually take advantage of the extended time periods permitted under Rule 3–19, and how likely it is that offerings or listings would be delayed or precluded by the requirements of new Item 8? To the extent the requirements of new Item 8 impose a burden on some issuers, is this burden likely to be offset by the benefits to most issuers of a clearer rule, a more internationally accepted standard and the availability to investors of more current financial information? Will U.S. investors in foreign securities be affected by these changes?

By incorporating the international disclosure standards into Form 20–F, we are expanding their scope to cover all types of securities rather than just equity securities, because this is consistent with the current requirements of Form 20–F. We request comment on whether the age of financial statements provisions of new Item 8 should be different for securities other than common equity. For example, should the permitted age of financial statements be extended for registration statements relating to preferred stock, investment grade debt and/or non-investment grade debt or preferred securities, to reflect the time period currently permitted under Rule 3–19? We also request comment on whether the permitted age of financial statements should be different for certain types of offerings such as rights offerings, dividend or interest reinvestment plans, and convertible securities and warrants, as is currently the case under Rule 3–19(e)? If so, which securities or which types of offerings should be covered by the extended time periods? Would the advantages of having different age of financial statements requirements for securities other than common equity (or for specified types of offerings) outweigh the added complexity?

G. ''Foreign Private Issuer'' Definition

We are proposing to amend Rule 405 under the Securities Act and Rule 3b–4 under the Exchange Act, which contain the definition of ''foreign private issuer.[37] The foreign private issuer definition currently includes a test of whether more than 50 percent of an issuer's outstanding voting securities are held of record, either directly or through voting trust certificates or depositary receipts, by residents of the United States.[38] We often are asked by issuers whether they may or must take into consideration the residency of a beneficial owner if they know that such owner's residency differs from that of the record owner.[39] We propose to clarify this issue by basing the ownership test on the method of calculation used in Rule 12g3–2(a) under the Exchange Act. That rule follows the definition of ''securities held of record'' in Rule 12g5–1, but requires the issuer to ''look through'' the record ownership of brokers, dealers, banks or nominees holding securities for the accounts of their customers to determine the residency of those customers. If a foreign issuer's securities trade in the U.S. markets in the form of American Depositary Receipts, or ADRs, we will presume that shares deposited in the ADR program are held solely by U.S. residents.[40] We also propose to require issuers to take into account information regarding U.S. ownership derived from beneficial ownership reports that are provided to the issuer or filed publicly and information that otherwise is provided to the issuer. We believe this approach takes into account the fact that securities, particularly securities of foreign issuers, increasingly are likely to be held by U.S. residents through offshore nominee accounts. These changes to the ''foreign private issuer'' definition would give a better picture of whether a company incorporated outside the United States is, in fact, the type of entity for whom the special rules and forms for foreign private issuers were intended.

We request comment on whether referencing Rule 12g3–2(a) in the foreign private issuer definition is a workable approach. Should the required inquiry be limited to U.S. brokers, dealers, banks and nominees or their affiliates? Should we apply the automatic presumption that ADR holders are U.S. residents only to unsponsored ADR programs, because in the case of a sponsored ADR program the issuer presumably could obtain current U.S. ownership information from the ADR depositary bank? Is too great a burden imposed on issuers by requiring them to take into account information on U.S. beneficial ownership that is available to them from reports of beneficial ownership and that otherwise is available to them?

III. General Request for Comments

If you would like to submit written comments on the proposals, suggest additional changes or submit comments on other matters that might have an impact on the proposals, we encourage you to do so. Besides the specific questions we asked in this release, we also solicit comments on the usefulness of the proposals to securityholders, foreign private issuers and the marketplace at large. You may comment on portions of the release or respond to selected questions without replying to all the questions raised in the release.

Please send three copies of your comments to Jonathan G. Katz, Secretary, Securities and Exchange Commission, 450 Fifth Street, N.W., Washington, D.C. 20549. You also may

blackout period would be three months, although under the Securities Act Reform Release, we have proposed shortening the due date for annual reports on Form 20–F from six months to five months after the close of the issuer's fiscal year. If this proposal in the Securities Act Reform Release is adopted, this would have the effect of limiting the blackout period to two months.

[37] Foreign private issuers have been granted various accommodations under the federal securities laws, and the Commission historically has chosen not to extend those accommodations to foreign issuers whose contacts with the U.S. make them ''essentially U.S. issuer[s].'' The Commission has recognized that there is an important public interest in this latter group of issuers, and has required them to comply with the same rules and regulations as U.S.-incorporated issuers. *See* Securities Act Release No. 6433 (Oct. 28, 1982) [47 FR 50292]. The Commission was aware, however, that a foreign-incorporated issuer's securities could migrate to the U.S., bringing its U.S. shareholder base over the 50% level. The second part of the foreign private issuer definition is intended to distinguish these issuers from other foreign issuers that also have over 50% U.S. ownership but are ''essentially U.S. issuer[s].'' *See* note 38, *infra.*

[38] There are two parts to the definition. The first part is based on ownership of the issuer's securities. The second part of the definition is based on whether (a) a majority of the issuer's executive officers or directors are U.S. citizens or residents, (b) over 50% of its assets are within the United States, or (c) its business is administered principally in the United States. Any one of these three factors, together with majority U.S. ownership, will mean the issuer fails to satisfy the foreign private issuer definition.

[39] At least one court has held that the reference to record ownership in Rule 3b–4 must be read literally, on the theory that when the Commission means beneficial ownership it knows how to say it. See *Thouret* v. *Hudner,* 1996 U.S. District LEXIS 981; Fed. Sec. L. Rep. (CCH) ¶ 99,037 (S.D.N.Y. 1996).

[40] This presumption is consistent with our proposed rules for cross-border rights and exchange offers. Securities Act Release No. 7611 (Nov. 13, 1998) [63 FR 69136]. As was the case in that proposal, if the issuer receives information to the contrary from the depositary, it may rely on that information in calculating the number of shares held by U.S. residents for purposes of the ''foreign private issuer'' definition.

submit your comments electronically at the following electronic mail address: **rule-comments@sec.gov.** All comment letters should refer to File No. S7–3–99; this file number should be included in the subject line if electronic mail is used. Comment letters can be inspected and copied in the public reference room at 450 Fifth Street, N.W., Washington, D.C. We will post electronically submitted comments on our Internet Web site **<http://www.sec.gov>.**

IV. Cost-Benefit Analysis

The proposed new rules and amendments update and simplify the disclosure requirements for foreign private issuers. We believe the proposal will make it easier for foreign private issuers to raise capital or list their securities in multiple jurisdictions and that U.S. investors will benefit if foreign issuers find it easier to access the U.S. securities markets. In this section, we examine the benefits and costs of the proposed revisions, focusing on the groups that might be affected. We request that commenters provide their analysis and supporting information on the benefits and costs of the proposals.

Foreign issuers seeking to raise capital or list securities in more than one jurisdiction often encounter differing, and in some cases conflicting, regulatory requirements. These regulatory hurdles may influence issuers' decisions about where to offer or list their securities. A primary goal of the proposed amendments to Form 20–F is to facilitate the use of one disclosure document by issuers seeking to raise capital or list securities in multiple jurisdictions. The proposed amendments are intended to remove regulatory barriers and reduce the registration requirements of cross-border offerings and listings. We expect the amendments to reduce the costs and burdens of complying with regulatory requirements in more than one jurisdiction, because the amendments will bring us closer to the goal of enabling issuers to prepare one basic disclosure document that will be accepted in many jurisdictions. Although some tailoring of the disclosure document will be required to satisfy specific national requirements, issuers will benefit from greater uniformity in the requirements for core disclosure topics.

We believe U.S. investors will benefit because the amendments to Form 20–F will update the disclosure requirements and bring them more in line with current international disclosure requirements. Investors in the United States also will benefit from increased access to foreign investments if foreign issuers find it easier to offer or list securities in the United States. Any increase in foreign listings may increase the competition for capital in the United States, which could affect both U.S. and foreign issuers.

Foreign issuers should benefit from the ability to access more than one securities market using essentially the same basic disclosure document. In a few cases the amendments to Form 20–F may be more burdensome for foreign issuers than the current Form 20–F requirements because they impose a higher standard of disclosure or require additional information. In those cases, we do not believe that a foreign issuer will incur substantial additional costs in complying with these requirements, since they represent requirements that the issuer would expect to encounter in accessing other major securities markets or in its home jurisdiction.

The proposed amendments to the definition of ''foreign private issuer'', which require the issuer to look beyond record ownership in determining the U.S. ownership of its securities, should not impose significant additional burdens on foreign issuers. The concept of looking beyond record ownership is familiar to foreign issuers, and the proposed amendments provide clear guidance on how issuers should determine U.S. ownership.

For purposes of the Small Business Regulatory Enforcement Fairness Act of 1996 (''SBREFA''),[41] a rule is ''major'' if it has resulted, or is likely to result in:

- An annual effect on the economy of $100 million or more;
- A major increase in costs or prices for consumers or individual industries; or
- Significant adverse effects on competition, investment or innovation.

We request information on the potential impact of the proposed rules and amendments on the economy on an annual basis. Commenters should provide empirical data on: (i) The annual effect on the economy; (ii) any increase in costs or prices for consumers or individual industries; and (iii) any effect on competition, investment or innovation.

Section 23(a) of the Exchange Act[42] requires us, in adopting rules under the Exchange Act, to consider the impact that rules would have on competition. We cannot adopt any rule that would impose a burden on competition not necessary or appropriate in the public interest. Section 3(f) of the Exchange Act[43] requires the Commission, when engaged in rulemaking, to consider or determine whether the action is necessary or appropriate in the public interest, and also to consider, in addition to the protection of investors, whether the action would promote efficiency, competition and capital formation. We seek information on the impact of increased competition for capital on domestic companies as a result of an increase in securities offered into the United States by foreign companies. Would capital costs increase for domestic companies? If so, to what extent would the benefit to U.S investors offset the increase in these capital costs? We request comment on whether the proposals, if adopted, would have an adverse effect on competition or would impose a burden on competition that is neither necessary nor appropriate in furthering the purposes of the Exchange Act.

V. Regulatory Flexibility Act Certification

Pursuant to the Regulatory Flexibility Act (15 U.S.C. 605(b)), the Chairman of the Commission has certified that the proposed revisions to rules and forms will not have a significant impact on a substantial number of small entities. We encourage written comments on the Certification. Commenters are asked to describe the nature of any impact on small entities and provide empirical data to support the extent of the impact. For your information, a copy of the certification is attached at Appendix A.

VI. Paperwork Reduction Act

The proposed amendments affect Form 20–F, which contains ''collection of information requirements'' within the meaning of the Paperwork Reduction Act of 1995.[44] The title for the collection of information is ''Form 20–F.'' The OMB control number is 3235–0288. The Commission has submitted proposed revisions to those rules and forms to the Office of Management and Budget (OMB) for review in accordance with 44 U.S.C. 3507(d) and 5 CFR 1320.11. 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 proposed forms and regulations set forth the disclosures that the Commission would require foreign private issuers to make to the public about themselves and their securities offerings. The proposed amendments would update and simplify the Commission's disclosure requirements for foreign private issuers. The substantive requirements of the forms

[41] Pub. L. No. 104–121, Title II, 110 Stat. 857 (1996).

[42] 15 U.S.C. § 78w(a)(2).

[43] 15 U.S.C. § 78c(f).

[44] 44 U.S.C. 3501 *et. seq.*

would remain largely the same, but the requirements would be presented in a form that reflects an international regulatory consensus, and thus should be more familiar to foreign issuers. The information is needed so that prospective investors may make informed investment decisions both in registered offerings and in secondary market transactions of registered securities. We estimate that 600 revised Forms 20–F will be filed each year based on our current experience with Form 20–F and our expectation that more foreign private issuers will file the revised form. Our experience also indicates that in subsequent years the number will increase. We estimate the current annual burden of preparing a Form 20–F to be 1,991 hours per filing. From this we estimate that the expected annual burden to a registrant of preparing a Form 20–F as proposed would not exceed 1,995 hours per filing. In estimating the burden associated with the proposed Form 20–F, we considered that, generally, most foreign private issuers currently either disclose or collect the data underlying the information that would be required by the proposed Form. We solicit comment on the accuracy of our estimate. The information collection requirements imposed by the forms and regulations would be mandatory to the extent that companies are publicly owned and either offer securities to the public, register under the Exchange Act or file annual reports. There would be no mandatory retention period for the information disclosed, and the information gathered would be made publicly available unless granted confidential treatment.

Pursuant to 44 U.S.C. 3506(2)(B), we solicit comments to:

(i) Evaluate whether the proposed collection of information is necessary for the proper performance functions of the agency, including whether the information will have practical utility;

(ii) Evaluate the accuracy of the agency's estimate of the burden of the proposed collection of information;

(iii) Enhance the quality, utility, and clarity of the information to be collected; and

(iv) Minimize the burden of collection of information on foreign private issuers, including through the use of automated collection techniques or other forms of information technology.

Persons wishing to submit comments on the collection of information requirements should direct them to the following persons: Desk Officer for the Securities and Exchange Commission, Office of Information and Regulatory Affairs, Office of Management and Budget, Room 3208, New Executive Office Building, Washington, DC 20503; and Jonathan G. Katz, Secretary, Securities and Exchange Commission, 450 Fifth Street, NW., Washington, DC 20549, with reference to File Number S7–3–99. OMB is required to make a decision concerning the collections of information between 30 and 60 days after publication, so a comment to OMB is best assured of having its full effect if OMB receives it within 30 days of publication.

VII. Statutory Basis and Text of Proposed Amendments

The proposed amendments to the Commission's existing rules and forms are being proposed pursuant to Sections 2(b), 5, 6, 7, 10 and 19(a) of the Securities Act of 1933 as amended, Sections 3, 12, 13, 15 and 23 of the Securities Exchange Act of 1934, and Section 319 of the Trust Indenture Act of 1939.

List of Subjects

17 CFR Part 210

Accountants, Accounting.

17 CFR Part 228

Reporting and recordkeeping requirements, Securities, Small business.

17 CFR Parts 229, 239 and 249

Reporting and recordkeeping requirements, Securities.

17 CFR Part 230

Advertising, Investment companies, Reporting and recordkeeping requirements, Securities.

17 CFR Part 240

Brokers, Reporting and recordkeeping requirements, Securities.

17 CFR Part 260

Reporting and recordkeeping requirements, Securities, Trusts and Trustees.

Text of Proposed Amendments

In accordance with the foregoing, the Securities and Exchange Commission proposes to amend Title 17, chapter II of the Code of Federal Regulations as follows:

PART 210—FORM AND CONTENT OF AND REQUIREMENTS FOR FINANCIAL STATEMENTS, SECURITIES ACT OF 1933, SECURITIES EXCHANGE ACT OF 1934, PUBLIC UTILITY HOLDING COMPANY ACT OF 1935, INVESTMENT COMPANY ACT OF 1940, AND ENERGY POLICY AND CONSERVATION ACT OF 1975

1. The authority citation for part 210 continues to read as follows:

Authority: 15 U.S.C. 77f, 77g, 77h, 77j, 77s, 77z–2, 77aa(25), 77aa(26), 78j–1, 78*l*, 78m, 78n, 78o(d), 78u–5, 78w(a), 78*ll*(d), 79e(b), 79j(a), 79n, 79t(a), 80a–8, 80a–20, 80a–29, 80a–30, 80a–37(a), unless otherwise noted.

2. By removing and reserving § 210.3–19.

3. Amend § 210.3–20 in the last sentence of paragraph (d) by removing the words ''Items 17(c)(2) or 18(c)(2) of'' and add, in their place, the words ''Item 17(c)(2) of''.

4. By removing in 17 CFR Part 210 the words ''§ 210.3–19'' and adding, in their place, the words ''Item 8.A of Form 20–F (§ 249.220 of this chapter)'' in the following places:

a. Section 210.3–01(h); and

b. Section 210.3–02(d).

5. Amend § 210.3–12 in paragraph (f) by removing the words ''specified in § 210.3–19. Financial statements of a foreign business which are furnished pursuant to §§ 210.3–05 or 210.3–09 because it is an acquired business or a 50 percent or less owned person may be of the age specified in § 210.3–19.'' and add, in their place, the words ''specified in Item 8.A of Form 20–F (§ 249.220f of this chapter). Financial statements of a foreign business which are furnished pursuant to §§ 210.3–05 or 210.3–09 because it is an acquired business or a 50 percent or less owned person may be of the age specified in Item 8.A of Form 20–F.''

PART 228—INTEGRATED DISCLOSURE SYSTEM FOR SMALL BUSINESS ISSUERS

6. The authority citation for part 228 continues to read as follows:

Authority: 15 U.S.C. 77e, 77f, 77g, 77h, 77j, 77k, 77s, 77z–2, 77aa(25), 77aa(26), 77ddd, 77eee, 77ggg, 77hhh, 77jjj, 77nnn, 77sss, 78*l*, 78m, 78n, 78o, 78u–5, 78w, 78*ll*, 80a–8, 80a–29, 80a–30, 80a–37, 80b–11, unless otherwise noted.

7. Amend the first sentence in Note 2 of § 228.310 by removing the words ''Articles 3–19 and 3–20 (17 CFR 210.3–19 and 210.3–20)'' and add, in their place, the words ''Item 8.A of Form 20–F (17 CFR 249.220f) and Article 3–20 of Regulation S–X (17 CFR 210.3–20)''.

PART 229—STANDARD INSTRUCTIONS FOR FILING FORMS UNDER SECURITIES ACT OF 1933, SECURITIES EXCHANGE ACT OF 1934 AND ENERGY POLICY AND CONSERVATION ACT OF 1975—REGULATION S–K

8. The authority citation for part 229 continues to read in part as follows:

Authority: 15 U.S.C. 77e, 77f, 77g, 77h, 77j, 77k, 77s, 77z–2, 77aa(25), 77aa(26), 77ddd, 77eee, 77ggg, 77hhh, 77iii, 77jjj, 77nnn, 77sss, 78c, 78i, 78j, 78*l*, 78m, 78n, 78o, 78u–5, 78w, 78*ll*(d), 79e, 79n, 79t, 80a–8, 80a–29, 80a–30, 80a–37, 80b–11, unless otherwise noted.

* * * * *

9. Amend § 229.402(a)(1)(ii) by removing the words ''Items 11 and 12 of Form 20–F [17 CFR 249.220f]'' and add, in their place, the words ''Items 6.B. and 6.E.2. of Form 20–F (17 CFR 249.220f)''.

10. Amend § 229.512 in the first sentence of paragraph (a)(4) by removing the words ''§ 210.3–19 of this chapter'' and add, in their place, the words ''Item 8.A. of Form 20–F (17 CFR 249.220f)''.

11. Amend § 229.601 in paragraph (b)(10)(iii)(B)(5) by removing the words ''Item 11 of Form 20–F'' and adding, in their place, the words ''Item 6.B. of Form 20–F (§ 249.220f of this chapter)''.

PART 230—GENERAL RULES AND REGULATIONS, SECURITIES ACT OF 1933

12. The authority citation for part 230 continues to read in part as follows:

Authority: 15 U.S.C. 77b, 77f, 77g, 77h, 77j, 77r, 77s, 77sss, 78c, 78d, 78*l*, 78m, 78n, 78o, 78w, 78*ll*(d), 79t, 80a–8, 80a–24, 80a–28, 80a–29, 80a–30, and 80a–37, unless otherwise noted.

* * * * *

13. Amend § 230.175 by removing in paragraph (b)(2)(i) the words ''or Item 9 of Form 20–F (§ 249.220f of this chapter) 'Management's discussion and analysis of financial condition and results of operations,' '' and adding, in their place, the words ''Management's Discussion and Analysis of Financial Condition and Results of Operations or Item 5 of Form 20–F Operating and Financial Review and Prospects (§ 249.220f of this chapter)''; by removing in paragraph (c)(3) the words ''Item 9 of Form 20–F'' and adding, in their place, the words ''Item 5 of Form 20–F''.

14. By amending § 230.405 by revising the definition of ''foreign private issuer'' to read as follows:

§ 230.405 Definitions of terms.

* * * * *

Foreign private issuer. The term *foreign private issuer* means any foreign issuer other than a foreign government except an issuer meeting the following conditions:

(1) More than 50 percent of the outstanding voting securities of such issuer are directly or indirectly owned of record by residents of the United States; and

(2) Any of the following:

(i) The majority of the executive officers or directors are United States citizens or residents;

(ii) More than 50 percent of the assets of the issuer are located in the United States; or

(iii) The business of the issuer is administered principally in the United States.

Instructions to paragraph (1) of this definition: To determine the percentage of outstanding voting securities held by U.S. residents:

A. Use the method of calculating record ownership in Rule 12g3–2(a) under the Exchange Act (§ 240.12g3–2(a) of this chapter);

B. Unless information provided by the depositary demonstrates otherwise, count holders of American Depositary Receipts as U.S. holders of the underlying securities; and

C. Count shares of voting securities beneficially owned by residents of the United States as reported on reports of beneficial ownership that are provided to you or publicly filed and based on information otherwise provided to you.

* * * * *

15. Amend § 230.434 by revising paragraph (c)(3)(i) to read as follows; and by removing in paragraph (c)(3)(ii) the words ''Item 11 of Form S–3 or Form F–3 (§ 239.13 or § 239.33 of this chapter)'' and adding, in their place, the words ''Item 11 of Form S–3 or Item 5 of Form F–3 (§ 239.13 or § 239.33 of this chapter)''.

§ 230.434 Prospectus delivery requirements in firm commitment underwritten offerings of securities for cash.

* * * * *

(c) * * *

(3) * * *

(i) The description of securities required by Item 202 of Regulations S–K (§ 229.202 of this chapter) or by Items 9, 10 and 12 of Form 20–F (§ 249.220f of this chapter) as applicable, or a fair and accurate summary thereof; and

* * * * *

16. Amend § 230.463 by removing in paragraph (a) the words ''Item 16(e)'' and adding, in their place, the words ''Item 14(e)''.

PART 239—FORMS PRESCRIBED UNDER THE SECURITIES ACT OF 1933

17. The general authority citation for part 239 continues to read in part as follows:

Authority: 15 U.S.C. 77f, 77g, 77h, 77j, 77s, 77z–2, 77sss, 78c, 78*l*, 78m, 78n, 78o(d), 78u–5, 78w(a), 78*ll*(d), 79e, 79f, 79g, 79j, 79*l*, 79m, 79n, 79q, 79t, 80a–8, 80a–24, 80a–29, 80a–30 and 80a–37, unless otherwise noted.

* * * * *

18. Amend General Instruction E. to Form S–11 (referenced in § 239.18) by removing the words ''Items 3, 4, 10, 11 and 18, respectively, of Form 20–F'' and adding, in their place, the words ''Items 6, 7.A., 8.A.7., and 18 of Form 20–F''.

Note: The text of Form S–11 does not and this amendment will not appear in the Code of Federal Regulations.

19. Amend Form F–1 (referenced in § 239.31) by removing in General Instruction III the words ''the information that would be required by Item 11'' and adding in their place the words ''the information which would be required by Item 4''; by removing in General Instruction III the words ''called for by Item 9'' and adding in their place the words ''called for by Items 10.A and 10.B of Form 20–F or Item 12 of Form 20–F, as applicable''; by removing Items 4 through 10 and 13; by redesignating Items 11, 12, 14, 15, 16, and 17 as Items 4, 5, 6, 7, 8, and 9; by revising the caption for newly designated Item 4 to read ''Information with Respect to the Registrant and the Offering''; by removing in newly designated Item 4(b) the words ''Pursuant to Item 16'' and adding, in their place, the words ''Pursuant to Item 8''; and, by removing in newly designated Item 8(b) the words ''and Item 11(b) of this Form'' and adding, in their place, the words ''and Item 4(b) of this Form''.

20. Amend Form F–1 (referenced in § 239.31) the Instructions As To Summary Prospectuses section by redesignating paragraphs 1.(c), 1.(d), 1.(e), 1.(f), 1.(g) and 1.(h) as paragraphs 1.(c)(i), 1.(c)(ii), 1.(c)(iii), 1.(c)(iv), 1.(c)(v) and 1.(d); by removing in newly designated paragraph 1.(c)(i) the words ''As to Item 4, a'' and adding, in their place, ''A''; by removing in newly designated paragraph 1.(c)(ii) the words ''As to Item 7, a'' and adding, in their place, ''A''; by removing in newly designated paragraph 1.(c)(iii) the words ''As to Item 8, a'' and adding, in their place, ''A''; by removing in newly designated paragraph 1.(c)(iv) the words ''As to Item 9, a'' and adding, in their place, ''A''; by removing in newly designated paragraph 1.(c)(v) the words ''As to Item 11, a brief statement of the

general character of the business done and intended to be done, the Selected Financial Data (Item 8 of Form 20–F (§ 249.220f of this chapter))'' and adding, in their place, the words ''As to Item 4, a brief statement of the general character of the business done and intended to be done, the Selected Financial Data (Item 3.A of Form 20–F (§ 249.220f of this chapter))''; by removing in paragraph 3 the words ''that information as to Items 9 and 11 specified in paragraphs (f) and (g) above'' and adding, in their place, the words ''that information specified in paragraphs 1.(c)(iv) and 1.(c)(v) above''.

Note: The text of Form F–1 does not and this amendment will not appear in the Code of Federal Regulations.

21. Amend Form F–2 (referenced in § 239.32) by removing Items 4 through 10 and 14; by adding new Item 4 to read as follows; by redesignating Items 11, 12, 13, 15, 16, and 17 as Items 5, 6, 7, 8, 9, and 10; by removing in newly designated Item 5(b)(1) the words ''pursuant to Item 12'' and adding, in their place, the words ''pursuant to Item 6''; by removing in newly designated Item 5(b)(2) the words ''accordance with Item 12 are not sufficiently current to comply with the requirements of Rule 3–19 of Regulation S–X (§ 210.3–19 of this chapter), financial statements necessary to comply with that rule'' and adding, in their place, the words ''accordance with Item 6 are not sufficiently current to comply with the requirements of Item 8.A of Form 20–F, financial statements necessary to comply with that Item''; and, by removing in the caption of the Note to newly designated Item 6 the words ''Item 12(a)''and adding, in their place, the words ''Item 6(a)''.

Note: The text of Form F–2 does not and this amendment will not appear in the Code of Federal Regulations.

SECURITIES AND EXCHANGE COMMISSION

Washington D.C. 20549

Form F–2

Registration Statement Under the Securities Act of 1933

* * * * *

Item 4. Information About the Offering

Furnish the information about the offering required by the following items of Form 20–F: Item 2 (Offer Statistics and Expected Timetable), Item 3.B (Capitalization and Indebtedness), Item 3.C (Reasons for the Offer and Use of Proceeds), Item 7.C (Interests of Experts and Counsel), Item 10 (The Offer and Listing) and Item 12 (Description of Securities Other than Equity Securities). You do not have to repeat in the prospectus any information called for by these items if the same information is contained in a report being incorporated by reference into this registration statement.

* * * * *

22. Amend Form F–2 (referenced in § 239.32) the Instructions As To Summary Prospectuses section by redesignating paragraphs 1.(c), 1.(d), 1.(e), 1.(f), 1.(g) and 1.(h) as paragraphs 1.(c)(i), 1.(c)(ii), 1.(c)(iii), 1.(c)(iv), 1.(c)(v) and 1.(d); by removing in newly designated paragraph 1.(c)(i) the words ''As to Item 4, a'' and adding, in their place, ''A''; by removing in newly designated paragraph 1.(c)(ii) the words ''As to Item 7, a'' and adding, in their place, ''A''; by removing in newly designated paragraph 1.(c)(iii) the words ''As to Item 8, a'' and adding, in their place, ''A''; by removing in newly designated paragraph 1.(c)(iv) the words ''As to Item 9, a'' and adding, in their place, ''A''; and, by removing in newly designated paragraph 1.(c)(v) the words ''As to Item 12, a brief statement of the general character of the business done and intended to be done, the Selected Financial Data (Item 8 of Form 20–F (§ 249.220f of this chapter)'' and adding, in their place, the words ''A brief statement of the general character of the business done and intended to be done, the Selected Financial Data (Item 3.A of Form 20–F (§ 249.220f of this chapter)''.

23. Amend Form F–3 (referenced in § 239.33) by removing Items 4 through 10 and 14; by adding new Item 4 to read as follows; by redesignating Items 11, 12, 13, 15, 16, and 17 as Items 5, 6, 7, 8, 9, and 10; in newly designated Item 5 remove the words ''Item 12'' and add, in their place, the words ''Item 6'' in the following places: twice in Item 5(a), once in Item 5(b)(1), and once in Item 5(b)(2); by removing in newly designated Item 5(b)(1) the words ''Form 8–K'' and adding, in their place, the words ''Form 6–K''; by removing in newly designated Item 5(b)(2) the words ''Rule 3–19 of Regulation S–X (§ 210.3–19 of this chapter), financial statements necessary to comply with that rule'' and adding, in their place, the words ''Item 8.A. of Form 20–F, financial statements necessary to comply with that Item''; and by removing in the caption of the Note to newly designated Item 6 the words ''Item 12(d)'' and adding, in their place, the words ''Item 6(d)''.

Note: The text of Form F–3 does not and this amendment will not appear in the Code of Federal Regulations.

SECURITIES AND EXCHANGE COMMISSION

Form F–3

Registration Statement Under the Securities Act of 1933

* * * * *

Item 4. Information About the Offering

Furnish the information about the offering required by the following items of Form 20–F: Item 2 (Offer Statistics and Expected Timetable), Item 3.B (Capitalization and Indebtedness), Item 3.C (Reasons for the Offer and Use of Proceeds), Item 7.C (Interests of Experts and Counsel), Item 10 (The Offer and Listing) and Item 12 (Description of Securities Other than Equity Securities). You do not have to repeat in the prospectus any information called for by these items if the same information is contained in a report being incorporated by reference into this registration statement.

* * * * *

24. Amend Form F–4 (referenced in § 239.34) by removing the words ''Item 4 of Form 20–F'' and adding, in their place, the words ''Item 7.A. of Form 20–F'' in the following places:

a. the Instruction following Item 18(a)(5)(ii); and

b. the Instruction following Item 19(a)(5).

25. Amend Form F–4 (referenced in § 239.34) by removing the words ''Item 5 of Form 20–F'' and adding, in their place, the words ''Item 9.A.4. of Form 20–F'' in the following places:

a. Instruction 2. to Item 11;

b. Item 12(a)(5);

c. Item 12(b)(3)(viii);

d. Instruction 2. to Item 13;

e. Item 14(i); and

f. Item 17(b)(2).

26. Amend Item 12(b)(3)(iii) of Form F–4 (referenced in § 239.34) by removing the words ''Item 6 of Form 20–F, exchange controls and other limitations on security holders'' and adding, in their place, the words ''Item 10.D. of Form 20–F, exchange controls''.

27. Amend Item 14(d) of Form F–4 (referenced in § 239.34) by removing the words ''Item 6 of Form 20–F, exchange controls and other limitations affecting security holders'' and adding, in their place, the words ''Item 10.D. of Form 20–F, exchange controls''.

28. Amend Form F–4 (referenced in § 239.34) by removing the words ''Item 8 of Form 20–F'' and adding, in their place, the words ''Item 3.A. of Form 20–F'' in the following places:

a. Item 3(d), 3(e), 3(f)(1), 3(f)(2), 3(f)(3);

b. Item 12(b)(3)(v);

c. Item 14(f); and
d. Item 17(b)(3).

29. Amend Form F–4 (referenced in § 239.34) by removing the words ''Item 9 of Form 20–F, management's discussion and analysis of financial condition and results of operations'' and adding, in their place, the words ''Item 5 of Form 20–F, operating and financial review'' in the following places:
a. Item 12(b)(3)(vi)(A);
b. Item 14(g)(1); and
c. Item 17(b)(4)(i).

30. Amend Form F–4 (referenced in § 239.34) by removing the words ''Item 9A of Form 20–F'' and adding, in their place, the words ''Item 11 of Form 20–F'' in the following places:
a. Item 12(b)(3)(vi)(B);
b. Item 14(g)(2); and
c. Item 17(b)(4)(ii).

31. Amend Item 18(a)(7)(i) of Form F–4 (referenced in § 239.34) by removing the words ''Item 10 of Form 20–F, directors and officers of registrant'' and adding, in their place, the words ''Item 6.A. of Form 20–F, directors and senior management of the registrant''.

32. Amend Item 19(a)(7)(i) of Form F–4 (referenced in § 239.34) by removing the words ''Item 10 of Form 20–F, directors and officers of the registrant: and adding, in their place, the words ''Item 6.A. of Form 20–F, directors and senior management of the registrant''.

33. Amend Form F–4 (referenced in § 239.34) by removing the words ''Items 11 and 12 of Form 20–F, remuneration and options'' and adding, in their place, the words ''Items 6.B. and 6.E. of Form 20–F, compensation and share ownership'' in the following places:
a. Item 18(a)(7)(ii); and
b. Item 19(a)(7)(ii).

34. Amend Form F–4 (referenced in § 239.34) by removing the words ''Item 13 of Form 20–F, interest of management in certain transactions'' and adding, in their place, the words ''Item 7.B. of Form 20–F, related party transactions'' in the following places:
a. Item 18(a)(7)(iii); and
b. Item 19(a)(7)(iii).

35. Amend Form F–4 (referenced in § 239.34) by removing the words ''Rule 3–19 of Regulation S–X (210.3–19 of this chapter)'' or ''Rule 3–19 to Regulation S–X'' or ''Rule 3–19 of Regulation S–X'' and adding, in their place, the words ''Item 8.A. of Form 20–F'' in the following places:
a. Item 10(b);
b. Instruction 2 to Item 11;
c. Items 12(a)(2), (a)(5), (b)(2)(i), and (b)(3)(viii);
d. Instruction 2 to Item 13;
e. Item 14(i);
f. The Instructions following Item 14(i); and
g. Items 17(b)(2) and 17(b)(6).

36. Amend Item 3 of Form F–4 (referenced in § 239.34) by removing in Instruction 2. to *Instructions to paragraphs (e) and (f)* the words ''Instruction 7 to Item 8 of Form 20–F'' and adding, in their place, the words ''The Instructions to Item 3.A. of Form 20–F''.

37. Amend Item 4(a)(3) of Form F–4 (referenced in § 239.34) by removing the words ''Item 202 of Regulation S–K (§ 229.202 of this chapter)'' and adding, in their place, the words ''Items 10.A and 10.B of Form 20–F or Item 12 of Form 20–F, as applicable''.

38. Amend Item 7(a) of Form F–4 (referenced in § 239.34) by removing the words ''Item 507 of Regulation S–K (§ 229.507 of this chapter)'' and adding, in their place, the words ''Item 9.D. of Form 20–F (§ 249.220f of this chapter)''.

39. Amend Item 8 of Form F–4 (referenced in § 239.34) by removing the words ''Item 509 of Regulation S–K (§ 229.509 of this chapter)'' and adding, in their place, the words ''Item 7.C. of Form 20–F (§ 249.220f of this chapter)''.

40. Amend Item 12 of Form F–4 (referenced in § 239.34) by removing in Item 12(a)(2) the words ''Item 9 of Form 20–F'' and adding, in their place, the words ''Item 5 of Form 20–F''; by removing in Item 12(b)(1) the words ''Items 1 and 2 of Form 20–F'' and adding, in their place, the words ''Item 4 of Form 20–F''; by removing in Item 12(b)(3)(i) the words ''Items 1(a)(3) and (a)(4) of Form 20–F'' and adding, in their place, the words ''Items 4.B., 4.B.2., and 4.B.5. of Form 20–F''; by removing in Item 12(b)(3)(ii) the words ''Item 2 of Form 20–F'' and adding, in their place, the words ''Item 4.D. of Form 20–F''; by removing in Item 12(b)(3)(iv) the words ''Item 7 of Form 20–F'' and adding, in their place, the words ''Item 10.E of Form 20–F''; and by removing in Item 12(b)(3)(v) the words ''Item 8 of Form 20–F'' and adding, in their place, the words ''Item 3.A. of Form 20–F''.

41. Amend Item 14 of Form F–4 (referenced in § 239.34) by removing in Item 14(a) the words ''Item 1 of Form 20–F, description of business'' and adding, in their place, the words ''Items 4.A., 4.B., and 4.C of Form 20–F, information on the company''; by removing in Item 14(b) the words ''Item 2 of Form 20–F, description of property'' and adding, in their place, the words ''Item 4.D. of Form 20–F, property, plant and equipment''; by removing in Item 14(c) words ''Item 3 of Form 20–F'' and adding, in their place, the words ''Item 8.A.7. of Form 20–F''; by removing in Item 14(e) words ''Item 7 of Form 20–F'' and adding, in their place, the words ''Item 10.E. of Form 20–F''.

Note: The text of Form F–4 does not and this amendment will not appear in the Code of Federal Regulations.

42. Revise Item 1 of Form F–6 (referenced in § 239.36) to read as follows:

Note: The text of Form F–6 does not and this amendment will not appear in the Code of Federal Regulations.

Securities and Exchange Commission

Form F–6

Registration Statement Under the Securities Act of 1933 For Depositary Shares Evidenced by American Depositary Receipts

* * * * *

Item 1. Description of Securities To Be Registered

Furnish the information required by Item 12.E. of Form 20–F (§ 249.220f of this chapter).

* * * * *

PART 240—GENERAL RULES AND REGULATIONS, SECURITIES EXCHANGE ACT OF 1934

43. The general authority citation for part 240 continues to read in part as follows:

Authority: 15 U.S.C. 77c, 77d, 77g, 77j, 77s, 77z–2, 77eee, 77ggg, 77nnn, 77sss, 77ttt, 78c, 78d, 78f, 78i, 78j, 78j–1, 78k, 78k–1, 78l, 78m, 78n, 78o, 78p, 78q, 78s, 78u–5, 78w, 78x, 78*ll*(d), 78mm, 79q, 79t, 80a–20, 80a–23, 80a–29, 80a–37, 80b–3, 80b–4 and 80b–11, unless otherwise noted.

* * * * *

44. By amending § 240.3b–4 by revising the section heading and paragraph (c) to read as follows:

§ 240.3b–4 Definition of ''foreign government,'' ''foreign issuer'' and ''foreign private issuer''.

* * * * *

(c) The term *foreign private issuer* means any foreign issuer other than a foreign government except an issuer meeting the following conditions:

(1) More than 50 percent of the issuer's outstanding voting securities are directly or indirectly held of record by residents of the United States; and

(2) Any of the following:

(i) The majority of the executive officers or directors are United States citizens or residents;

(ii) More than 50 percent of the assets of the issuer are located in the United States; or

(iii) The business of the issuer is administered principally in the United States.

Instruction to paragraph (c)(1): To determine the percentage of outstanding voting securities held by U.S. residents:

A. Use the method of calculating record ownership in Rule 12g3–2(a) under the Exchange Act (§ 240.12g3–2(a));

B. Unless information provided by the depositary demonstrates otherwise, count holders of American Depositary Receipts as U.S. holders of the underlying securities; and

C. Count shares of voting securities beneficially owned by residents of the United States as reported on reports of beneficial ownership provided to you or filed publicly and based on information otherwise provided to you.

45. Amend § 240.3b–6 by removing in paragraph (b)(2)(i) the words ''or Item 9 of Form 20–F (§ 249.220f of this chapter) ''Management's discussion and analysis of financial condition and results of operations,'' and adding, in their place, the words ''''Management's Discussion and Analysis of Financial Condition and Results of Operations'' or Item 5 of Form 20–F, ''Operating and Financial Review and Prospects,''''; by removing in paragraph (c)(3) the words ''Item 9 of Form 20–F'' and adding, in their place, the words ''Item 5 of Form 20–F''.

46. Amend § 240.13a–10 by removing in paragraph (g)(4) the words ''responding to Items 3, 9, 15, 16, and 17 or 18'' and adding, in their place, the words ''responding to Items 5, 8.A.7., 13, 14, and 17 or 18''.

47. Amend § 240.15d-10 by removing in paragraph (g)(4) the words ''responding to Items, 3, 9, 15, 16, and 17 or 18'' and adding, in their place, the words ''responding to Items 5, 8.A.7., 13, 14, and 17 or 18''.

PART 249—FORMS, SECURITIES EXCHANGE ACT OF 1934

48. The authority citation for part 249 continues to read, in part, as follows:

Authority: 15 U.S.C. 78a, *et seq.*, unless otherwise noted;

* * * * *

49. Amend Form 20–F (referenced in § 249.220f) by revising the General Instructions; by removing Item 11; by revising Items 1 through 9, 10, 12 through 16, 18, 19 and Instructions to Exhibits to read as follows; by redesignating Item 9A as Item 11; by removing in newly designated Item 11 each time they appear the words ''Item 9A'' and adding, in their place, the words ''Item 11''; and, by removing in the Appendix section following the Instructions As To Exhibits section each time they appear the words ''Item 2(b)'' and adding, in their place, the words ''Item 4.D''.

Note: The text of Form 20–F does not and this amendment will not appear in the Code of Federal Regulations.

United States Securities and Exchange Commission

Washington, D.C. 20549

Form 20–F

* * * * *

General Instructions

A. Who May Use Form 20–F and When it Must Be Filed.

(a) Any foreign private issuer may use this form as a registration statement under Section 12 of the Securities Exchange Act of 1934 (referred to as the Exchange Act) or as an annual or transition report filed under Section 13(a) or 15(d) of the Exchange Act. A transition report is filed when an issuer changes its fiscal year end. The term ''foreign private issuer'' is defined in Rule 3b-4 under the Exchange Act.

(b) A foreign private issuer must file its annual report on this Form within six months after the end of the fiscal year covered by the report.

(c) A foreign private issuer filing a transition report on this Form must file its report in accordance with the requirements set forth in Rule 13a-10 or Rule 15d-10 under the Exchange Act that apply when an issuer changes its fiscal year end.

B. General Rules and Regulations That Apply to this Form

(a) The General Rules and Regulations under the Securities Act of 1933 (referred to as the Securities Act) contain general requirements that apply to registration on any form. Read these general requirements carefully and follow them when preparing and filing registration statements and reports on this Form. In addition to the definitions in the General Rules and Regulations, General Instruction F defines certain terms for purposes of the items of this Form.

(b) Pay particular attention to Regulation 12B under the Exchange Act, which contains general requirements about matters such as the kind and size of paper to be used, the legibility of the registration statement or report, the information to give in response to a requirement to state the title of securities, the language to be used and the filing of the registration statement or report. In addition to the definitions in Rule 12b–2, General Instruction F defines certain terms for purposes of the items of this Form.

C. How to Prepare Registration Statements and Reports on this Form

(a) Do not use this Form as a blank form to be filled in; use it only as a guide in the preparation of the registration statement or annual report. General Instruction E states which items must be responded to in a registration statement and which items must be responded to in an annual report. The registration statement must contain the numbers and captions of all items. You may omit the text following each caption in this Form, which describes what must be disclosed under each item. Omit the text of all instructions in this Form. If an item is inapplicable or the answer to the item is in the negative, respond to the item by making a statement to that effect.

(b) Unless an item directs you to provide information as of a specific date or for a specific period, give the information in a registration statement as of a date reasonably close to the date of filing the registration statement and give the information in an annual report as of the latest practicable date.

(c) Note Rule 12b–20, which states: ''In addition to the information expressly required to be included in a statement or report, there shall be added such further material information, if any, as may be necessary to make the required statements, in light of the circumstances under which they are made, not misleading.''

(d) If the same information required by this Form also is required by the body of accounting principles used in preparing the financial statements, you may respond to an item of this Form by providing a cross-reference to the location of the information in the financial statements, in lieu of repeating the information.

(e) Note Item 10 of Regulation S–K which explains the Commission policy on projections of future economic performance and the Commission policy on securities ratings.

(f) If you are providing the information required by this Form in connection with a registration statement under the Securities Act, note that Rules 421(b) and 421(c) require you to follow plain English drafting principles. You should read Securities Act Release No. 7497 (January 28, 1998) for information on plain English principles. Also, we refer you to ''A Plain English Handbook—How to create clear SEC disclosure documents,'' issued by the Office of Investor Education and Assistance.

D. How to File Registration Statements and Reports on this Form

File with the Commission (i) three complete copies of the registration statement or report, including financial statements, exhibits and all other papers and documents filed as part of the registration statement or report, and (ii)

five additional copies of the registration statement or report, which need not contain exhibits. File at least one complete copy of the registration statement or report, including financial statements, exhibits and all other papers and documents filed as part of the registration statement or report, with each exchange on which any class of securities is or will be registered. Manually sign at least one complete copy of the registration statement or report filed with the Commission and one copy filed with each exchange. Type or print the signatures on copies that are not manually signed. See Rule 12b–11(d) for instructions about manual signatures and the Instructions as to Exhibits of this Form for instructions about signatures pursuant to powers of attorney.

Registration statements and reports are filed with the Commission by sending or delivering them to our File Desk between the hours of 9:00 a.m. and 5:30 p.m., Washington, D.C. time. The File Desk is closed on weekends and federal holidays. If you file a registration statement or report by mail or by any means other than hand delivery, the address is U.S. Securities and Exchange Commission, Attention: File Desk, 450 Fifth Street, N.W., Washington, D.C. 20549. We consider documents to be filed on the date our File Desk receives them. We do not require foreign private issuers to file registration statements and reports under our Electronic Data Gathering and Retrieval System (EDGAR). We encourage you to use EDGAR, if possible, because documents filed through EDGAR are easily accessible to the public through the Commission's Internet Web site and through other electronic means. If you have technical questions about EDGAR or want to request an access code, call the EDGAR Filer Support Office at (202) 942–8900. If you have questions about the EDGAR rules, call the Office of EDGAR Policy at (202) 942–2940.

E. Which Items To Respond to in Registration Statements and Annual Reports

(a) *Exchange Act Registration Statements.* A registration statement filed under the Exchange Act on this Form must include the information specified in Part I and Part III. Read the instructions to each item carefully before responding to the item. In some cases, the instructions may permit you to omit some of the information specified in certain items in Part I.

(b) *Annual Reports.* An annual report on this Form must include the information specified in Parts I, II and III. Read the instructions to each item carefully before responding to the item. In some cases, the instructions may permit you to omit some of the information specified in certain items in Part I. You may omit certain information if it was previously reported and has not changed. If that is the case, you do not have to file copies of the previous report with the report being filed on this Form.

(c) *Financial Statements.* A registration statement or annual report filed on this Form must contain the financial statements and related information specified in Item 17 of this Form. We encourage you to provide the financial statements and related information specified in Item 18 of this Form in lieu of Item 17, but the Item 18 statements and information are not required. In certain circumstances, Forms F–2 or F–3 for the registration of securities under the Securities Act require that you provide the financial statements and related information specified in Item 18 in your annual report on Form 20–F. Consult those Securities Act forms for the specific requirements and consider the potential advantages of complying with Item 18 instead of Item 17 of this Form. Note that Items 17 and 18 may require you to file financial statements of other entities in certain circumstances. These circumstances are described in Regulation S–X.

The financial statements must be audited in accordance with U.S. generally accepted auditing standards, and the auditor must comply with the U.S. standards for auditor independence. If you have any questions about these requirements, contact the Office of Chief Accountant in the Division of Corporation Finance at (202) 942–2960.

(d) *Securities Act Registration Statements.* The registration statement forms under the Securities Act direct you to provide information required by specific items of Form 20–F. Some items of Form 20–F only apply to Securities Act registration statements, and you do not have to respond to those items if you are using Form 20–F to file an Exchange Act registration statement or an annual report. The instructions to the items of Form 20–F identify which information is required only in Securities Act registration statements.

F. Definitions

The following definitions apply to various terms used in this Form, unless the context indicates otherwise.

Affiliate—An ''affiliate'' of a specified person or entity refers to one who, directly or indirectly, either controls, is controlled by or is under common control with, the specified person or entity.

Beneficial owner—The term ''beneficial owner'' of securities refers to any person who, even if not the record owner of the securities, has or shares the underlying benefits of ownership. These benefits include the power to direct the voting or the disposition of the securities or to receive the economic benefit of ownership of the securities. A person also is considered to be the ''beneficial owner'' of securities that the person has the right to acquire within 60 days by option or other agreement. Beneficial owners include persons who hold their securities through one or more trustees, brokers, agents, legal representatives or other intermediaries, or through companies in which they have a ''controlling interest,'' which means the direct or indirect power to direct the management and policies of the entity.

Company—References to the ''company'' mean the company whose securities are being offered or listed, and refer to the company on a consolidated basis unless the context indicates otherwise.

Directors and senior management—This term includes (a) the company's directors, (b) members of its administrative, supervisory or management bodies, (c) partners with unlimited liability, in the case of a limited partnership with share capital, (d) nominees to serve in any of the aforementioned positions, and (e) founders, if the company has been established for fewer than five years. The persons covered by the term ''administrative, supervisory or management bodies'' vary in different countries and, for purposes of complying with the disclosure standards, will be determined by the host country. In the United States, the persons referred to by this term correspond to a U.S. company's ''executive officers'' as defined in Rule 405 under the Securities Act of 1933, as amended and Rule 3b–7 under the Securities Exchange Act of 1934, as amended.

Document—This term covers prospectuses and offering documents used in connection with a public offering of securities and registration statements or prospectuses used in connection with the initial listing of securities.

Instruction: References to the ''document'' mean whatever type of document is being prepared using these disclosure requirements, including, as applicable, a prospectus, an Exchange Act registration statement, and an annual report.

Equity securities—The term ''equity securities'' includes common or ordinary shares, preferred or preference shares, options or warrants to subscribe for equity securities, and any securities, other than debt securities, which are convertible into or exercisable or redeemable for equity securities of the same company or another company. If the equity securities available upon conversion, exercise or redemption are those of another company, the disclosure standards also apply to the other company.

Group—A ''group'' is a parent and all its subsidiaries. References to a company's group mean the group of which it is a member.

Home country—This term refers to the jurisdiction in which the company is legally organized, incorporated or established and, if different, the jurisdiction where it has its principal listing.

Host country—This term refers to jurisdictions, other than the home country, in which the company is seeking to offer, register or list its securities.

Instruction: Note that, for purposes of this Form, the term ''host country'' means the United States and its territories.

Pre-emptive issue—The term ''pre-emptive issue'' and references to ''pre-emptive purchase rights'' refer to offerings made to the company's existing shareholders in order to permit them to maintain their pro rata ownership in the company.

Part I

Item 1. Identity of Directors, Senior Management and Advisers

The purpose of this standard is to identify the company representatives and other individuals involved in the company's listing or registration.

A. *Directors and senior management.* Provide the names, business addresses and functions of the company's directors and senior management.

B. *Advisers.* Provide the names and addresses of the company's principal bankers and legal advisers to the extent the company has a continuing relationship with such entities, the sponsor for listing (where required by the host country regulations), and the legal advisers to the issue.

C. *Auditors.* Provide the names and addresses of the company's auditors for the preceding three years (together with their membership in a professional body).

Instructions to Item 1: If you are filing Form 20–F as an annual report under the Exchange Act, you do not have to provide the information called for by Item 1. You must provide this information, to the extent applicable, if you are filing a registration statement under either the Securities Act or the Exchange Act.

Instructions to Item 1.B: Regulated markets in the United States do not require sponsors for listing. If a sponsor is required for listing in another jurisdiction, disclose the identity of the sponsor.

Item 2. Offer Statistics and Expected Timetable

The purpose of this standard is to provide key information regarding the conduct of any offering and the identification of important dates relating to that offering.

A. *Offer statistics.* For each method of offering, e.g., rights offering, general offering, etc., state the total expected amount of the issue, including the expected issue price or the method of determining the price and the number of securities expected to be issued.

B. *Method and expected timetable.* For all offerings, and separately for each group of targeted potential investors, the document shall state the following information to the extent applicable to the offering procedure:

1. The time period during which the offer will be open, and where and to whom purchase or subscription applications shall be addressed. Describe whether the purchase period may be extended or shortened, and the manner and duration of possible extensions or possible early closure or shortening of this period. Describe the manner in which the latter shall be made public. If the exact dates are not known when the document is first filed or distributed to the public, describe arrangements for announcing the final or definitive date or period.

2. Method and time limits for paying up securities; where payment is partial, the manner and dates on which amounts due are to be paid.

3. Method and time limits for delivery of equity securities (including provisional certificates, if applicable) to subscribers or purchasers.

4. In the case of pre-emptive purchase rights, the procedure for the exercise of any right of pre-emption, the negotiability of subscription rights and the treatment of subscription rights not exercised.

5. A full description of the manner in which results of the distribution of securities are to be made public, and when appropriate, the manner for refunding excess amounts paid by applicants (including whether interest will be paid).

Instructions to Item 2: If you are filing Form 20–F as a registration statement or annual report under the Exchange Act, you do not have to provide the information called for by Item 2. You must provide this information if you are filing a registration statement under the Securities Act.

Item 3. Key Information

The purpose of this standard is to summarize key information about the company's financial condition, capitalization and risk factors. If the financial statements included in the document are restated to reflect material changes in the company's group structure or accounting policies, the selected financial data also must be restated. See Item 8.

A. *Selected financial data.*

1. The company shall provide selected historical financial data regarding the company, which shall be presented for the five most recent financial years (or such shorter period that the company has been in operation), in the same currency as the financial statements. Selected financial data for either or both of the earliest two years of the five-year period may be omitted, however, if the company represents to the host country regulator that such information cannot be provided, or cannot be provided on a restated basis, without unreasonable effort or expense. If interim period financial statements are included, the selected financial data should be updated for that interim period, which may be unaudited, provided that fact is stated. If selected financial data for interim periods is provided, comparative data from the same period in the prior financial year shall also be provided, except that the requirement for comparative balance sheet data is satisfied by presenting the year end balance sheet information.

2. The selected financial data presented shall include items generally corresponding to the following, except that the specific line items presented should be expressed in the same manner as the corresponding line items in the company's financial statements. Such data shall include, at a minimum, net sales or operating revenues; income (loss) from operations; income (loss) from continuing operations; net income (loss); net income (loss) from operations per share; income (loss) from continuing operations per share; total assets; net assets; capital stock (excluding long term debt and redeemable preferred stock); number of shares as adjusted to reflect changes in capital; dividends declared per share in both the currency of the financial statements and the host

country currency, including the formula used for any adjustments to dividends declared; and diluted net income per share. Per share amounts must be determined in accordance with the body of accounting principles used in preparing the financial statements.

3. Where the financial statements provided in response to Item 8 are prepared in a currency other than the currency of the host country, disclosure of the exchange rate between the financial reporting currency and the currency of the host country should be provided, using the exchange rate designated by the host country for this purpose, if any:

(a) at the latest practicable date;

(b) the high and low exchange rates for each month during the previous six months; and

(c) for the five most recent financial years and any subsequent interim period for which financial statements are presented, the average rates for each period, calculated by using the average of the exchange rates on the last day of each month during the period.

B. *Capitalization and indebtedness.* A statement of capitalization and indebtedness (distinguishing between guaranteed and unguaranteed, and secured and unsecured, indebtedness) as of a date no earlier than 60 days prior to the date of the document shall be provided showing the company's capitalization on an actual basis and, if applicable, as adjusted to reflect the sale of new securities being issued and the intended application of the net proceeds therefrom. Indebtedness also includes indirect and contingent indebtedness.

C. *Reasons for the offer and use of proceeds.*

1. The document shall disclose the estimated net amount of the proceeds broken down into each principal intended use thereof. If the anticipated proceeds will not be sufficient to fund all the proposed purposes, the order of priority of such purposes should be given, as well as the amount and sources of other funds needed. If the company has no specific plans for the proceeds, it should discuss the principal reasons for the offering.

2. If the proceeds are being used directly or indirectly to acquire assets, other than in the ordinary course of business, briefly describe the assets and their cost. If the assets will be acquired from affiliates of the company or their associates, disclose the persons from whom they will be acquired and how the cost to the company will be determined.

3. If the proceeds may or will be used to finance acquisitions of other businesses, give a brief description of such businesses and information on the status of the acquisitions.

4. If any material part of the proceeds is to be used to discharge, reduce or retire indebtedness, describe the interest rate and maturity of such indebtedness and, for indebtedness incurred within the past year, the uses to which the proceeds of such indebtedness were put.

D. *Risk factors.* The document shall prominently disclose risk factors that are specific to the company or its industry and make an offering speculative or one of high risk, in a section headed ''Risk Factors.'' Companies are encouraged, but not required, to list the risk factors in the order of their priority to the company. Among other things, such factors may include, for example: the nature of the business in which it is engaged or proposes to engage; factors relating to the countries in which it operates; the absence of profitable operations in recent periods; the financial position of the company; the possible absence of a liquid trading market for the company's securities; reliance on the expertise of management; potential dilution; unusual competitive conditions; pending expiration of material patents, trademarks or contracts; or dependence on a limited number of customers or suppliers. The Risk Factors section is intended to be a summary of more detailed discussion contained elsewhere in the document.

Instructions to Item 3: If you are filing Form 20–F as a registration statement or annual report under the Exchange Act, you do not have to provide the information called for by Item 3.B or 3.C. You must provide this information if you are filing a registration statement under the Securities Act.

Throughout Form 20–F, the terms ''financial year'' and ''fiscal year'' have the same meaning. The term ''fiscal year'' is defined in Rule 405 under the Securities Act and Rule 12b–2 under the Exchange Act.

Instructions to Item 3.A: You may present the selected financial data on the basis of the accounting principles used in your primary financial statements. If you do this, however, you also must include in this summary any reconciliations of the data to U.S. generally accepted accounting principles and Regulation S–X, pursuant to Item 17 or 18 of this Form. In that case, you only have to provide selected financial data on a basis reconciled to U.S. generally accepted accounting principles for (i) those periods for which you were required to reconcile the primary annual financial statements in a filing under the Securities Act or the Exchange Act, and (ii) any interim periods.

If you are unable to provide selected financial data for the earliest two years of the five-year period, submit the required representation to us before or at the time you file the document. Disclose in the document that data for the earliest two years have been omitted and explain the reasons for the omission.

Instructions to Item 3.B: If you are not selling the new securities being issued in a firm commitment underwritten offering or an ''all or none'' best efforts offering, reflect the capitalization ''as adjusted'' for the net proceeds of the offering only in the following ways:

1. In a best efforts ''minimum/maximum'' offering, reflect both the minimum and maximum proceeds; and

2. In a rights offering or an offering of securities upon the exercise of outstanding warrants, reflect the proceeds only to the extent exercise is likely in view of the current market price.

Instructions to Item 3.D: If you are providing this information in an annual report, the information may be limited to the most significant risk factors regarding your business, operations, industry or financial position that may have a negative effect on your future financial performance.

Item 4. Information on the Company

The purpose of this standard is to provide information about the company's business operations, the products it makes or the services it provides, and the factors that affect the business. The standard also is intended to provide information regarding the adequacy and suitability of the company's properties, plants and equipment, as well as its plans for future increases or decreases in such capacity.

A. *History and development of the company.* The following information shall be provided:

1. The legal and commercial name of the company.

2. The date of incorporation and the length of life of the company, except where indefinite.

3. The domicile and legal form of the company, the legislation under which the company operates, its country of incorporation and the address and telephone number of its registered office (or principal place of business if different from its registered office). Provide the name and address of the company's agent in the host country, if any.

4. The important events in the development of the company's business,

e.g. information concerning the nature and results of any material reclassification, merger or consolidation of the company or any of its significant subsidiaries; acquisitions or dispositions of material assets other than in the ordinary course of business; any material changes in the mode of conducting the business; material changes in the types of products produced or services rendered; name changes; or the nature and results of any bankruptcy, receivership or similar proceedings with respect to the company or significant subsidiaries.

5. A description, including the amount invested, of the company's principal capital expenditures and divestitures (including interests in other companies), since the beginning of the company's last three financial years to the date of the offering or listing document.

6. Information concerning the principal capital expenditures and divestitures currently in progress, including the distribution of these investments geographically (home and abroad) and the method of financing (internal or external).

7. An indication of any public takeover offers by third parties in respect of the company's shares or by the company in respect of other companies' shares which have occurred during the last and current financial year. The price or exchange terms attaching to such offers and the outcome thereof are to be stated.

B. *Business overview.* The information required by this item may be presented on the same basis as that used to determine the company's business segments under the body of accounting principles used in preparing the financial statements. The following information shall be provided:

1. A description of the nature of the company's operations and its principal activities, stating the main categories of products sold and/or services performed for each of the last three financial years. Indicate any significant new products and/or services that have been introduced and, to the extent the development of new products or services has been publicly disclosed, give the status of development.

2. A description of the principal markets in which the company competes, including a breakdown of total revenues by category of activity and geographic market for each of the last three financial years.

3. A description of the seasonality of the company's main business.

4. A description of the sources and availability of raw materials, including a description of whether prices of principal raw materials are volatile.

5. A description of the marketing channels used by the company, including an explanation of any special sales methods, such as installment sales.

6. Summary information regarding the extent to which the company is dependent, if at all, on patents or licenses, industrial, commercial or financial contracts (including contracts with customers or suppliers) or new manufacturing processes, where such factors are material to the company's business or profitability.

7. The basis for any statements made by the company regarding its competitive position shall be disclosed.

8. A description of the material effects of government regulations on the company's business, identifying the regulatory body.

C. *Organizational structure.* If the company is part of a group, include a brief description of the group and the company's position within the group. Provide a listing of the company's significant subsidiaries, including name, country of incorporation or residence, proportion of ownership interest and, if different, proportion of voting power held.

D. *Property, plants and equipment.* The company shall provide information regarding any material tangible fixed assets, including leased properties, and any major encumbrances thereon, including a description of the size and uses of the property; productive capacity and extent of utilization of the company's facilities; how the assets are held; the products produced; and the location. Also describe any environmental issues that may affect the company's utilization of the assets. With regard to any material plans to construct, expand or improve facilities, describe the nature of and reason for the plan, an estimate of the amount of expenditures including the amount of expenditures already paid, a description of the method of financing the activity, the estimated dates of start and completion of the activity, and the increase of production capacity anticipated after completion.

Instructions to Item 4.A.5: If you are providing the information called for by Item 4.A.5 in an annual report, you only have to provide the required information for the period from the beginning of your last full financial year up to the latest practicable date.

Instructions to Item 4.B: If you:

(a) are filing a registration statement on Form F-1 under the Securities Act or on Form 20-F under the Exchange Act,

(b) were not required to file reports under Section 13(a) or 15(d) of the Exchange Act immediately prior to filing that registration statement, and

(c) have not received (or your predecessor has not received) revenue from operations during each of the three fiscal years immediately prior to filing the registration statement, you must provide information about your plan of operations. Provide information comparable to the information required by Item 101(a)(2) of Regulation S–K.

Instructions to Item 4.D:

1. In the case of an extractive enterprise:

(a) Provide material information about production, reserves, locations, developments and the nature of your interest. If individual properties are of major significance to you, provide more detailed information about those properties and use maps to disclose information about their location.

(b) If you are giving reserve estimates in the registration statement or report,

(i) consult the staff of the Office of International Corporate Finance of the Division of Corporation Finance. That office may request that you provide supplementally a copy of the full report of the engineer or other expert who estimated the reserves. See Rule 418 of Regulation C (§ 230.418 of this chapter) and Rule 12b-4 of Regulation 12B (§ 240.12b-4 of this chapter) for information about submitting supplemental information to the Commission and requesting its return.

(ii) in documents you file publicly with the Commission, do not disclose estimates of oil or gas reserves unless the reserves are proved (or in the case of other extractive industries, proved or probable) and do not give estimated values of those reserves, unless foreign law requires you to disclose the information. If these types of estimates have already been provided to any person that is offering to acquire you, however, you may include the estimates in documents relating to the acquisition.

(c) If oil and gas operations are material to your or your subsidiaries' business operations or financial position, provide the information specified in Appendix A to Item 4.D, located at the end of this Form.

Item 5. Operating and Financial Review and Prospects

The purpose of this standard is to provide management's explanation of factors that have affected the company's financial condition and results of operations for the historical periods covered by the financial statements, and management's assessment of factors and trends which are anticipated to have a material effect on the company's

financial condition and results of operations in future periods.

Discuss the company's financial condition, changes in financial condition and results of operations for each year and interim period for which financial statements are required, including the causes of material changes from year to year in financial statement line items, to the extent necessary for an understanding of the company's business as a whole. Information provided also shall relate to all separate segments of the company. Provide the information specified below as well as such other information that is necessary for an investor's understanding of the company's financial condition, changes in financial condition and results of operations.

A. *Operating results.* Provide information regarding significant factors, including unusual or infrequent events or new developments, materially affecting the company's income from operations, indicating the extent to which income was so affected. Describe any other significant component of revenue or expenses necessary to understand the company's results of operations.

1. To the extent that the financial statements disclose material changes in net sales or revenues, provide a narrative discussion of the extent to which such changes are attributable to changes in prices or to changes in the volume or amount of products or services being sold or to the introduction of new products or services.

2. Describe the impact of inflation, if material. If the currency in which financial statements are presented is of a country that has experienced hyperinflation, the existence of such inflation, a five year history of the annual rate of inflation and a discussion of the impact of hyperinflation on the company's business shall be disclosed.

3. Provide information regarding the impact of foreign currency fluctuations on the company, if material, and the extent to which foreign currency net investments are hedged by currency borrowings and other hedging instruments.

4. Provide information regarding any governmental economic, fiscal, monetary or political policies or factors that have materially affected, or could materially affect, directly or indirectly, the company's operations or investments by host country shareholders.

B. *Liquidity and capital resources.* The following information shall be provided:

1. Information regarding the company's liquidity (both short and long term), including:

(a) A description of the internal and external sources of liquidity and a brief discussion of any material unused sources of liquidity. Include a statement by the company that, in its opinion, the working capital is sufficient for the company's present requirements, or, if not, how it proposes to provide the additional working capital needed.

(b) An evaluation of the sources and amounts of the company's cash flows, including the nature and extent of any legal or economic restrictions on the ability of subsidiaries to transfer funds to the company in the form of cash dividends, loans or advances and the impact such restrictions have had or are expected to have on the ability of the company to meet its cash obligations.

(c) Information on the level of borrowings at the end of the period under review, the seasonality of borrowing requirements and the maturity profile of borrowings and committed borrowing facilities, with a description of any restrictions on their use.

2. Information regarding the type of financial instruments used, the maturity profile of debt, currency and interest rate structure. The discussion also should include funding and treasury policies and objectives in terms of the manner in which treasury activities are controlled, the currencies in which cash and cash equivalents are held, the extent to which borrowings are at fixed rates, and the use of financial instruments for hedging purposes.

3. Information regarding the company's material commitments for capital expenditures as of the end of the latest financial year and any subsequent interim period and an indication of the general purpose of such commitments and the anticipated sources of funds needed to fulfill such commitments.

C. *Research and development, patents and licenses, etc.* Provide a description of the company's research and development policies for the last three years, where it is significant, including the amount spent during each of the last three financial years on company-sponsored research and development activities.

D. *Trend information.* The company should identify the most significant recent trends in production, sales and inventory, the state of the order book and costs and selling prices since the latest financial year. The company also should discuss, for at least the current financial year, any known trends, uncertainties, demands, commitments or events that are reasonably likely to have a material effect on the company's net sales or revenues, income from continuing operations, profitability, liquidity or capital resources, or that would cause reported financial information not necessarily to be indicative of future operating results or financial condition.

Instructions to Item 5:

1. Refer to the Commission's interpretive release (No. 33–6835) dated May 18, 1989 for guidance in preparing this discussion and analysis by management of the company's financial condition and results of operations.

2. We encourage you to supply forward-looking information, but that type of information is not required. Forward-looking information is covered expressly by the safe harbor provisions of Section 27A of the Securities Act and Section 27A of the Exchange Act. Forward-looking information is different than presently known data which will have an impact on future operating results, such as known future increases in costs of labor or materials. You are required to disclose this latter type of data if it is material.

Item 6. Directors, Senior Management and Employees

The purpose of this standard is to provide information concerning the company's directors and managers that will allow investors to assess such individuals' experience, qualifications and levels of compensation, as well as their relationship with the company. Information concerning the company's employees is also required.

A. *Directors and senior management.* The following information shall be disclosed with respect to the company's directors and senior management, and any employees such as scientists or designers upon whose work the company is dependent:

1. Name, business experience, functions and areas of experience in the company.

2. Principal business activities performed outside the issuing company (including, in the case of directors, other principal directorships).

3. Date of birth or age (if required to be reported in the home country or otherwise publicly disclosed by the company).

4. The nature of any family relationship between any of the persons named above.

5. Any arrangement or understanding with major shareholders, customers, suppliers or others, pursuant to which any person referred to above was selected as a director or member of senior management.

B. *Compensation.* Provide the following information for the last full financial year for the company's directors and members of its administrative, supervisory or management bodies:

1. The amount of compensation paid, and benefits in kind granted, to such persons by the company and its subsidiaries for services in all capacities to the company and its subsidiaries by any person. Disclosure of compensation is required on an individual basis unless individual disclosure is not required in the company's home country and is not otherwise publicly disclosed by the company. The standard also covers contingent or deferred compensation accrued for the year, even if the compensation is payable at a later date. If any portion of the compensation was paid (a) pursuant to a bonus or profit-sharing plan, provide a brief description of the plan and the basis upon which such persons participate in the plan; or (b) in the form of stock options, provide the title and amount of securities covered by the options, the exercise price, the purchase price (if any), and the expiration date of the options.

2. The total amounts set aside or accrued by the company or its subsidiaries to provide pension, retirement or similar benefits.

C. *Board practices.* The following information for the company's last completed financial year shall be given with respect to, unless otherwise specified, the company's directors, and members of its administrative, supervisory or management bodies.

1. Date of expiration of the current term of office, if applicable, and the period during which the person has served in that office.

2. Details of directors' service contracts with the company or any of its subsidiaries providing for benefits upon termination of employment, or an appropriate negative statement.

3. Details relating to the company's audit committee and remuneration committee, including the names of committee members and a summary of the terms of reference under which the committee operates.

D. *Employees.* Provide either the number of employees at the end of the period or the average for the period for each of the past three financial years (and changes in such numbers, if material) and, if possible, a breakdown of persons employed by main category of activity and geographic location. Also disclose any significant change in the number of employees, and information regarding the relationship between management and labor unions. If the company employs a significant number of temporary employees, include disclosure of the number of temporary employees on an average during the most recent financial year.

E. *Share ownership.*

1. With respect to the persons listed in subsection 6.B, above, provide information as to their share ownership in the company as of the most recent practicable date (including disclosure on an individual basis of the number of shares and percent of shares outstanding of that class, and whether they have different voting rights) held by the persons listed and options granted to them on the company's shares. Information regarding options shall include: the title and amount of securities called for by the options; the exercise price; the purchase price, if any; and the expiration date of the options.

2. Describe any arrangements for involving the employees in the capital of the company, including any arrangement that involves the issue or grant of options or shares or securities of the company.

Instructions to Item 6.C: The term ''plan'' is used very broadly and includes any type of arrangement for compensation, even if the terms of the plan are not contained in a formal document.

Item 7. Major Shareholders and Related Party Transactions

The purpose of this standard is to provide information regarding the major shareholders and others that control or may control the company. The standard also provides information regarding transactions the company has entered into with persons affiliated with the company and whether the terms of such transactions are fair to the company. These standards may require disclosure of related party transactions not required to be disclosed under the body of accounting principles used in preparing the financial statements. This standard is not intended to address the thresholds at which shareholders are required, on a continuing basis, to disclose their beneficial ownership of securities.

A. *Major shareholders.* To the extent that the following information is known to the company or can be ascertained from public filings, it should be provided as of the most recent practicable date, with references to the number of shares held in the company including shares beneficially owned.

1. The following information shall be provided regarding the company's major shareholders, which means shareholders that are the beneficial owners of 5% or more of each class of the company's voting securities (unless the company is required to disclose a lesser percentage in its home country, in which case that lesser percentage applies):

(a) Provide the names of the major shareholders, and the number of shares and the percentage of outstanding shares of each class owned by each of them as of the most recent practicable date, or an appropriate negative statement if there are no major shareholders.

(b) Disclose any significant change in the percentage ownership held by any major shareholders during the past three years.

(c) Indicate whether the company's major shareholders have different voting rights, or an appropriate negative statement.

2. Information shall be provided as to the portion of each class of securities held in the host country and the number of record holders in the host country.

3. To the extent known to the company, state whether the company is directly or indirectly owned or controlled by another corporation(s), by any foreign government or by any other natural or legal person(s) severally or jointly, and, if so, give the name(s) of such controlling corporation(s), government or other person(s), and briefly describe the nature of such control, including the amount and proportion of capital held giving a right to vote.

4. Describe any arrangements, known to the company, the operation of which may at a subsequent date result in a change in control of the company.

B. *Related party transactions.* Provide the information required below for the period since the beginning of the company's preceding three financial years up to the date of the document, with respect to transactions or loans between the company and (a) enterprises that directly or indirectly through one or more intermediaries, control or are controlled by, or are under common control with, the company; (b) associates; (c) individuals owning, directly or indirectly, an interest in the voting power of the company that gives them significant influence over the company, and close members of any such individual's family; (d) key management personnel, that is, those persons having authority and responsibility for planning, directing and controlling the activities of the company, including directors and senior management of companies and close members of such individuals' families; and (e) enterprises in which a substantial interest in the voting power is owned, directly or indirectly, by any

person described in (c) or (d) or over which such a person is able to exercise significant influence. This includes enterprises owned by directors or major shareholders of the company and enterprises that have a member of key management in common with the company. Close members of an individual's family are those that may be expected to influence, or be influenced by, that person in their dealings with the company. An associate is an unconsolidated enterprise in which the company has a significant influence or which has significant influence over the company. Significant influence over an enterprise is the power to participate in the financial and operating policy decisions of the enterprise but is less than control over those policies. Shareholders beneficially owning a 10% interest in the voting power of the company are presumed to have a significant influence on the company.

1. The nature and extent of any transactions or presently proposed transactions which are material to the company or the related party, or any transactions that are unusual in their nature or conditions, involving goods, services, or tangible or intangible assets, to which the company or any of its parent or subsidiaries was a party.

2. The amount of outstanding loans (including guarantees of any kind) made by the company or any of its parent or subsidiaries to or for the benefit of any of the persons listed above. The information given should include the largest amount outstanding during the period covered, the amount outstanding as of the latest practicable date, the nature of the loan and the transaction in which it was incurred, and the interest rate on the loan.

C. *Interests of experts and counsel.* If any of the named experts or counselors was employed on a contingent basis, owns an amount of shares in the company or its subsidiaries which is material to that person, or has a material, direct or indirect economic interest in the company or that depends on the success of the offering, provide a brief description of the nature and terms of such contingency or interest.

Instructions to Item 7.B: If you are providing the information called for by Item 7.B in an annual report, you only have to provide the required information for the period from the beginning of your last full fiscal year up to the latest practicable date.

Instructions to Item 7.C: If you are filing Form 20–F as a registration statement or annual report under the Exchange Act, you do not have to provide the information called for by Item 7.C. You must provide this information if you are filing a registration statement under the Securities Act. Accountants who provide a report on financial statements that are presented or incorporated by reference in a registration statement should note Article 2 of Regulation S–X. That Article contains the Commission's requirements for qualifications and reports of accountants.

Item 8. Financial Information

The purpose of this standard is to specify which financial statements must be included in the document, as well as the periods to be covered, the age of the financial statements and other information of a financial nature.

A. *Consolidated Statements and Other Financial Information.*

1. The document must contain consolidated financial statements, audited by an independent auditor and accompanied by an audit report, comprised of:

(a) balance sheet;

(b) income statement;

(c) statement showing either (i) changes in equity other than those arising from capital transactions with owners and distributions to owners; or (ii) all changes in equity (including a subtotal of all non-owner items recognized directly in equity);

(d) cash flow statement;

(e) related notes and schedules required by the comprehensive body of accounting standards pursuant to which the financial statements are prepared; and

(f) if not included in the primary financial statements, a note analyzing the changes in each caption of shareholders' equity presented in the balance sheet.

2. The document should include comparative financial statements that cover the latest three financial years, audited in accordance with a comprehensive body of auditing standards.

3. The audit report(s) must cover each of the periods for which these international disclosure standards require audited financial statements. If the auditors have refused to provide a report on the annual accounts or if the report(s) contain qualifications or disclaimers, such refusal or such qualifications or disclaimers shall be reproduced in full and the reasons given, so the host country securities regulator can determine whether or not to accept the financial statements. Include an indication of any other information in the document which has been audited by the auditors.

4. The last year of audited financial statements may not be older than 15 months at the time of the offering or listing; provided, however, that in the case of the company's initial public offering, unless the host country regulator permits otherwise, the audited financial statements also shall be as of a date not older than 12 months at the time the document is filed. In such cases, the audited financial statements may cover a period of less than a full year.

5. If the document is dated more than nine months after the end of the last audited financial year, it should contain consolidated interim financial statements, which may be unaudited (in which case that fact should be stated), covering at least the first six months of the financial year. The interim financial statements should include a balance sheet, income statement, cash flow statement, and a statement showing either (i) changes in equity other than those arising from capital transactions with owners and distributions to owners, or (ii) all changes in equity (including a subtotal of all non-owner items recognized directly in equity). Each of these statements may be in condensed form as long as it contains the major line items from the latest audited financial statements and includes the major components of assets, liabilities and equity (in the case of the balance sheet); income and expenses (in the case of the income statement) and the major subtotals of cash flows (in the case of the cash flow statement). The interim financial statements should include comparative statements for the same period in the prior financial year, except that the requirement for comparative balance sheet information may be satisfied by presenting the year end balance sheet. If not included in the primary financial statements, a note should be provided analyzing the changes in each caption of shareholders' equity presented in the balance sheet. The interim financial statements should include selected note disclosures that will provide an explanation of events and changes that are significant to an understanding of the changes in financial position and performance of the enterprise since the last annual reporting date. If, at the date of the document, the company has published interim financial statements that cover a more current period than those otherwise required by this standard, the more current interim financial statements must be included in the document. Companies are encouraged, but not required, to have any interim financial statements in the

document reviewed by an independent auditor. If such a review has been performed and is referred to in the document, a copy of the auditor's interim review report must be provided in the document.

6. If the amount of export sales constitutes a significant portion of the company's total sales volume, provide the total amount of export sales and the percent and amount of export sales in the total amount of sales volume.

7. Provide information on any legal or arbitration proceedings, including those relating to bankruptcy, receivership or similar proceedings and those involving any third party, which may have, or have had in the recent past, significant effects on the company's financial position or profitability. This includes governmental proceedings pending or known to be contemplated.

8. Describe the company's policy on dividend distributions.

B. *Significant Changes.* Disclose whether or not any significant change has occurred since the date of the annual financial statements, and/or since the date of the most recent interim financial statements, if any, included in the document.

Instructions to Item 8.A.2: The financial statements must be audited in accordance with U.S. generally accepted auditing standards, and the auditor must comply with the U.S. and Commission standards for auditor independence. Note Article 2 of Regulation S–X, which contains requirements for qualifications and reports of accountants.

Instructions to Item 8.A.3: The circumstances in which we would accept an audit report containing a disclaimer or qualification are extremely limited. If you plan to submit this type of report, we recommend that you contact the staff of the Office of Chief Accountant in the Division of Corporation Finance well in advance of filing the document, to discuss the report.

Instructions to Item 8.A.4:

1. In calculating the 15-month requirement for the age of financial statements, determine the age based on the period of time that has elapsed between the date of the balance sheet and ''the time of the offering or listing,'' which means the time the registration statement is declared effective. You may satisfy this requirement by providing audited financial statements covering a period of less than a full year.

2. The additional requirement that financial statements be no older than 12 months at the date of filing applies only in those limited cases where a nonpublic company is registering its initial public offering of securities. We will waive this additional requirement in those cases if you are able to represent adequately to us that you are not required to comply with this requirement in any other jurisdiction outside the United States and that complying with the requirement is impracticable or involves undue hardship. File this statement as an exhibit to the registration statement.

Instructions to Item 8.A.5: Item 8.A.5 does not apply to annual reports on Form 20–F. This item requires you to include in the document interim financial statements that have been published by the company if those statements cover a more current period than the statements otherwise required by Item 8. This requirement covers any publication of financial information that includes, at a minimum, revenue and income information, even if that information is not published as part of a complete set of financial statements. Whenever you provide more current interim financial information in response to this requirement:

1. Describe any ways in which the accounting principles, practices and methods used in preparing that interim financial information vary materially from the principles, practices and methods accepted in the United States, and

2. Quantify any material variations, unless they already are quantified because they occur in other financial statements included in the document.

Instructions to Item 8.A.7:

1. This Item requires disclosure of any material proceeding in which any director, any member of senior management, or any of your affiliates is either a party adverse to you or your subsidiaries or has a material interest adverse to you or your subsidiaries.

2. If you are providing the information called for by Item 8.A.7 in an annual report, describe the disposition of any previously reported litigation that occurred during the last fiscal year.

Item 9. The Offer and Listing

The purpose of this standard is to provide information regarding the offer or listing of securities, the plan for distribution of the securities and related matters.

A. *Offer and listing details.*

1. Indicate the expected price at which the securities will be offered or the method of determining the price, and the amount of any expenses specifically charged to the subscriber or purchaser.

2. If there is not an established market for the securities, the document shall contain information regarding the manner of determination of the offering price as well as of the exercise price of warrants and the conversion price of convertible securities, including who established the price or who is formally responsible for the determination of the price, the various factors considered in such determination and the parameters or elements used as a basis for establishing the price.

3. If the company's shareholders have pre-emptive purchase rights and where the exercise of the right of pre-emption of shareholders is restricted or withdrawn, the company shall indicate the basis for the issue price if the issue is for cash, together with the reasons for such restriction or withdrawal and the beneficiaries of such restriction or withdrawal if intended to benefit specific persons.

4. Information regarding the price history of the stock to be offered or listed shall be disclosed as follows:

(a) For the five most recent full financial years: the annual high and low market prices;

(b) For the two most recent full financial years and any subsequent period: the high and low market prices for each full financial quarter;

(c) For the most recent six months: the high and low market prices for each month;

(d) For pre-emptive issues, the market prices for the first trading day in the most recent six months, for the last trading day before the announcement of the offering and (if different) for the latest practicable date prior to publication of the document.

Information shall be given with respect to the market price in the host market and the principal trading market outside the host market. If significant trading suspensions occurred in the prior three years, they shall be disclosed. If the securities are not regularly traded in an organized market, information shall be given about any lack of liquidity.

5. State the type and class of the securities being offered or listed and furnish the following information:

(a) Indicate whether the shares are registered shares or bearer shares and provide the number of shares to be issued and to be made available to the market for each kind of share. The nominal par or equivalent value should be given on a per share basis and, where applicable, a statement of the minimum offer price. Describe the coupons attached, if applicable.

(b) Describe arrangements for transfer and any restrictions on the free transferability of the shares.

6. If the rights evidenced by the securities being offered or listed are or

may be materially limited or qualified by the rights evidenced by any other class of securities or by the provisions of any contract or other documents, include information regarding such limitation or qualification and its effect on the rights evidenced by the securities to be listed or offered.

7. With respect to securities other than common or ordinary shares to be listed or offered, outline briefly the rights evidenced thereby.

(a) If subscription warrants or rights are to be listed or offered, state: the title and amount of securities called for; the amount of warrants or rights outstanding; provisions for changes to or adjustments in the exercise price; the period during which and the price at which the warrants or rights are exercisable; and any other material terms of such warrants or rights.

(b) Where convertible securities or stock purchase warrants to be listed or offered are subject to redemption or call, the description of the conversion terms of the securities or material terms of the warrants shall include whether the right to convert or purchase the securities will be forfeited unless it is exercised before the date specified in the notice of redemption or call; the expiration or termination date of the warrants; the kind, frequency and timing of notice of the redemption or call, including where the notice will be published; and, in the case of bearer securities, that investors are responsible for making arrangements to prevent loss of the right to convert or purchase in the event of redemption or call.

B. *Plan of distribution.*

1. The names and addresses of the entities underwriting or guaranteeing the offering shall be listed.

2. To the extent known to the company, indicate whether major shareholders, directors or members of the company's management, supervisory or administrative bodies intend to subscribe in the offering, or whether any person intends to subscribe for more than 5% of the offering.

3. Identify any group of targeted potential investors to whom the securities are offered. If the offering is being made simultaneously in the markets of two or more countries and if a tranche has been or is being reserved for certain of these, indicate any such tranche.

4. If securities are reserved for allocation to any group of targeted investors, including, for example, offerings to existing shareholders, directors, or employees and past employees of the company or its subsidiaries, provide details of these and any other preferential allocation arrangements.

5. Indicate whether the amount of the offering could be increased, such as by the exercise of an underwriter's over-allotment option or ''greenshoe,'' and by how much.

6. Indicate the amount, and outline briefly the plan of distribution, of any securities that are to be offered otherwise than through underwriters. If the securities are to be offered through the selling efforts of brokers or dealers, describe the plan of distribution and the terms of any agreement or understanding with such entities. If known, identify the broker(s) or dealer(s) that will participate in the offering and state the amount to be offered through each.

7. If the securities are to be offered in connection with the writing of exchange-traded call options, describe briefly such transactions.

8. If simultaneously or almost simultaneously with the creation of shares for which admission to official listing is being sought, shares of the same class are subscribed for or placed privately or if shares of other classes are created for public or private placing, details are to be given of the nature of such operations and of the number and characteristics of the shares to which they relate.

9. Unless otherwise described under the response to Item 10.C (Material Contracts), describe the features of the underwriting relationship together with the amount of securities being underwritten by each underwriter in privity of contract with the company or selling shareholders. The foregoing information should include a statement as to whether the underwriters are or will be committed to take and to pay for all of the securities if any are taken, or whether it is an agency or the type of ''best efforts'' arrangement under which the underwriters are required to take and to pay for only such securities as they may sell to the public.

10. If any underwriter or other financial adviser has a material relationship with the company, describe the nature and terms of such relationship.

C. *Markets.* The company shall disclose all stock exchanges and other regulated markets on which the securities to be offered or listed are traded. When an application for admission to any exchange and/or regulated market is being or will be sought, this must be mentioned, without creating the impression that the listing necessarily will be approved. If known, the dates on which the shares will be listed and dealt in should be given.

D. *Selling shareholders.* The following information shall be provided:

1. The name and address of the person or entity offering to sell the shares, the nature of any position, office or other material relationship that the selling shareholder has had within the past three years with the company or any of its predecessors or affiliates.

2. The number and class of securities being offered by each of the selling shareholders, and the percentage of the existing equity capital. The amount and percentage of the securities for each particular type of securities beneficially held by the selling shareholder before and immediately after the offering shall be specified.

E. *Dilution.* The following information shall be provided:

1. Where there is a substantial disparity between the public offering price and the effective cash cost to directors or senior management, or affiliated persons, of equity securities acquired by them in transactions during the past five years, or which they have the right to acquire, include a comparison of the public contribution in the proposed public offering and the effective cash contributions of such persons.

2. Disclose the amount and percentage of immediate dilution resulting from the offering, computed as the difference between the offering price per share and the net book value per share for the equivalent class of security, as of the latest balance sheet date.

3. In the case of a subscription offering to existing shareholders, disclose the amount and percentage of immediate dilution if they do not subscribe to the new offering.

F. *Expenses of the issue.* The following information shall be provided:

1. The total amount of the discounts or commissions agreed upon by the underwriters or other placement or selling agents and the company or offeror shall be disclosed, as well as the percentage such commissions represent of the total amount of the offering and the amount of discounts or commissions per share.

2. A reasonably itemized statement of the major categories of expenses incurred in connection with the issuance and distribution of the securities to be listed or offered and by whom the expenses are payable, if other than the company. If any of the securities are to be offered for the account of a selling shareholder, indicate the portion of such expenses to be borne by such shareholder. The information may be given subject to future contingencies. If the amounts of

any items are not known, estimates (identified as such) shall be given.

Instructions to Item 9: If you are using this Form as a registration statement under the Exchange Act, provide only the information called for by Items 9.A.4–7 and 9.C. If you are using this Form as an annual report, provide only the information called for by Items 9.A.4 and 9.C. If you are providing this information in a Securities Act registration statement, provide the information called for by the entire Item.

Instructions to Item 9.A: When you are required to state the title of the securities, the title must indicate the type and general character of the securities, such as whether they are callable, convertible or redeemable and whether there is any preference or fixed rate of dividends.

Instructions to Item 9.B: If previously you have not been required to file reports under section 13(a) or 15(d) of the Exchange Act and any of the managing underwriters (or a majority of the principal underwriters) has been organized, reactivated or first registered as a broker-dealer within the past three years, disclose that fact. Also disclose, if true, that the principal business function of this underwriter will be to sell the securities being registered or that your promoters or founders have a material relationship with this underwriter. Give enough details to provide a clear picture of the underwriter's experience and its relationship with you, your promoters or founders, and their controlling persons.

Instructions to Item 9.F: Major categories of expenses include at least the following: registration fees, federal taxes, state taxes and fees, trustees' and transfer agents' fees, printing and engraving costs, legal fees, accounting fees, engineering fees, and any premiums paid to insure directors or officers for liabilities in connection with the registration, offer or sale of the securities you are registering.

Item 10. Additional Information

The purpose of this standard is to provide information, most of which is of a statutory nature, that is not covered elsewhere in the document.

A. *Share capital.* The following information shall be given as of the date of the most recent balance sheet included in the financial statements and as of the latest practicable date:

1. The amount of issued capital and, for each class of share capital: (a) the number of shares authorized; (b) the number of shares issued and fully paid and issued but not fully paid; (c) the par value per share, or that the shares have no par value; and (d) a reconciliation of the number of shares outstanding at the beginning and end of the year. If more than 10% of capital has been paid for with assets other than cash within the past five years, that fact should be stated.

2. If there are shares not representing capital, the number and main characteristics of such shares shall be stated.

3. Indicate the number, book value and face value of shares in the company held by or on behalf of the company itself or by subsidiaries of the company.

4. Where there is authorized but unissued capital or an undertaking to increase the capital, for example, in connection with warrants, convertible obligations or other outstanding equity-linked securities, or subscription rights granted, indicate: (i) the amount of outstanding equity-linked securities and of such authorized capital or capital increase and, where appropriate, the duration of the authorization; (ii) the categories of persons having preferential subscription rights for such additional portions of capital; and (iii) the terms, arrangements and procedures for the share issue corresponding to such portions.

5. The persons to whom any capital of any member of the group is under option or agreed conditionally or unconditionally to be put under option, including the title and amount of securities covered by the options; the exercise price; the purchase price, if any; and the expiration date of the options, or an appropriate negative statement. Where options have been granted or agreed to be granted to all the holders of shares or debt securities, or of any class thereof, or to employees under an employees' share scheme, it will be sufficient so far as the names are concerned, to record that fact without giving names.

6. A history of share capital for the last three years identifying the events during such period which have changed the amount of the issued capital and/or the number and classes of shares of which it composed, together with a description of changes in voting rights attached to the various classes of shares during that time. Details should be given of the price and terms of any issue including particulars of consideration where this was other than cash (including information regarding discounts, special terms or installment payments). If there are no such issues, an appropriate negative statement must be made. The reason for any reduction of the amount of capital and the ratio of capital reductions also shall be given.

7. An indication of the resolutions, authorizations and approvals by virtue of which the shares have been or will be created and/or issued, the nature of the issue and amount thereof and the number of shares which have been or will be created and/or issued, if predetermined.

B. *Memorandum and articles of association.* The following information shall be provided:

1. Indicate the registor and the entry number therein, if applicable, and describe the company's objects and purposes and where they can be found in the memorandum and articles.

2. With respect to directors, provide a summary of any provisions of the company's articles of association or charter and bylaws with respect to: (a) a director's power to vote on a proposal, arrangement or contract in which the director is materially interested; (b) the directors' power, in the absence of an independent quorum, to vote compensation to themselves or any members of their body; (c) borrowing powers exercisable by the directors and how such borrowing powers can be varied; (d) retirement or non-retirement of directors under an age limit requirement; and (e) number of shares, if any, required for director's qualification.

3. Describe the rights, preferences and restrictions attaching to each class of the shares, including: (a) dividend rights, including the time limit after which dividend entitlement lapses and an indication of the party in whose favor this entitlement operates; (b) voting rights, including whether directors stand for reelection at staggered intervals and the impact of that arrangement where cumulative voting is permitted or required; (c) rights to share in the company's profits; (d) rights to share in any surplus in the event of liquidation; (e) redemption provisions; (f) sinking fund provisions; (g) liability to further capital calls by the company; and (h) any provision discriminating against any existing or prospective holder of such securities as a result of such shareholder owning a substantial number of shares.

4. Describe what action is necessary to change the rights of holders of the stock, indicating where the conditions are more significant than is required by law.

5. Describe the conditions governing the manner in which annual general meetings and extraordinary general meetings of shareholders are convoked, including the conditions of admission.

6. Describe any limitations on the rights to own securities, including the rights of non-resident or foreign shareholders to hold or exercise voting

rights on the securities imposed by foreign law or by the charter or other constituent document of the company or state that there are no such limitations if that is the case.

7. Describe briefly any provision of the company's articles of association, charter or bylaws that would have an effect of delaying, deferring or preventing a change in control of the company and that would operate only with respect to a merger, acquisition or corporate restructuring involving the company (or any of its subsidiaries).

8. Indicate the bylaw provisions, if any, governing the ownership threshold above which shareholder ownership must be disclosed.

9. With respect to items 2 through 8 above, if the law applicable to the company in these areas is significantly different from that in the host country, the effect of the law in these areas should be explained.

10. Describe the conditions imposed by the memorandum and articles of association governing changes in the capital, where such conditions are more stringent than is required by law.

C. *Material contracts.* Provide a summary of each material contract, other than contracts entered into in the ordinary course of business, to which the company or any member of the group is a party, for the two years immediately preceding publication of the document, including dates, parties, general nature of the contracts, terms and conditions, and amount of any consideration passing to or from the company or any other member of the group.

D. *Exchange controls.* Describe any governmental laws, decrees, regulations or other legislation of the home country of the company which may affect:

1. the import or export of capital, including the availability of cash and cash equivalents for use by the company's group.

2. the remittance of dividends, interest or other payments to nonresident holders of the company's securities.

E. *Taxation.* The company shall provide information regarding taxes (including withholding provisions) to which shareholders in the host country may be subject. Information should be included as to whether the company assumes responsibility for the withholding of tax at the source and regarding applicable provisions of any reciprocal tax treaties between the home and host countries, or a statement, if applicable, that there are no such treaties.

F. *Dividends and paying agents.* Disclose any dividend restrictions, the date on which the entitlement to dividends arises, if known, and any procedures for nonresident holders to claim dividends. Identify the financial organizations which, at the time of admission of shares to official listing, are the paying agents of the company in the countries where admission has taken place or is expected to take place.

G. *Statement by experts.* Where a statement or report attributed to a person as an expert is included in the document, provide such person's name, address and qualifications and a statement to the effect that such statement or report is included, in the form and context in which it is included, with the consent of that person, who has authorized the contents of that part of the document.

H. *Documents on display.* The company shall provide an indication of where the documents concerning the company which are referred to in the document may be inspected. Exhibits and documents on display generally should be translated into the language of the host country, or a summary in the host country language should be provided.

I. *Subsidiary Information.* Certain information relating to the company's subsidiaries must be provided in some countries, if the information is not otherwise called for by the body of generally accepted accounting principles used in preparing the financial statements.

Instructions to Item 10: If you are using this Form as an annual report and the information called for by Items 10.B and 10.C has been reported previously in a registration statement on Form 20–F or a registration statement filed under the Securities Act, you may incorporate that information by a specific reference in the annual report to the previous registration statement. The information referred to in Item 10.I is not required for registration statements and reports filed in the United States.

* * * * *

Item 12. Description of Securities Other than Equity Securities.

A. *Debt Securities.* If you are registering debt securities, provide the following information if it is relevant to the securities you are registering.

1. Information about interest, conversions, maturity, redemption, amortization, sinking funds or retirement.

2. The kind and priority of any lien securing the issue, as well as a brief identification of the principal properties subject to each lien.

3. Subordination of the rights of holders of the securities to other security holders or creditors. If the securities are designated in their title as subordinated, give the aggregate amount of outstanding indebtedness as of the most recent practicable date that is senior to the subordinated debt and briefly describe any limitations on the issuance of additional senior indebtedness, or state that there is no limitation.

4. Information about provisions restricting the declaration of dividends or requiring the creation or maintenance of any reserves or of any ratio of assets or requiring the maintenance of properties.

5. Information about provisions permitting or restricting the issuance of additional securities, the withdrawal of cash deposited against the issuance of additional securities, the incurring of additional debt, the release or substitution of assets securing the issue, the modification of the terms of the security and similar provisions. You do not need to describe provisions permitting the release of assets upon the deposit of equivalent funds or the pledge of equivalent property, the release of property no longer required in the business, obsolete property or property taken by eminent domain, the application of insurance monies, and similar provisions.

6. The general type of event that constitutes a default and whether or not you are required to provide periodic evidence of the absence of a default or of compliance with the terms of the indenture.

7. Modification of the terms of the security or the rights of security holders.

8. If the rights evidenced by the securities you are registering are or may be materially limited or qualified by the rights of any other authorized class of securities, provide enough information about the other class of securities so investors will understand the rights evidenced by the securities you are registering. You do not need to provide information about the other class of securities if all of it will be retired, as long as you have taken appropriate steps to ensure that retirement will be completed on or before the time you deliver the securities you are registering.

9. The tax effects of any ''original issue discount'' as that term is defined in Section 1232 of the Internal Revenue Code (26 U.S.C. 1232), including cases where the debt security is being sold in a package with another security and the allocation of the offering price between the two securities may have the effect of offering the debt security at an original issue discount.

10. The name and address of the trustee and the nature of any material

relationship between the trustee and you or any of your affiliates, the percentage of the class of securities that is needed to require the trustee to take action, and what indemnification the trustee may require before proceeding to enforce the lien.

11. The names and addresses of the paying agents.

12. The currency or currencies in which the debt is payable. If the debt may be paid in two or more currencies, state who has the option to determine the currency conversion and what the basis will be for that determination.

13. Any law or decree determining the extent to which the securities may be serviced.

14. The consequences of any failure to pay principal, interest, or any sinking or amortization installment.

15. If the securities are guaranteed, the name of the guarantor and a brief outline of the contract of guarantee.

B. *Warrants and Rights.* If the securities you are registering are being offered pursuant to warrants or rights, provide the following information, in addition to the description of the securities the warrants or rights represent.

1. The amount of securities called for by the warrants or rights.

2. The period during and the price at which the warrants or rights are exercisable.

3. The amount of warrants or rights outstanding.

4. Provisions for changes or adjustments in the exercise price.

5. Any other material terms of the warrants or rights.

C. *Other Securities.* If you are registering securities other than equity, debt, warrants or rights, briefly describe the rights evidenced by the securities you are registering. The description should be comparable in detail to the description you would be required to provide for equity, debt, warrants or rights.

D. *American Depositary Shares.* If you are registering American depositary shares represented by American depositary receipts, provide the following information.

1. Give the name of the depositary and the address of its principal executive office.

2. Give the title of the American depositary receipts and identify the deposited security. Briefly describe the American depositary shares, including provisions, if any, regarding:

(a) the amount of deposited securities represented by one unit of American depositary receipts;

(b) any procedure for voting the deposited securities;

(c) the procedure for collecting and distributing dividends;

(d) the procedures for transmitting notices, reports and proxy soliciting material;

(e) the sale or exercise of rights;

(f) the deposit or sale of securities resulting from dividends, splits or plans of reorganization;

(g) amendment, extension or termination of the deposit arrangements;

(h) the rights that holders of American depositary receipts have to inspect the books of the depositary and the list of receipt holders;

(i) any restrictions on the right to transfer or withdraw the underlying securities; and

(j) any limitation on the depositary's liability.

3. Describe all fees and charges that a holder of American depositary receipts may have to pay, either directly or indirectly. Indicate the type of service, the amount of the fees or charges and to whom the fees or charges are paid. In particular, provide information about any fees or charges in connection with (a) depositing or substituting the underlying shares; (b) receiving or distributing dividends; (c) selling or exercising rights; (d) withdrawing an underlying security; and (e) transferring, splitting or grouping receipts. Provide information about the depositary's right, if any, to collect fees and charges by offsetting them against dividends received and deposited securities.

Instructions to Item 12: You do not need to provide the information called for by this item if you are using this form as an annual report.

You do not need to include any information in a registration statement or prospectus in response to Item 305(a)(2) of the Trust Indenture Act of 1939, 15 U.S.C. 77aaa *et seq.*, as amended, if the information is not otherwise required by this Item.

If you are registering convertible securities or stock purchase warrants that are subject to redemption or call, include the following information in your description of the securities.

1. Whether holders will forfeit the right to convert or purchase the securities unless they exercise that right before the date specified in the notice of redemption or call;

2. The expiration or termination date of the warrants;

3. The kinds, frequency and timing of the redemption or call notice, including the cities or newspapers in which you will publish the notice; and

4. In the case of bearer securities, that investors are responsible for making arrangements to avoid losing the right to convert or purchase if there is a redemption or call, such as by reading the newspapers in which you will publish the redemption or call notice.

When you are required to state the title of the securities, the title must indicate the type and general character of the securities.

PART II

Item 13. Defaults, Dividend Arrearages and Delinquencies.

A. If there has been:

1. a material default in the payment of principal, interest, a sinking or purchase fund installment, or

2. any other material default not cured within 30 days,

relating to indebtedness of you or any of your significant subsidiaries, and if the amount of the indebtedness exceeds 5% of your total assets on a consolidated basis, identify the indebtedness and state the nature of the default. If the default falls under paragraph A.1 above, state the amount of the default and the total arrearage on the date you file this report.

B. If the payment of dividends is in arrears or there has been any other material delinquency not cured within 30 days, relating to:

1. any class of your preferred stock which is registered or ranks prior to any class of registered securities, or

2. any class of preferred stock of your significant subsidiaries,

state the title of the class and the nature of the arrearage or delinquency. If the payment of dividends is in arrears, state the amount of this arrearage and the total arrearage on the date you file this report.

Instructions to Item 13: If you previously have reported information called for by this item in a report on Form 6–K, you may incorporate the information by specifically referring in this report to the previous report.

You do not have to provide the information called for by this Item if the default or arrearage relates to a class of securities held entirely by or for the account of you or any of your wholly owned subsidiaries.

Instructions to Item 13.A: This requirement only applies to events that have become defaults under the governing instruments, i.e., after any grace period has expired and any notice requirements have been satisfied.

Item 14. Material Modifications to the Rights of Security Holders and Use of Proceeds.

A. If you or anyone else has modified materially the instruments defining the rights of holders of any class of registered securities, identify that class

of securities and briefly describe the general effect of the modification on the rights of those security holders.

B. If you or anyone else has modified materially or qualified the rights evidenced by any class of registered securities by issuing or modifying any other class of securities, briefly describe the general effect of the issuance or modification on the rights of holders of the registered securities.

C. If you or anyone else has materially withdrawn or substituted the assets securing any class of your registered securities, provide the following information.

1. Give the title of the securities.

2. Identify and describe briefly the assets withdrawn or substituted.

3. Indicate the provisions in the underlying indenture, if any, that authorize the withdrawal or substitution.

D. If the trustees or paying agents for any registered securities have changed during the last financial year, give the names and addresses of the new trustees or paying agents.

E. *Use of proceeds.* If required pursuant to Rule 463 under the Securities Act, report the use of proceeds after the effective date of the first Securities Act registration statement filed by you or your predecessor. You must report the use of proceeds:

(i) on the first Form 20–F annual report you file pursuant to sections 13(a) and 15(d) of the Exchange Act after the Securities Act registration statement is effective, and

(ii) on each of your subsequent Form 20–F annual reports filed pursuant to sections 13(a) and 15(d) of the Exchange Act.

You may cease reporting the use of proceeds on the later of the date you disclose application of all the offering proceeds, or the date you disclose termination of the offering. If a required report on the use of proceeds relates to the first effective registration statement of your predecessor, you must provide the report.

Provide the information required by paragraphs E.1 through E.4 below in the first Form 20–F annual report you file pursuant to sections 13(a) and 15(d) of the Exchange Act. In subsequent Form 20–F annual reports, you only need to provide the information required by paragraphs E.2 through E.4 if that information has changed since the last Form 20–F annual report you filed.

1. The effective date of the Securities Act registration statement for which the use of proceeds information is being disclosed and the Commission file number assigned to that registration statement;

2. The offering date, if the offering has commenced, or an explanation of why it has not commenced;

3. If the offering terminated before any securities were sold, an explanation for the termination; and

4. If the offering did not terminate before any securities were sold, disclose:

(a) Whether the offering has terminated and, if so, whether it terminated before all of the registered securities were sold;

(b) The name(s) of the managing underwriter(s), if any;

(c) The title of each class of securities registered and, if a class of convertible securities is being registered, the title of any class of securities into which the convertible securities may be converted;

(d) For each class of securities (other than a class into which a class of registered convertible securities may be converted without additional payment to the issuer) the following information, provided for both the account of the issuer and the account(s) of any selling shareholder(s): the amount registered, the aggregate price of the offering amount registered, the amount sold and the aggregate offering price of the amount sold to date;

(e) From the effective date of the Securities Act registration statement to the ending date of the reporting period, the amount of expenses incurred for the issuer's account in connection with the issuance and distribution of the registered securities for underwriting discounts and commissions, finders' fees, expenses paid to or for underwriters, other expenses and total expenses. Indicate if a reasonable estimate for the amount of expenses is provided instead of the actual amount of the expense. Indicate whether the payments were:

(i) Direct or indirect payments to directors, officers, general partners of the issuer or their associates; to persons owning ten (10) percent or more of any class of the issuer's equity securities; and to affiliates of the issuer; or

(ii) Direct or indirect payments to others;

(f) The net offering proceeds to the issuer after deducting the total expenses described in paragraph E.4(e) of this Item;

(g) From the effective date of the Securities Act registration statement to the ending date of the reporting period, the amount of net offering proceeds to the issuer used for construction of plant, building and facilities; purchase and installation of machinery and equipment; purchases of real estate; acquisition of other business(es); repayment of indebtedness; working capital; temporary investments (which should be specified); and any other purposes for which at least five (5) percent of the issuer's total offering proceeds or $100,000 (whichever is less) has been used (which should be specified). Indicate if a reasonable estimate for the amount of net offering proceeds applied instead of the actual amount of net offering proceeds used. Indicate whether such payments were:

(i) Direct or indirect payments to directors, officers, general partners of the issuer or their associates; to persons owning ten (10) percent or more of any class of the issuer's equity securities; and to affiliates of the issuer; or

(ii) Direct or indirect payments to others; and

(h) If the use of proceeds in paragraph E.4(g) of this Item represents a material change in the use of proceeds described in the prospectus, the issuer should describe briefly the material change.

Instructions to Item 14: If you previously have reported information called for by this item in a report on Form 6–K, you may incorporate the information by specifically referring in this report to the previous report.

Instructions to Item 14.B: You should report any working capital restrictions or other limitations on the payment of dividends.

Instructions to Item 14.C: You do not have to provide the information called for by Item 14.C. if the withdrawal or substitution is made pursuant to the terms of an indenture qualified under the Trust Indenture Act of 1939.

Item 15. [Reserved]

Item 16. [Reserved]

PART III

[See General Instruction E(c)]

* * * * *

Item 18. Financial Statements.

Provide the following information:

(a) All of the information required by Item 17 of this Form, and

(b) All other information required by U.S. generally accepted accounting principles and Regulation S–X unless such requirements specifically do not apply to the registrant as a foreign issuer. However, information may be omitted (i) for any period in which net income has not been presented on a basis reconciled to United States generally accepted accounting principles, or (ii) if the financial statements are furnished for a business acquired or to be acquired pursuant to § 210.3–05 or less-than-majority-owned

investee pursuant to § 210.3–09 of this chapter.

Instructions to Item 18: All of the instructions to Item 17 also apply to this Item, except Instruction 3 to Item 17, which does not apply.

Item 19. Exhibits.

List all exhibits filed as part of the registration statement or annual report, including exhibits incorporated by reference.

Instructions to Item 19: If you incorporate any financial statement or exhibit by reference, include the incorporation by reference in the list required by this Item. Note Rule 12b-23 regarding incorporation by reference. Note also the Instructions to Exhibits at the end of this Form.

Signatures

The registrant hereby certifies that it meets all of the requirements for filing on Form 20–F and that it has duly caused and authorized the undersigned to sign this registration statement [annual report] on its behalf.

_____

(Registrant)

_____

(Signature) *
Date: _____

_____

* Print the name and title of the signing office under this signature.

Instructions as to Exhibits

File the exhibits listed below as part of this registration statement or report. Rule 12b–32 explains the circumstances in which you may incorporate exhibits by reference. Rule 24b–2 explains the procedure to be followed in requesting confidential treatment of information required to be filed.

Include an exhibit index in each registration statement or report you file, immediately preceding the exhibits you are filing. The exhibit index must list each exhibit according to the number assigned to it below. If an exhibit is incorporated by reference, note that fact in the exhibit index. In the sequentially numbered, manually signed original registration statement required by Securities Act Rule 403(d), include in the index the page number in the sequential numbering system where each exhibit can be found.

In an annual report, previously filed exhibits may be incorporated by reference. If any previously filed exhibits have been amended or modified, file copies of the amendment or modification or copies of the entire exhibit as amended or modified.

1. The articles of incorporation or association and bylaws, or comparable instruments, as currently in effect and any amendments to those documents. If you are filing an amendment, file a complete copy of the document as amended.

2. (a) All instruments defining the rights of holders of the securities being registered. You do not have to file instruments that define the rights of participants, rather than security holders, in an employee benefit plan.

(b) All instruments defining the rights of holders of long-term debt issued by you or any subsidiary for which you are required to file consolidated or unconsolidated financial statements, except that you do not have to file:

(i) any instrument relating to long-term debt that is not being registered on this registration statement, if the total amount of securities authorized under that instrument does not exceed 10% of the total assets of you and your subsidiaries on a consolidated basis and you have filed an agreement to furnish us a copy of the instrument if we request it;

(ii) any instrument relating to a class of securities if, on or before the date you deliver the securities being registered, you take appropriate steps to assure that class of securities will be redeemed or retired; or

(iii) copies of instruments evidencing script certificates for fractions of shares.

(c) A copy of the indenture, if the securities being registered are or will be issued under an indenture qualified under the Trust Indenture Act of 1939. Include a reasonably itemized and informative table of contents and a cross-reference sheet showing the location in the indenture of the provisions inserted pursuant to sections 310 through 318(a) inclusive of the Trust Indenture Act.

3. Any voting trust agreements and any amendments to those agreements.

4. (a) Every contract that is material to you and (i) is to be performed in whole or in part on or after the date you file the registration statement or (ii) was entered into not more than two years before the filing date. Only file a contract if you or your subsidiary is a party or has succeeded to a party by assumption or assignment or if you or your subsidiary has a beneficial interest.

(b) If a contract is the type that ordinarily accompanies the kind of business you and your subsidiaries conduct, we will consider it have been made in the ordinary course of business and will not require you to file it, unless it falls within one or more of the following categories. Even if it falls into one of these categories, you do not have to file the contract if it is immaterial in amount or significance.

(i) Any contract to which (A) directors, (B) officers, (C) promoters, (D) voting trustees or (E) security holders named in the registration statement are parties, unless the contract involves only the purchase or sale of current assets that have a determinable market price and the assets are purchased or sold at that price;

(ii) Any contract upon which your business is substantially dependent. Examples of these types of contracts might be (a) continuing contracts to sell the major part of your products or services or to purchase the major part of your requirement of goods, services or raw materials, or (b) any franchise or license or other agreement to use a patent, formula, trade secret, process or trade name if your business depends to a material extent on that patent, formula, trade secret processor trade name;

(iii) Any contract for the acquisition or sale of any property, plant or equipment if the consideration exceeds 15% of your fixed assets on a consolidated basis; or

(iv) Any material lease under which you hold part of the property described in the registration statement.

(c) We will consider any management contract or compensatory plan, contract or arrangement in which your directors or members of your administrative, supervisory or management bodies participate to be material. File these management contracts or compensatory plans, contracts or arrangements unless they fall into one of the following categories:

(i) Ordinary purchase and sale agency agreements;

(ii) Agreements with managers of stores in a chain or similar organization;

(iii) Contracts providing for labor or salesmen's bonuses or for payments to a class of security holders in their capacity as security holders;

(iv) Any compensatory plan, contract or arrangement that is available by its terms to employees, officers or directors generally, if the operation of the plan, contract or arrangement uses the same method to allocate benefits to management and nonmanagment participants; and

(v) Any compensatory plan, contract or arrangement if you are furnishing compensation information on an aggregate basis as permitted by Item 6.B.

If you are filing compensatory plans, contracts or arrangements, only file copies of the plans and not copies of each individual's personal agreement under the plans, unless there are particular provisions in a personal agreement that should be filed as an exhibit so investors will understand that

individual's compensation under the plan.

5. A list showing the number and a brief identification of each material foreign patent for an invention not covered by a United States patent, but only if we request you to file the list.

6. A statement explaining in reasonable detail how earnings per share information was calculated, unless the computation is clear from material contained in the registration statement or report.

7. A statement explaining in reasonable detail how any ratio of earning to fixed charges, any ratio of earnings to combined fixed charges and preferred stock dividends or any other ratios in the registration statement or report were calculated.

8. A list of all your subsidiaries, their jurisdiction of incorporation and the names under which they do business. You may omit the names of subsidiaries that, in the aggregate, would not be a ''significant subsidiary'' as defined in rule 1–02(w) of Regulation S–X as of the end of the year covered by the report. You may omit the names of multiple wholly owned subsidiaries carrying on the same line of business, such as chain stores or service stations, if you give the name of the immediate parent company, the line of business and the number of omitted subsidiaries broken down by U.S. and foreign operations.

9. Statement pursuant to the instructions to Item 8.A.4, regarding the financial statements filed in registration statements for initial public offerings of securities.

10. (a) Any additional exhibits you wish to file as part of the registration statement or report, clearly marked to indicate their subject matter, and (b) any document or part of a document incorporated by reference in this filing if it is not otherwise required to be filed or is not a Commission filed document incorporated in a Securities Act registration statement.

* * * * *

PART 260—GENERAL RULES AND REGULATIONS, TRUST INDENTURE ACT OF 1939

50. The authority citation for part 260 continues to read as follows:

Authority: 15 U.S.C. 77eee, 77ggg, 77nnn, 78sss, 78*ll*(d), 80b–3, 80b–4, and 80b–11.

51. Amend § 260.0–11 by removing in paragraph (b)(2) the words ''Item 9 of Form 20–F (§ 249.220f of this chapter), management's discussion and analysis of financial condition and results of operations,'' and adding, in their place, the words ''Item 5 of Form 20–F (§ 249.220f of this chapter), 'Operating and Financial Review and Prospects,' ''; and by removing in paragraph (c)(3) the words ''Item 9 of Form 20–F'' and adding, in their place, the words ''Item 5 of Form 20–F''.

Dated: February 2, 1999.

By the Commission.

Margaret H. McFarland,

Deputy Secretary.

Appendix A

Note: This Appendix A to the preamble will not appear in the Code of Federal Regulations.

Securities and Exchange Commission

Regulatory Flexibility Act Certification

I, Arthur Levitt, Chairman of the Securities and Exchange Commission, hereby certify pursuant to 5 U.S.C. 605(b) that the following amendments to the Commission's rules and forms would not, if adopted, have a significant economic impact on a substantial number of small entities in the United States: changes to Forms F–1, F–2, F–3, F–4, F–6 and S–11 and Rules 175, 405, 434 and 463 under the Securities Act; changes to Form 20–F and Rules 3b–4, 3b–6, 13a–10 and 15d–10 under the Exchange Act; changes to Items 402, 512 and 601 of Regulation S–K; changes to Rules 3–01, 3–02, 3–12, 3–19 and 3–20 of Regulation S–X; changes to Item 310 of Regulation S–B; and changes to Rule 0–11 under the Trust Indenture Act. The reasons for this certification are as follows:

The amendments are unlikely to have a significant economic impact because they are based on current law and practice. Moreover, the amendments are intended primarily to facilitate offerings and listings of securities by foreign private issuers, by conforming the disclosure requirements of Form 20–F more closely to international disclosure norms. The resulting incremental reduction in the expense, time and effort of making offerings in multiple jurisdictions will directly affect only foreign entities that issue securities, rather than U.S. entities.

One possible indirect result of adopting the amendments is that foreign companies may offer securities to U.S. small entity investors who previously would have been excluded due to the time and expense of compliance with the regulatory requirements of more than one jurisdiction. The potential increase in foreign offerings in the United States may have some indirect impact on U.S. small entity offerings. However, the indirect impact is likely to be small, and its effect is not expected to be significant for a substantial number of small entities in the United States.

The proposed amendments would not have a significant economic impact on a substantial number of small entities. The primary effect of the proposals would be on foreign entities, which we believe are not considered as small entities under the Regulatory Flexibility Act.

Dated: February 2, 1999.

Arthur Levitt,

Chairman.

[FR Doc. 99–2931 Filed 2–8–99; 8:45 am]

BILLING CODE 8010–01–P

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Food and Drug Administration

21 CFR Part 1020

[Docket No. 98N–1170]

Medical Devices; Sunlamp Products Performance Standard; Request for Comments and Information

AGENCY: Food and Drug Administration, HHS.

ACTION: Advance notice of proposed rulemaking.

SUMMARY: The Food and Drug Administration (FDA) is announcing its intent to propose amendments to the performance standard for sunlamp products. The agency is taking this action to address concerns about the adequacy of the warnings on sunlamp products, current recommended exposure schedule to minimize risk to customers who choose to produce and maintain a tan, current labeling for replacement lamps, and current health warnings which do not reflect recent advances in photobiological research. FDA is soliciting comments and information from interested persons concerning the subject matter of the proposed amendments.

DATES: Written comments by May 10, 1999.

ADDRESSES: Submit written comments to the Dockets Management Branch (HFA–305), Food and Drug Administration, 5630 Fishers Lane, rm. 1061, Rockville, MD 20852. Individuals or organizations wishing to receive copies of draft amendments or related documents distributed for review during the development of these amendments may have their names placed on a mailing list by writing to Office of Science and Technology (HFZ–114), Center for Devices and Radiological Health, Food and Drug Administration, 5600 Fishers Lane, Rockville, MD 20857, FAX 301–594–6775, e-mail address HWC@CDRH.FDA.GOV.

FOR FURTHER INFORMATION CONTACT: W. Howard Cyr, Center for Devices and Radiological Health (HFZ–114), Food and Drug Administration, 5600 Fishers Lane, Rockville, MD 20857, 301–443–7179.

SUPPLEMENTARY INFORMATION:

I. Background

The Safe Medical Devices Act of 1990 (Pub. L. 101–629), enacted on November 28, 1990, transferred the provisions of the Radiation Control for Health and Safety Act of 1968 (Pub. L. 90–602) from Title III of the Public Health Service Act to Chapter V, subchapter C of the Federal Food, Drug, and Cosmetic Act (21 U.S.C. 360hh *et seq.*). This authority provides for developing, amending, and administering radiation safety performance standards for electronic products.

Sunlamp products are class I medical devices exempt from premarket notification requirements (21 CFR 878.4635). These products are intended to provide ultraviolet (UV) radiation to tan the skin. As class I devices, sunlamp products are subject to general controls such as registration, listing, and current good manufacturing practices. Sunlamp products are also subject to the regulations for electronic product radiation control including parts 1000 through 1010 and § 1040.20 (21 CFR parts 1000 through 1010 and 21 CFR 1040.20).

The sunlamp performance standard in § 1040.20 was originally published in the **Federal Register** of November 9, 1979 (44 FR 65352). On September 6, 1985 (50 FR 36548), FDA amended § 1040.20 and made it applicable to all sunlamp products manufactured on or after September 8, 1986. On August 21, 1986, FDA issued a guidance entitled ''Policy on Maximum Timer Interval and Exposure Schedule for Sunlamp Products.'' The guidance explained the criteria FDA uses to evaluate the adequacy of the exposure schedule and the recommended maximum exposure time for sunlamp products. On September 2, 1986, FDA issued another guidance entitled ''Policy on Lamp Compatibility.'' The guidance listed the criteria FDA uses to evaluate lamp compatibility for sunlamp products.

Before proposing any electronic product performance standards, FDA is required to consult a statutory advisory committee, the Technical Electronic Product Radiation Safety Standards Committee (TEPRSSC) (21 U.S.C. 360kk(f)(1)(A)). At the September 23 and 24, 1998, meeting of TEPRSSC, FDA presented general concepts for amendments to the performance standard for sunlamp products. The committee recommended that FDA pursue development of the amendments. FDA intends to present more specific proposals to amend the performance standard to TEPRSSC prior to the publication of a proposed rule in the **Federal Register**.

FDA is concerned that inadequate attention is being paid to the recommended exposure schedule which should be designed to minimize risks for those who choose to produce and maintain a tan. FDA is further concerned that the warnings for sunlamp products are not reaching many users of sunlamp products and that the existing exposure schedule does not take into account the variations in individual human UV sensitivity. In order to update the current sunlamp product standards, FDA is considering revising § 1040.20.

In addition, sunlamp technology continues to change. These changes can affect both the intensity and the spectral characteristics of the UV from sunlamps. Because there is no uniform grading/rating system, choosing a replacement lamp can be confusing for tanning bed owners. Owners choosing replacement lamps must consider lamp compatibility as well as compliance with FDA's performance standard in order to protect users from excessive exposure to UV.

In addition to concerns about the warnings, labeling, and exposure schedule, FDA is aware of new research findings that suggest a stronger association between exposures to ultraviolet radiation and the increased incidence of skin cancer that has been observed in the U.S. population. Some of this increase has been linked to intense, intermittent exposures to solar radiation, but other research suggests that chronic, less intense exposures to ultraviolet radiation also contribute to skin cancer. Research has identified the fundamental chemical damage that occurs in the genetic material of humans and has linked some skin cancers to changes in specific genes. These scientific findings have led many in the medical community to strongly suggest that consumers avoid intense, intermittent exposures (the type that could produce sunburns) to ultraviolet radiation, and also minimize other UV exposures as well.

There are other deleterious effects from human exposure to UV radiation. They include blistering burns, skin erythema, photoaging, and photoallergic/photosensitive drug interactions. UV radiation may induce damage in the cornea, lens, and retina of the eye, which in extreme cases leads to permanent loss of vision. UV exposure is immunosuppressive, and can have an impact on the development of many diseases.

Some research has linked skin cancer to exposures to sunlamp products, and some research has even suggested an association between the use of sunlamps and malignant melanoma. This association is not definitive. FDA solicits comments and information as to whether a warning about possible melanoma induction should be part of sunlamp labels. To provide users with sufficient information for the safe use of these devices at tanning salons and for home sunlamp products, FDA seeks comments and information on suggested changes to the current sunlamp labels.

After considering the risks, some consumers may still choose to tan, either by exposure to the sun or by use of sunlamp products. Those consumers who use sunlamp products should obtain their tan with the least amount of risk from sunburn and eye damage. Therefore, FDA seeks advice on a recommended exposure schedule which would minimize the risks of adverse effects while still producing and maintaining a tan.

II. Revisions Under Consideration

FDA believes that amendment of the current performance standard is necessary to keep pace with changes in technology and advances in research related to the use of sunlamp products. The following discussion is intended to describe the need for the revision and FDA's proposed approach. Comments received from this advance notice of proposed rulemaking (ANPRM) will be used to develop any proposed amendments. Any proposed regulatory changes or standards amendments will be included in a future proposed rule. FDA is soliciting comments on all aspects of this ANPRM, and specifically requests comments on the following proposed amendments:

1. FDA is considering revising and updating the current sunlamp product performance standard (§ 1040.20) and harmonizing it with the International Electrotechnical Committee Standard 335–2–27 for UV and infrared emitting appliances. After consulting with international standards organizations and evaluation of the current scientific knowledge, FDA intends to develop a recommended exposure schedule which will become part of the directions for use of the sunlamp product. As part of the development process, FDA intends to review the material on effects of UVA and UVB on skin, the effects of UV exposure on melanoma induction, and the use of photobiological action spectra as a basis for risk assessment in health protection and product safety discussed at the American Society for Photobiology and European Society for Photobiology Joint Workshop on UV and Melanoma, Snowbird, Utah, July 11

through 15, 1998; the International Symposium and Workshop on Measurements of Optical Radiation Hazards, at the National Institute for Standards and Technology, Gaithersburg, MD, September 1 through 3, 1998; and (3) the Research Workshop on Risks and Benefits of Exposure to Ultraviolet Radiation and Tanning, at the National Institutes of Health, Bethesda, MD, September 16 through 18, 1998. The proceedings of these meetings describe current research findings that show a stronger correlation between UV exposure and skin cancer, photoaging, and photoimmunological effects.

2. FDA is considering revising and updating its August 21, 1986, guidance on the determination of the maximum timer interval and recommended exposure schedule for sunlamp products entitled, ''Policy on Maximum Timer Interval and Exposure Schedule for Sunlamp Products.'' FDA is concerned that inadequate attention is being paid to current recommended exposure schedules and that current guidance may allow higher exposures than are necessary to produce and maintain a tan, and it does not incorporate the differences in individual human sensitivity to UV exposure. FDA intends to update this guidance after reviewing and evaluating material presented at the meetings listed previously and other available information. FDA is further considering incorporating the previous guidance into the sunlamp product performance standard because it believes such incorporation would result in a more comprehensive regulatory standard with all relevant information for compliance in the standard.

3. FDA is considering adding a provision clarifying that manufacturing includes the modification of a sunlamp product, previously certified under § 1010.2, by any person engaged in the business of manufacturing, assembling or modifying sunlamp products if the modification affects any aspect of the product's performance, information or intended function for which § 1040.20 has an applicable requirement. This addition would clarify that sunlamp products are being regulated like other products regulated under § 1010.2. FDA is also considering requiring the manufacturer who performs such modification to recertify and re-identify the product in accordance with the provisions of §§ 1010.2 and 1010.3. This potential amendment is intended to clarify the responsibilities of firms and individuals who are in the business of installing ultraviolet lamps and new timers with different performance characteristics than the original lamps and timers in previously certified products.

4. FDA is concerned that the current warning label is not read by many tanning salon patrons because it is too long and detailed. Therefore, FDA is considering updating the warning statement required by § 1040.20(d)(1)(i) to simplify the wording and to highlight the risk of skin cancers. In order to update the warning statements, FDA intends to review and evaluate epidemiological and mechanistic information on UV exposure-related skin cancers, including possibly fatal cutaneous malignant melanoma. In developing its specific proposal for this item, FDA will be reviewing the material presented at the meetings cited previously and other available information.

5. FDA is considering requiring the reproduction of the text of the warning statement specified in § 1040.20(d)(1)(i) in catalogs, specification sheets, and brochures pertaining to sunlamp products. FDA is concerned that consumers who purchase sunlamp products through catalog mail order or through catalogs on electronic media may not receive information about the associated hazards and risks until the products are delivered to their homes and unpacked.

6. To simplify appropriate lamp replacement, FDA is considering the development of a biological efficacy rating scale for ultraviolet lamps intended for use in sunlamp products. Lamp technology continues to evolve, affecting the levels of UV exposure, the spectral characteristics and, therefore, the biological efficacy of ultraviolet lamp radiation. At present, a label that specifies the type of lamps suitable for replacement in the product is required on sunlamp products and in the user instructions. As new lamps and new lamp manufacturers enter the marketplace, while other manufacturers abandon the marketplace, it is increasingly cumbersome to keep track of individual lamp designations which are compatible with the product and compliant with the standard. In order to simplify the process, especially for industry and State regulators, FDA is considering a uniform grading/rating system.

III. Comments

Interested persons may, on or before May 10, 1999, submit to the Dockets Management Branch (address above) written comments regarding this ANPRM. Two copies of any comments are to be submitted, except that individuals may submit one copy. Comments are to be identified with the docket number found in brackets in the heading of this document. Received comments may be seen in the office above between 9 a.m. and 4 p.m., Monday through Friday. This ANPRM is issued under section 531 *et seq.* of the Federal Food, Drug, and Cosmetic Act (21 U.S.C. 360hh *et seq.*) and under authority of the Commissioner of Food and Drugs.

Dated: February 2, 1999.

William K. Hubbard,

Associate Commissioner for Policy Coordination.

[FR Doc. 99–3109 Filed 2–8–99; 8:45 am]

BILLING CODE 4160–01–F

DEPARTMENT OF TRANSPORTATION

Coast Guard

33 CFR Part 117

[CGD07–98–048]

RIN 2115–AE47

Drawbridge Regulations: Grand Canal, FL

AGENCY: Coast Guard, DOT.

ACTION: Supplemental notice of proposed rulemaking.

SUMMARY: The Coast Guard proposes to change the regulation governing the operation of the Tortoise Island drawbridge across the Grand Canal at Tortoise Island, Brevard County, Florida. The Coast Guard has reconsidered its original proposal in the NPRM published on August 28, 1998, extending the 2 hours advance notice for opening on signal to include Friday and Saturday nights and evenings preceding federal holidays, and now is proposing only 30 minutes advance notice for opening the bridge on Friday and Saturday nights and evenings preceding federal holidays. This rule is intended to reduce the requirement to maintain bridgetender service on the bridge during evening hours while still meeting the reasonable needs of navigation on Grand Canal.

DATES: Comments must be received on or before April 12, 1999.

ADDRESSES: Comments may be mailed to Commander (oan) Seventh Coast Guard District, 909 SE 1st Avenue, Miami, Florida 33131–3050, or may be delivered to room 406 at the above address between 7:30 a.m. and 4:00 p.m. Monday through Friday, except federal holidays. The telephone number is (305) 536–6546. The Commander, Seventh Coast Guard District, maintains the

public docket for this rulemaking. Comments will become part of this docket and will be available for inspection or copying at the above address.

FOR FURTHER INFORMATION CONTACT: Miss Evelyn Smart, Project Manager, Bridge Section, (305) 536–6546.

SUPPLEMENTARY INFORMATION:

Requests for Comments

The Coast Guard encourages interested persons to participate in this rulemaking by submitting written data, views or arguments. Persons submitting comments should include their names and addresses, identify the rulemaking [CGD07–98–048] and the specific section of this revised proposal to which each comment applies, and give the reason for each comment. The Coast Guard requests that all comments and attachments be submitted in an unbound format suitable for copying. If not practical, a second copy of any bound material is requested. Persons wanting acknowledgment of receipt of comments should enclose a stamped, self-addressed postcard or envelope. The Coast Guard will consider all comments received during the comment period. It may change this proposal in view of the comments received.

The Coast Guard plans no public hearing. Persons may request a public hearing by writing to Ms. Evelyn Smart at the address under **ADDRESSES**. The request should include the reasons why a hearing would be beneficial. If it determines that the opportunity for oral presentations will aid this rulemaking, the Coast Guard will hold a public hearing at a time and place announced by a later notice in the **Federal Register**.

Regulatory History

On August 28, 1998, the Coast Guard published a Notice of Proposed Rulemaking (NPRM) in the **Federal Register** (63 FR 45978). The NPRM proposed to change the regulations governing the operation of the Tortoise Island drawbridge. In response to the NPRM, the Coast Guard received objections from local waterway users stating that Grand Canal provides a well lit, deep water alternative to the shallow main channel of the Banana River. The Banana River is not regularly maintained and has unlighted day marks that are far apart. The local waterway users expressed their concerns about weekend night openings being delayed 2 hours vice opening on signal.

Background and Purpose

The Coast Guard's original proposal included extension of the 2 hours advance notice for opening on signal now authorized during evening hours Sunday through Thursday, to include Friday and Saturday nights and evenings preceding federal holidays. This rule was intended to reduce the requirement to maintain bridgetender service on the bridge during weekend evening hours due to the low volume of boat traffic analyzed over an extended period of time.

Discussion of Comments

Four objections were received to the original NPRM stating that the proposed weekend opening restriction would place an undue burden on the boating public. They were in opposition of the proposed rule because they felt that the bridge owner is not abiding by their original agreement that boaters would have access to the waterway at all times. The National Marine Fisheries Service stated in their letter that the proposal would not affect resources for which the NMFS is responsible and offered neither support nor objection.

Discussion of the Revised Proposal

The Coast Guard reviewed its original proposal and continues to believe that the lack of boat use during the evening hours on weekends justifies placing additional restrictions on bridge openings. However, in order to minimize the impact on navigation, the Coast Guard has decreased the proposed restriction to require only 30 minutes advance notice for a bridge opening on Friday and Saturday nights and evenings preceding federal holidays.

This revised regulation proposal would maintain the existing 2 hours advance notice for openings during evening hours Sunday through Thursday and would add the 30 minute advance notice for bridge openings on Friday and Saturday nights and evenings preceding federal holidays. This change is intended to reduce the requirement to maintain bridgetender service while still meeting the reasonable needs of navigation.

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 10e of the regulatory policies and procedures of DOT is unnecessary.

Small Entities

Under the Regulatory Flexibility Act (5 U.S.C. 601 et seq.), 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 and 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.

Because it expects the impact of this rule to be minimal, the Coast Guard certifies under 5 U.S.C. 605(b) that this rule will not have a significant economic impact on a substantial number of small entities.

Collection of Information

This rule contains no collection of information requirements under the Paperwork Reduction Act. (44 U.S.C. 3501 et seq.).

Federalism

The Coast Guard has analyzed this rule under the principles and criteria contained in Executive Order 12612, and has determined that this rule does not have sufficient federalism implications to warrant the preparation of a Federalism Assessment.

Environmental Assessment

The Coast Guard considered the environmental impact of this rule and has determined pursuant to Figure 2–1, paragraph 32(e) of Commandant Instruction M16475.1C, that this action is categorically excluded from further environmental documentation. A categorical exclusion determination for this rulemaking is available in the public docket for inspection and copying.

List of Subjects in 33 CFR Part 117

Bridges.

Proposed Regulations

In consideration of the foregoing, the Coast Guard proposes to amend 33 CFR part 117, as follows:

PART 117—[AMENDED]

1. The authority citation for part 117 continues to read as follows:

Authority: 33 U.S.C. 499; 49 CFR 1.46; 33 CFR 1.05–1(g); section 117.255 also issued

under the authority of Pub. L. 102–587, 106 Stat. 5039.

2. Revise § 117.285 paragraph (b) to read as follows:

§ 117.285 Grand Canal.

* * * * *

(b) The draw of the Tortoise Island bridge, mile 2.6, shall open on signal; except that during the evening hours from 10 p.m. to 6 a.m. from Sunday evening until Friday morning, the draw shall open on signal if at least 2 hours advance notice is given. On Friday and Saturday evening hours and evenings preceding federal holidays, from 10 p.m. to 6 a.m., the draw shall open on signal if at least 30 minutes advance notice is given.

Dated: January 21, 1999.

Norman T. Saunders,

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

[FR Doc. 99–3133 Filed 2–8–99; 8:45 am]

BILLING CODE 4910–15–M

ENVIRONMENTAL PROTECTION AGENCY

40 CFR Part 52

[CA–011–0071b; FRL–6229–6]

Approval and Promulgation of State Implementation Plans; California State Implementation Plan Revision, North Coast Unified Air Quality Management District and Northern Sonoma County Air Pollution Control District

AGENCY: Environmental Protection Agency (EPA).

ACTION: Proposed rule.

SUMMARY: EPA is proposing to approve revisions to the California State Implementation Plan (SIP). This action is an administrative change which revises definitions in North Coast Unified Air Quality Management District (NCUAQMD) and Northern Sonoma County Air Pollution Control District (NSAPCD) Rule 130, Definitions.

The intended effect of proposing approval of these rule is to incorporate changes to the definitions for clarity and consistency with revised federal and state definitions. EPA is proposing approval of these rules to be incorporated into the California SIP for the attainment and maintenance of the national ambient air quality standards (NAAQS) under title I of the Clean Air Act, as amended in 1990 (CAA or the Act). In the Final Rules Section of this **Federal Register,** the EPA is approving these rules as a direct final rule without prior proposal because the Agency views this as noncontroversial amendment and anticipates no adverse comments. A detailed rationale for this approval is set forth in the direct final rule. If no relevant adverse comments are received in response to this action, no further activity is contemplated in relation to this proposed rule. If EPA receives relevant adverse comments, the direct final rule will not take effect and all public comments received will be addressed in a subsequent final rule based on this proposed rule. EPA will not institute a second comment period on this action. Any parties interested in commenting on this action should do so at this time.

DATES: Comments must be received in writing by March 11, 1999.

ADDRESSES: Written comments on this action should be addressed to: Andrew Steckel, Rulemaking Office (AIR–4), Air Division, U.S. Environmental Protection Agency, Region 9, 75 Hawthorne Street, San Francisco, CA 94105–3901.

Copies of the rule revisions and EPA's approval of each rule are available for public inspection at EPA's Region 9 office during normal business hours. Copies of the submitted rule revisions are also available for inspection at the following locations:

Environmental Protection Agency, Air Docket (6102), 401 ''M'' Street, S.W., Washington, D.C. 20460.

California Air Resources Board, Stationary Source Division, Rule Evaluation Section, 2020 ''L'' Street, Sacramento, CA 95812.

North Coast Unified Air Quality Management District, 2300 Myrtle Avenue, Eureka, CA 95501.

Northern Sonoma County Air Pollution Control District, 150 Matheson, Healdsburg, CA 95448.

FOR FURTHER INFORMATION CONTACT: Cynthia G. Allen, Rulemaking Office (AIR–4), Air Division, U.S. Environmental Protection Agency, Region IX, 75 Hawthorne Street, San Francisco, CA 94105–3901, Telephone: (415) 744–1189.

SUPPLEMENTARY INFORMATION: This document concerns North Coast Unified Air Quality Management District and Northern Sonoma County Air Pollution Control District Rules 130, Definitions, submitted on EPA on December 31, 1990 (NCUAQMD) and June 23, 1998 (NCUAQMD) and March 10, 1998 (NSCAPCD), by the California Air Resources Board. For further information, please see the information provided in the Direct Final action that is located in the Final Rules section of this **Federal Register**.

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

Dated: January 4, 1999.

Laura Yoshii,

Acting Regional Administrator, Region IX.

[FR Doc. 99–2794 Filed 2–8–99; 8:45 am]

BILLING CODE 6560–50–M

ENVIRONMENTAL PROTECTION AGENCY

40 CFR Part 52

[CA 194–0125b; FRL–6226–6]

Approval and Promulgation of State Implementation Plans; California State Implementation Plan Revision, Monterey Bay Unified Air Pollution Control District

AGENCY: Environmental Protection Agency (EPA).

ACTION: Proposed rule.

SUMMARY: EPA is proposing to approve a revision to the California State Implementation Plan (SIP) which concerns the control of volatile organic compounds (VOC) emissions from leather processing operations within the Monterey Bay Unified Air Pollution Control District (MBUAPCD) area.

The intended effect of proposing approval of this rule is to regulate emissions of VOC in accordance with the requirements of the Clean Air Act, as amended in 1990 (CAA or the Act). In the Final Rules section of this **Federal Register**, the EPA is approving the state's SIP revision as a direct final rule without prior proposal because the Agency views this as a noncontroversial revision amendment and anticipates no adverse comments. A detailed rationale for this approval is set forth in the direct final rule. If no adverse comments are received, no further activity is contemplated in relation to this rule. If EPA receives adverse comments, the direct final rule will not take effect and all public comments received will be addressed in a subsequent final rule based on this proposed rule. EPA will not institute a second comment period on this rule. Any parties interested in commenting on this rule should do so at this time.

DATES: Written comments must be received in writing by March 11, 1999.

ADDRESSES: Written comments should be addressed to: Andrew Steckel, Rulemaking Office (AIR–4), Air Division, U.S. Environmental Protection Agency, Region IX, 75 Hawthorne Street, San Francisco, CA 94105–3901.

Copies of the rule revisions and EPA's evaluation report of the rule are available for public inspection at EPA's Region IX office during normal business

hours. Copies of the submitted rule revisions are also available for inspection at the following locations:

California Air Resources Board, Stationary Source Division, Rule Evaluation Section, 2020 ''L'' Street, Sacramento, CA 95812.

Monterey Bay Unified Air Pollution Control District, Rule Development, 24850 Silver Cloud Ct., Monterey, CA 93940–6536.

FOR FURTHER INFORMATION CONTACT: Andrew Steckel, Rulemaking Office (AIR–4), Air Division, U.S. Environmental Protection Agency, Region IX, 75 Hawthorne Street, San Francisco, CA 94105–3901, Telephone: (415) 744–1185.

SUPPLEMENTARY INFORMATION: This document concerns MBUAPCD's Rule 430, Leather Processing Operations, submitted to EPA on March 26, 1997 by the California Air Resources Board. For further information, please see the information provided in the direct final action that is located in the Rules section of this **Federal Register**.

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

Dated: January 14, 1999.

Felicia Marcus,

Regional Administrator, Region IX.

[FR Doc. 99–2792 Filed 2–8–99; 8:45 am]

BILLING CODE 6560–50–P

ENVIRONMENTAL PROTECTION AGENCY

40 CFR Part 52

[CA 207–0114b; FRL–6229–8]

Approval and Promulgation of State Implementation Plans; California State Implementation Plan Revision, Amador County Air Pollution Control District and Northern Sonoma County Air Pollution Control District

AGENCY: Environmental Protection Agency (EPA).

ACTION: Proposed rule.

SUMMARY: EPA is proposing to approve revisions to the California State Implementation Plan (SIP) which concern rules from the Amador County Air Pollution Control District (ACAPCD) and the Northern Sonoma County Air Pollution Control District (NSCAPCD). The intended effect of this proposed action is to remove rules from the SIP in accordance with the Clean Air Act, as amended in 1990 (CAA or the Act). In the Rules section of this **Federal Register**, EPA is approving the State's SIP revision as a direct final rule without prior proposal because the Agency views this as a noncontroversial action and anticipates no adverse comments. A detailed rationale for this approval is set forth in the direct final rule and technical evaluation documents. If no adverse comments are received, no further activity is contemplated in relation to this rule. If EPA receives adverse comments, the direct final rule will not take effect and all public comments received will be addressed in a subsequent final rule based on this proposed rule. EPA will not institute a second comment period on this rule. Any parties interested in commenting on this action should do so at this time.

DATES: Comments must be received in writing by March 11, 1999.

ADDRESSES: Written comments should be addressed to: Andrew Steckel, Rulemaking Office (AIR–4), Air Division, U.S. Environmental Protection Agency, Region IX, 75 Hawthorne Street, San Francisco, CA 94105–3901.

Copies of the rules and EPA's evaluation report of each rule are available for public inspection at EPA's Region IX office during normal business hours. Copies of the submitted rescission requests are also available for inspection at the following locations:

Environmental Protection Agency, Air Docket (6102), 401 ''M'' Street, SW, Washington, DC 20460.

California Air Resources Board, Stationary Source Division, Rule Evaluation Section, 2020 ''L'' Street, Sacramento, CA 95812.

Amador County Air Pollution Control District, 500 Argonaut Lane, Jackson, CA 95642.

Northern Sonoma County Air Pollution Control District, 150 Matheson Street, Healdsburg, CA 95448–4908.

FOR FURTHER INFORMATION CONTACT: Yvonne Fong, Rulemaking Office (AIR–4), Air Division, U.S. Environmental Protection Agency, Region IX, 75 Hawthorne Street, San Francisco, CA 94105–3901, Telephone: (415) 744–1199.

SUPPLEMENTARY INFORMATION: This document concerns the following rules from the Amador County Air Pollution Control District: Rule 213.2, Organic Solvents; and Rule 213.3, Disposal and Evaporation of Solvents, and the following rules from the Northern Sonoma County Air Pollution Control District: Rule 56, Sulfide Emission Standard; Rule 64, Organic Solvents; Rule 64.1, Architectural Coatings; and Rule 64.2, Disposal and Evaporation of Solvents. These rules were submitted to EPA for removal from the California State Implementation Plan. For further information, please see the information provided in the direct final action which is located in the Rules section of this **Federal Register**.

Dated: January 25, 1999.

Laura Yoshii,

Acting Regional Administrator, Region IX.

[FR Doc. 99–2783 Filed 2–8–99; 8:45 am]

BILLING CODE 6560–50–P

ENVIRONMENTAL PROTECTION AGENCY

40 CFR Part 52

[CO–001–0019b; FRL–6216–7]

Approval and Promulgation of Air Quality Implementation Plans; Colorado; Revisions to Regulation No. 7, Section III, General Requirements for Storage and Transfer of Volatile Organic Compounds

AGENCY: Environmental Protection Agency (EPA).

ACTION: Proposed rule.

SUMMARY: EPA is taking direct final action to approve a revision to the Colorado State Implementation Plan (SIP) to Regulation No. 7, ''Regulation To Control Emissions of Volatile Organic Compounds.'' The revision to Regulation No. 7 involves the addition of paragraph C to section III, ''General Requirements for Storage and Transfer of Volatile Organic Compounds.'' This new paragraph C exempts beer production and associated beer container storage and transfer operations involving volatile organic compounds with a true vapor pressure of less than 1.5 psia, at actual conditions, from the submerged or bottom-fill requirements of section III. B. In the ''Rules and Regulations'' section of this **Federal Register**, EPA is approving the State's SIP revision as a direct final rule without prior proposal because the Agency views this as a noncontroversial SIP revision and anticipates no adverse comments. A detailed rationale for the approval is set forth in the direct final rule. If EPA receives no adverse comments, EPA will not take further action on this proposed rule. If EPA receives adverse comments, EPA will withdraw the direct final rule and it will not take effect. EPA will address all public comments in a subsequent final rule based on this proposed rule. EPA will not institute a second comment period on this action. Any parties interested in commenting on this action should do so at this time.

DATES: Comments must be received in writing on or before March 11, 1999.

ADDRESSES: Written comments may be mailed to: Richard R. Long, Director, Air

and Radiation Program (8P-AR), United States Environmental Protection Agency, Region VIII, 999 18th Street, Suite 500, Denver, Colorado 80202–2466.

Copies of the documents relevant to this action are available for public inspection during normal business hours at: United States Environmental Protection Agency, Region VIII, Air and Radiation Program, 999 18th Street, Suite 500, Denver, Colorado 80202–2466.

Copies of the State documents relevant to this action are available for public inspection at: Colorado Department of Public Health and Environment, Air Pollution Control Division, 4300 Cherry Creek Drive South, Denver, Colorado 80246–1530.

FOR FURTHER INFORMATION CONTACT: Tim Russ, Air and Radiation Program (8P-AR), United States Environmental Protection Agency, Region VIII, 999 18th Street, Suite 500, Denver, Colorado 80202–2466 Telephone number: (303) 312–6479.

SUPPLEMENTARY INFORMATION: See the information provided in the Direct Final action of the same title which is located in the Rules and Regulations Section of this **Federal Register**.

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

Dated: December 21, 1998.

William P. Yellowtail,

Regional Administrator, Region VIII.

[FR Doc. 99–2982 Filed 2–8–99; 8:45 am]

BILLING CODE 6560–50–P

ENVIRONMENTAL PROTECTION AGENCY

40 CFR Part 62

[Region 2 Docket No. NY30–188a, FRL–6231–6]

Approval and Promulgation of State Plans for Designated Facilities; New York

AGENCY: Environmental Protection Agency (EPA).

ACTION: Proposed rule.

SUMMARY: The Environmental Protection Agency (EPA) is proposing to approve revisions to the State Plan submitted by New York to fulfill the requirements of sections 111(d)/129 of the Clean Air Act for Municipal Waste Combustors (MWC). The revisions concern the implementation and enforcement of the Emissions Guidelines, as amended by EPA on August 25, 1997, applicable to existing large MWC units with individual capacity to combust more than 250 tons per day of municipal solid waste. We are proposing to approve the State Plan which imposes revised emission limits for four pollutants (hydrogen chloride, sulfur dioxide, nitrogen oxides and lead) and compliance schedules for the existing MWC's in New York which will reduce the designated pollutants. In the ''Rules and Regulations'' section of this **Federal Register**, EPA is approving New York's revised State Plan submittal, as a direct final rule without prior proposal because the Agency views this as a noncontroversial submittal and anticipates no adverse comments. A detailed rationale for the approval is set forth in the direct final rule. If EPA receives no adverse comments, EPA will not take further action on this rule. If EPA receives adverse comments, EPA will withdraw the direct final rule and it will not take effect. EPA will address all public comments in a subsequent final rule based on this proposed rule. The EPA will not institute a second comment period on this action. Any parties interested in commenting on this action should do so at this time.

DATES: Comments must be received on or before March 11, 1999.

ADDRESSES: All comments should be addressed to: Ronald J. Borsellino, Chief, Air Programs Branch, Environmental Protection Agency, Region 2 Office, 290 Broadway, 25th Floor, New York, New York 10007–1866.

Copies of the State submittal are available at the following addresses for inspection during normal business hours:

Environmental Protection Agency, Region 2 Office, 290 Broadway, 25th Floor, New York, New York 10007–1866.

New York State Department of Environmental Conservation, Division of Air Resources, 50 Wolf Road, Albany, New York 12233.

FOR FURTHER INFORMATION CONTACT: Christine DeRosa or Kirk J. Wieber, Air Programs Branch, Environmental Protection Agency, Region 2 Office, 290 Broadway, 25th Floor, New York, New York 10278, (212) 637–4249.

SUPPLEMENTARY INFORMATION: For additional information see the direct final rule which is published in the rules section of this **Federal Register**.

Dated: January 28, 1999.

William J. Muszynski,

Deputy Regional Administrator, Region 2.

[FR Doc. 99–2984 Filed 2–8–99; 8:45 am]

BILLING CODE 6560–50–P

ENVIRONMENTAL PROTECTION AGENCY

40 CFR Part 79

[FRL–6231–9]

Proposed Alternative Tier 2 Requirements for Methylcyclopentadienyl Manganese Tricarbonyl (MMT)

AGENCY: Environmental Protection Agency.

ACTION: Notice of proposed requirements.

SUMMARY: The purpose of this document is to announce that the Environmental Protection Agency (EPA) has notified the Ethyl Corporation (Ethyl), manufacturer of the fuel additive methylcyclopentadienyl manganese tricarbonyl (MMT), and other affected registrants of fuels and additives containing MMT, of proposed Alternative Tier 2 health and exposure testing requirements. The purpose of the proposed testing requirements is to assist in characterizing potential health risks associated with use of the additive in unleaded gasoline. By this document, EPA is affording an opportunity for members of the public to comment on these proposed requirements.

DATES: EPA will review and consider all comments on the proposed Alternative Tier 2 testing requirements for MMT which are received by EPA no later than March 30, 1999.

ADDRESSES: Written comments on this proposed action should be addressed to Public Docket Number A–98–35, Waterside Mall (Room M–1500), Environmental Protection Agency, Air Docket Section, 401 M Street, S.W., Washington, D.C. 20460. A copy of the notification transmitted to Ethyl and the notification transmitted to other affected registrants have been placed in Docket A–98–35. Documents may be inspected between the hours of 8:00 a.m. to 5:30 p.m., Monday through Friday. A reasonable fee may be charged for copying docket material.

FOR FURTHER INFORMATION CONTACT: Joseph R. Sopata, Chemist, U.S. Environmental Protection Agency, Office of Air and Radiation, (202) 564–9034.

SUPPLEMENTARY INFORMATION:

Regulated Entities

Entities who may be regulated pursuant to the notifications referenced in this document are those that manufacture or use the fuel additive MMT. Regulated categories and entities include:

Category	Examples of regulated entities	SIC codes
Industry	The Ethyl Corporation, petroleum refining, gasoline importers, fuel additive manufacturers.	2911, 5172, 2899.

This table is not intended to be exhaustive, but rather provides a guide for readers regarding entities likely to be regulated by this action. This table lists the types of entities that EPA is now aware that could potentially be regulated pursuant to the notifications. Other types of entities not listed in this table could also be regulated. If you have any questions regarding the applicability of the notifications to a particular entity, consult the person listed in the preceding section dealing with EPA contacts.

I. Introduction

The Clean Air Act (CAA), as amended, required the Administrator of EPA to promulgate regulations requiring manufacturers of fuels and fuel additives to conduct tests to determine potential health effects of such products. The final rule, promulgated on May 27, 1994, established new health effects testing requirements for the registration of designated F/FAs as authorized by CAA sections 211(b)(2) and 211(e) of the CAA.

The registration requirements are organized within a three-tier structure. Tier 1 requires F/FA manufacturers to supply to EPA (1) the identity and concentration of certain emission products of designated F/FAs and an analysis of potential emission exposures, and (2) any available information regarding the health and welfare effects of the whole and speciated emissions. 40 CFR 79.52. Tier 2 requires that combustion emissions of each F/FA subject to the testing requirements be tested for subchronic systemic and organic toxicity, as well as the assessment of specific health effect endpoints. 40 CFR 79.53. Tier 3 testing may be required, at EPA's discretion, when remaining uncertainties as to the significance of observed health or welfare effects, or emissions exposures interfere with EPA's ability to reasonably assess the potential risks posed by emissions from a F/FA. 40 CFR 79.54. EPA's regulations permit submission of adequate existing test data in lieu of conducting new duplicative tests. 40 CFR 79.53(b).

At its discretion, EPA may modify the standard Tier 2 health effects testing requirements for a F/FA (or group thereof) by substituting, adding, or deleting testing requirements, or changing the underlying vehicle/engine specifications. 40 CFR 79.58(c). EPA will not, however, delete a testing requirement for a specific endpoint in the absence of existing adequate information, or an alternative testing requirement for that endpoint. 40 CFR 79.58(c). When EPA exercises its authority under this special provision, it will allow an appropriate time for completion of the prescribed alternative tests.

II. Proposed Alternative Tier 2 Requirements for MMT

The purpose of this document is to announce that the Environmental Protection Agency (EPA) has notified the Ethyl Corporation (Ethyl), the manufacturer of MMT, and other affected registrants of fuels and additives containing MMT, of proposed Alternative Tier 2 testing requirements under 40 CFR 79.58(c) for fuels containing up to 1/32 gram per gallon (gpg) manganese in the form of MMT. This document also is intended to afford an opportunity for public comment on the proposed requirements.

The purpose of the proposed Alternative Tier 2 test requirements is to address specific research needs related to assessment of the potential risks associated with use of fuels containing MMT. The proposed Alternative Tier 2 test requirements are within two general categories, pharmacokinetic testing of manganese compounds and characterization of manganese emissions from vehicles utilizing fuels containing MMT. These Alternative Tier 2 testing requirements are intended to be the first stage in a two-stage Alternative Tier 2 test program. EPA intends to evaluate the results produced in the first stage of testing, as well as any other information which may be submitted to or obtained by EPA in the meantime, in determining the specific nature and scope of the second stage of Alternative Tier 2 testing. Any additional Alternative Tier 2 tests proposed for fuels and additives containing MMT in the future will be announced in a separate **Federal Register** document.

On January 29, 1999, Ethyl was notified by certified letter of the specific tests which the Agency is proposing to require under the Alternative Tier 2 provisions for MMT, and the proposed schedule for completion and submission of such tests. Other affected registrants of fuels and additives containing MMT were also notified by certified letter. A copy of the notification to Ethyl and the notification to other registrants, including a description of the proposed Alternative Tier 2 tests and the proposed schedule for such tests, has been placed in the Public Docket Number A–98–35, Waterside Mall (Room M–1500), Environmental Protection Agency, Air Docket Section, 401 M Street, S.W., Washington, D.C. 20460. The notifications are also available on the internet via EPA's Mobile Source home page at http://www.epa.gov/OMSWWW/. The Agency is affording an opportunity for public comment on these proposed requirements.

III. Environmental Impact

EPA's health effects testing notifications for MMT will result in no immediate environmental impact. Section 211(c) of the CAA, however, authorizes EPA to take regulatory action to control or prohibit manufacture or sale of fuels and fuel additives if testing information submitted by registrants or other information available to EPA indicates that use of such products may be reasonably anticipated to endanger public health or welfare. Thus, information obtained from health effects testing conducted by manufacturers of F/FAs may provide a basis for subsequent regulatory action.

IV. Economic Impact

The proposed testing requirements which are the subject of this document will have a potential economic impact on the affected registrants, who are obligated to make expenditures to conduct any required testing. EPA does not anticipate that there will be any direct economic impact on registrants of fuels and additives containing MMT other than Ethyl, because Ethyl has stated that it will be responsible for satisfying any test requirements imposed by EPA for the group of fuels and additives containing MMT.

The regulations at 40 CFR 79.58(d) also contain special provisions limiting testing obligations for those fuel or fuel additive manufacturers whose total annual sales are less than $10 million. EPA does not believe that the testing requirements which are the subject of these notifications will have any economic impact on small entities.

List of Subjects in 40 CFR Part 79

Environmental protection, Air pollution control, Gasoline, Conventional gasoline, Methylcyclopentadienyl manganese tricarbonyl, and Motor vehicle pollution.

Dated: February 2, 1999.

Robert A. Perciasepe,

Assistant Administrator, Office of Air and Radiation.

[FR Doc. 99–3141 Filed 2–8–99; 8:45 am]

BILLING CODE 6560–50–P

FEDERAL COMMUNICATIONS COMMISSION

47 CFR Parts 73 and 74

[ET Docket No. 99–34; FCC 99–8]

An Industry Coordination Committee System for Broadcast Digital Television Service

AGENCY: Federal Communications Commission.

ACTION: Proposed rule.

SUMMARY: The Commission has issued a Notice of Proposed Rule Making (NPRM) requesting comment on the establishment of an industry coordination committee to assist in the implementation of digital television (DTV) service. The Commission indicated that it believes such an industry committee could serve to improve its existing procedures for adjusting the DTV Table of Allotments and for managing requests for DTV station modifications as the transition to DTV progresses.

DATES: Comments must be received on or before March 29, 1999, and reply comments on or before April 28, 1999.

ADDRESSES: Federal Communications Commission, 445 12th Street, SW., Washington, DC 20554

FOR FURTHER INFORMATION CONTACT: Alan Stillwell (202–418–2470), Office of Engineering and Technology.

SUPPLEMENTARY INFORMATION: This is a summary of the Commission's Notice of Proposed Rule Making in ET Docket No. 99–34, FCC 99–8, adopted January 28, 1999, and released February 3, 1999. The full text of this decision is available for inspection and copying during normal business hours in the Public Reference Branch (Room 230), 1919 M Street, NW., Washington, DC. The complete text of this decision also may be purchased from the Commission's duplicating contractor, International Transcription Service, 1231 20th Street, NW., Washington, DC 20036, (202–857–3800).

Summary of the Notice of Proposed Rule Making

1. In the NPRM, the Commission sought comment on the establishment of an industry coordination committee to assist in the implementation of digital television (DTV) service. The Commission indicated that it believes that such an industry committee may aid its efforts to provide fair and efficient means for adjusting the DTV Table of Allotments and for managing requests for DTV station modifications as the transition to DTV progresses. It stated that a coordination committee might also serve to provide assistance in managing any further requests for modification of analog (NTSC) television stations during the transition and on other issues such as inter-service sharing arrangements.

2. The Commission indicated that it believes that the general principles and policies that were applied in establishing rules for frequency coordination in the land mobile services are also relevant and appropriate for guiding the development of an industry coordination committee system for broadcast television. It presented a number of proposals for the DTV industry coordination committee system that were generally based on a plan suggested in a Petition for Rule Making submitted by the Broadcasters' Caucus. These proposals, which are presented below, address the following issues: (a) the structure of a DTV industry coordination committee system; (b) its functions; (c) the operation of the Committee system; (d) the selection of the DTV frequency coordinators; and (e) the Commission's oversight of committee operations. The Commission invited interested parties to submit suggestions for any changes in these proposals or alternative approaches relating to an industry committee system that they believe would serve to improve the process for modifying the DTV Table and/or to provide other assistance to the Commission on television spectrum matters.

3. The Commission also indicated that if it decides to establish a DTV coordination committee system, it will need to decide whether to make participation in the committee process mandatory or voluntary. It therefore requested comment on whether to require that television station applicants, construction permit holders, licensees and others with proposals that would affect TV spectrum coordinate their proposals through the industry committee process or simply make participation in that process voluntary. It noted that under a mandatory approach, the industry coordination committee system would replace its existing rules for voluntary negotiation of DTV allotment and facility modifications. The Commission also reiterated its statement in the Memorandum Opinion and Order on Reconsideration of the Sixth Report and Order in the DTV proceeding, MM Docket No. 87–268, 13 FCC Rcd 6860, 63 FR 15774, April 11, 1998, that it intends that consideration of an industry coordination committee system not delay the implementation of DTV service. It therefore advised broadcasters that it will continue to process applications for DTV stations and requests for modification of facilities during the course of this proceeding. Broadcasters preparing DTV applications and/or station modification requests therefore should not delay the filing of those applications.

4. Under the structural plan proposed by the Commission, the coordination of allotment and station changes would be organized on the basis of regional committees operating under the umbrella of a national organization (national coordinator). The national coordinator would establish an organizational structure and administrative system for the regional committees, manage a nationwide data base, maintain procedures and software systems for performing technical analyses, and monitor the work of the regional committees. The regional coordinating committees would conduct evaluations and provide recommendations/advice to the Commission and would also coordinate among local stations and within the industry. The Commission did not present a plan for a specific number of regional coordinating committees or for the boundaries of the regions in which they would operate. Rather, it requested that interested parties submit comments and suggestions with regard to this issue and indicated that it would select an appropriate number of committees and define the boundaries of the regions in which the individual committees would operate after considering such submissions. The Commission also requested comment on whether it might be more desirable to adopt an alternative approach under which the Commission would specify requirements for the organization and administration of the regional committees and the national coordinator and for the manner in which they would interact. Parties supporting such an approach were requested to submit

specific suggestions for a plan of organizational requirements.

5. The Commission stated that, consistent with its position on frequency coordinators in the DTV proceeding, it believes it is important that any coordination system for the broadcast television industry be open to all affected parties, including low power television and TV translator stations and the public. It therefore proposed to require that the membership and processes of the DTV coordinating committee system be open to all affected parties.

6. The Commission envisioned that the principal function of the DTV industry coordination system would be to process and evaluate proposals for changes in DTV and NTSC station facilities and for changes to the DTV Table of Allotments and to make recommendations to the Commission on these matters. As suggested by the Caucus, the goal of the coordination system would be to accommodate reasonable requests for facility and allotment changes/additions without creating unacceptable interference to neighboring DTV or NTSC stations. In this regard, the industry coordinating committees would provide assistance to both broadcasters and the Commission in assessing the feasibility, in terms of affects on interference and service areas, of modifications in the power, antenna height, antenna pattern, or transmitter site of DTV and NTSC stations, of changes in DTV channels, including negotiated exchanges on an intra-or inter-market basis, and of proposed new DTV allotments. In addition to the station/allotment coordination function, the Commission identified a number of tasks and activities relating to evaluation of service coverage and interference and selection of channels that the coordinating committees could possibly perform to aid in the implementation of DTV service.

7. As indicated above, the national coordinator would be responsible for maintaining an accurate, up-to-date engineering data base of allotments, licensed stations, construction permits, applications and petitions for rule making. This data base, which would correspond in content and format with the engineering data base maintained by the FCC, would be used by the regional coordinating committees in their coordination work. The national coordinator would also be responsible for maintaining and managing a national system of methodology and software for use in performing studies and engineering evaluations. This methodology and software would be required to conform the Commission's DTV allotment and station modification standards and to the methodological guidance provided in its OET Bulletin No. 69. The national coordinator would further be responsible for monitoring the performance of the regional committees to ensure that studies and evaluations were being performed in a consistent manner and in accordance with all applicable policies and regulations.

8. As proposed by the Commission, coordination committee actions would begin with the submission of a request for facility or allotment changes or for information on interference and coverage. The request would be submitted to the appropriate regional coordinating committee on standard forms, with justification as applicable. The coordinator would then examine and evaluate the request. The coordinator would also be responsible for notifying all other stations in the area that would potentially be affected by the request of its preliminary assessment and providing them with an opportunity to comment, object or suggest their own proposals. In this role, the coordinating committee would also be expected to facilitate negotiations between the party or parties seeking changes and any stations that would be affected by those changes. After completing these activities, a committee coordinator would submit its assessment of the change proposed in the request and any alternative proposals, as appropriate, to the Commission, along with its recommendations. Coordinating committee assessments and recommendations would be limited to the technical viability of proposals, without regard to whether the requested changes would be consistent with any other applicable regulations.

9. Consistent with the approach used with land mobile frequency coordinators and the recommendations of the Caucus, the Commission proposed to establish certain rules for the processing of coordination requests by the DTV industry coordination committees. In this regard, it proposed:

—To require that the DTV industry coordinators accept and process all requests without discriminating among users;

—To permit the DTV industry coordination committees to charge reasonable, cost-based fees for providing information to stations and processing requests for facility and channel changes/additions;

—To require that, as a general practice, the committee coordinators process requests in the order received and to require that they maintain logs; and,

—To require that requests be processed in a timely manner.

10. The Commission requested comment on how those who would lead the DTV coordination committee system should be selected and how it should provide for the start-up of this organization. It noted that one approach would be for the Commission to select an entity to head the national committee organization, and then allow the national organization to proceed with selection of the regional, in accordance with that organization's stated plan for the regional committee structure and administrative system. Another approach would be for the Commission to select entities to head the national organization and the regional coordination committees. In selecting parties to lead the coordination committee system, the Commission proposed to consider a number of factors, including:

—The extent to which the applicant is representative of all broadcast television interest groups;

—The applicant's technical knowledge and expertise in performing the analyses and evaluations used in the coordination process and plans for the software and methodology to use in accomplishing DTV and NTSC interference and service area engineering studies on a nationwide basis; and,

—The applicant's plan for coordinating the DTV service.

11. The Commission stated that it believes it is important to exercise oversight of the DTV coordination committee system. It stated that, in addition to the investigation of complaints, it would conduct regular, perhaps on a six or twelve month basis, and ad hoc discussions with the regional committees and the national organization to review their performance, ensure they are conducting evaluations and analyses in accordance with established policies and regulations, and also to determine whether any changes might be needed in our policies based on experience gained through their work. Coordinators found to be unsatisfactory would be replaced. As suggested by the Caucus, the Commission's policies in this oversight would be developed on a case-by-case basis, so that an effective ''common law'' would develop.

Procedural Matters

Paperwork Reduction Act of 1995 Analysis

12. This Notice of Proposed Rule Making has been analyzed with respect to the Paperwork Reduction Act of 1995,

Pub. L. 104–13, and found to impose no new or modified information collection requirements on the public.

Regulatory Flexibility Act Analysis

13. As required by Section 603 of the Regulatory Flexibility Act, 5 U.S.C. 603, the Commission has prepared an Initial Regulatory Flexibility Analysis (IRFA) of the expected significant economic impact on small entities by the policies and rules proposed in this Notice of Proposed Rule Making in ET Docket No. 99–34. 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 NPRM provided below.

Need for and Objectives of the Proposed Rule

14. In this rule making action the Commission seeks comment on proposals for the establishment of an industry DTV coordination committee system to process and evaluate proposed changes to the Table of Allotments for digital television (DTV) service and related matters involving use of the television frequencies. It indicated that it believes that such an industry committee system may aid its efforts to provide fair and efficient means for adjusting the DTV Table and for managing requests for DTV station modifications as the transition to DTV progresses. In this regard, the Commission indicated that an industry coordination committee system could serve to improve its existing procedures by minimizing the number of petitions for rule making that are filed to change the DTV Table and encouraging the development of regional solutions to shared problems. A coordination committee system might also serve to provide assistance in managing any further requests for modification of analog (NTSC) television stations during the transition and on other issues such as inter-service sharing arrangements. The objective of this action is to obtain comment and information that will assist us in determining whether such an industry committee system is needed and to establish rules and policies for its structure, functions, operation, membership selection and oversight by the Commission.

Legal Basis

15. The proposed action is authorized under Sections 4(i), 7, 301, 303, 307, and 336 of the Communications Act of 1934, as amended, 47 U.S.C. 154(i), 301, 302, 303, 307, and 336.

Description and Estimate of the Number of Small Entities to Which The Rules Will Apply

I. Definition of a ''Small Business''

16. Under the Regulatory Flexibility Act, small entities may include small organizations, small businesses, and small governmental jurisdictions. 5 U.S.C. 601(6). The Regulatory Flexibility Act, 5 U.S.C. 601(3) generally defines the term ''small business'' as having the same meaning as the term ''small business concern'' under the Small Business Act, 15 U.S.C. 632. A small business concern is one which: (1) is independently owned and operated; (2) is not dominant in its field of operation; and (3) satisfies any additional criteria established by the Small Business Administration (''SBA''). *Id.* According to the SBA's regulations, entities engaged in television broadcasting may have a maximum of $10.5 million in annual receipts in order to qualify as a small business concern. 13 CFR 121.201. This standard also applies in determining whether an entity is a small business for purposes of the Regulatory Flexibility Act.

17. Pursuant to 5 U.S.C. 601(3), the statutory definition of a small business applies ''unless an agency after consultation with the Office of Advocacy of the Small Business Administration and after opportunity for public comment, establishes one or more definitions of such term which are appropriate to the activities of the agency and publishes such definition(s) in the **Federal Register**.'' For purposes of this Notice of Proposed Rule Making, we utilize the SBA's definition in determining the number of small businesses to which the rules apply, although we believe that that definition of ''small business'' overstates the number of television broadcast stations that are small businesses. Further, in this IRFA, we will identify the different classes of small television stations that may be impacted by the rules adopted in this Notice of Proposed Rule Making.

II. Issues in Applying the Definition of a ''Small Business''

18. SBA has defined ''annual receipts'' specifically in 13 CFR 104, and its calculations include an averaging process. We do not currently require submission of financial data from licensees that we could use to apply the SBA's definition of a small business. Thus, for purposes of estimating the number of small entities to which the rules apply, we are limited to considering the revenue data that are publicly available, and the revenue data on which we rely may not correspond completely with the SBA definition of annual receipts.

19. Under SBA criteria for determining annual receipts, if a concern has acquired an affiliate or been acquired as an affiliate during the applicable averaging period for determining annual receipts, the annual receipts in determining size status include the receipts of both firms. 13 CFR 121.104(d)(1). The SBA defines affiliation in 13 CFR 121.103. While we refer to an affiliate generally as a station affiliated with a network, the SBA's definition of affiliate is analogous to our attribution rules. Generally, under the SBA's definition, concerns are affiliates of each other when one concern controls or has the power to control the other, or a third party or parties controls or has the power to control both. 13 CFR 121.103(a)(1). The SBA considers factors such as ownership, management, previous relationships with or ties to another concern, and contractual relationships, in determining whether affiliation exists. 13 CFR 121.103(a)(2). Instead of making an independent determination of whether television stations were affiliated based on SBA's definitions, we relied on the industry data bases available to us to afford us that information.

III. Estimates Based on Census and BIA Data

20. According to the Census Bureau, in 1992, there were 1,155 out of 1,478 operating television stations with revenues of less than ten million dollars. This represents 78 percent of all television stations, including non-commercial stations. *See 1992 Census of Transportation, Communications, and Utilities, Establishment and Firm Size,* May 1995, at 1–25. The Census Bureau does not separate the revenue data by commercial and non-commercial stations in this report. Neither does it allow us to determine the number of stations with a maximum of 10.5 million dollars in annual receipts. Census data also indicates that 81 percent of operating firms (that owned at least one television station) had revenues of less than $10 million.

21. We have also performed a separate study based on the data contained in the BIA Publications, Inc. Master Access Television Analyzer Database, which lists a total of 1,141 full-power commercial television stations. It should be noted that the percentage figures derived from the data base may be underinclusive because the data base does not list revenue estimates for noncommercial educational stations, and these are therefore excluded from our calculations based on the data base.

Non-commercial stations would be subject to the allotment rules and policies proposed herein. The data indicate that, based on 1995 revenue estimates, 440 full-power commercial television stations had an estimated revenue of 10.5 million dollars or less. That represents 54 percent of commercial television stations with revenue estimates listed in the BIA program. The data base does not list estimated revenues for 331 stations. Using a worst case scenario, if those 331 stations for which no revenue is listed are counted as small stations, there would be a total of 771 stations with an estimated revenue of 10.5 million dollars or less, representing approximately 68 percent of the 1,141 commercial television stations listed in the BIA data base.

22. Alternatively, if we look at owners of commercial television stations as listed in the BIA data base, there are a total of 488 owners. The data base lists estimated revenues for 60 percent of these owners, or 295. Of these 295 owners, 158 or 54 percent had annual revenues of $10.5 million or less. Using a worst case scenario, if the 193 owners for which revenue is not listed are assumed to be small, the total of small entities would constitute 72 percent of owners.

23. In summary, based on the foregoing worst case analysis using census data, we estimate that our rules could affect as many as 1,155 commercial and non-commercial television stations (78 percent of all stations) that could be classified as small entities. Using a worst case analysis based on the data in the BIA data base, we estimate that as many as approximately 771 commercial television stations (about 68 percent of all commercial television stations) could be classified as small entities. As we noted above, these estimates are based on a definition that we believe greatly overstates the number of television broadcasters that are small businesses. Further, it should be noted that under the SBA's definitions, revenues of affiliates that are not television stations should be aggregated with the television station revenues in determining whether a concern is small. The estimates overstate the number of small entities since the revenue figures on which they are based do not include or aggregate such revenues from non-television affiliated companies.

24. The proposed DTV industry coordination committee system could also affect low power television (LPTV) and TV translator stations. Our records indicate that currently there are about 1,750 licensed LPTV stations and 5,050 licensed TV translators. We have also issued about 1,400 construction permits for new LPTV stations. We do not collect individual station financial data for LPTV and TV translator stations. However, based on our experience with LPTV and TV translator stations, we believe that all such stations have revenues of less than $10.5 million. We also seek information on the number of low power stations that operate commercially and noncommercially.

IV. Alternative Classification of Small Stations

25. An alternative way to classify small television stations is by the number of employees. We currently apply a standard based on the number of employees in administering its Equal Employment Opportunity Rule (EEO) for broadcasting. Thus, radio or television stations with fewer than five full-time employees are exempted from certain EEO reporting and recordkeeping requirements. We estimate that the total numbers of commercial and noncommercial television stations with 4 or fewer employees are 132 and 136, respectively. These estimates do not include LPTV stations, for which we do not collect employment data.

Description of Projected Reporting, Recordkeeping and Other Compliance Requirements

26. The proposals set forth in this action would involve no changes to reporting, recordkeeping and other compliance requirements beyond what is already required under the current regulations.

Federal Rules Which Overlap, Duplicate or Conflict With These Rules

27. None.

Significant Alternatives To Proposed Rules Which Minimize Significant Economic Impact of Small Entities and Accomplish Stated Objectives

28. The DTV industry coordination committee system proposed in this action would be available for use by all commercial and noncommercial broadcast television stations desiring to change their DTV facilities and/or channels or their NTSC facilities and by parties seeking to add new channel allotments to the DTV Table of Allotments. This coordination system would be used by existing full service stations, low power stations and those seeking to establish new stations on a voluntary basis. Stations would also be allowed to use their own internal resources or the services of consultants to obtain the analyses and evaluations that would be performed by the committee coordinators. We therefore believe that our proposal would result in the minimum impact on those needing such services. We have, however, requested comment on whether we should require that facility changes, channel changes, and new allotments be coordinated through the services of the industry coordination committee system. In this case, we have sought to minimize the impact on those using the coordination system by requiring that charges for services be reasonable and cost based and that services be provided in a timely manner. At this time we have no information on the approximate cost of the services that would be provided by the industry coordinating committees. We also do not know how many stations may seek such changes, although we expect that most of the changes sought will be to increase station's DTV service areas. We expect that the number of requests for addition of new DTV allotments will be approximately the same as we now receive each year, *i.e.* approximately 50 requests.

29. An alternative approach would be to establish specific allowable charges for services and specific time-periods within which requests for coordination must be completed. However, we generally believe that it would be difficult to establish a schedule of appropriate fees and required completion time-periods due to the great variation in complexity of the services to be performed and the time and resources needed to fulfill the requests. We seek comment and suggestions for alternatives that would further reduce any impact that an industry coordination committee system would have on those seeking to modify existing stations or to establish new stations.

30. As we observed in the DTV proceeding, implementation of DTV service will affect low power television (LPTV) and TV translator stations. Total investment in the LPTV and TV translator facilities is estimated to be about $150—$250 million. Studies by our staff indicate that there is not sufficient spectrum to accommodate both low power stations and DTV stations. These studies estimate that up to about one-third of all LPTV stations and one-quarter of all TV translators may have to cease operation to make way for DTV stations. In general, most LPTV stations within major markets will be affected, while rural operations will be affected to lesser degrees. We generally believe that the industry coordinating committee system would serve to provide a relatively low-cost

source of assistance to LPTV and TV translator stations that will need to modify their existing operations or seek displacement channels to avoid interference to DTV service. We seek comment on whether there are specific actions we could take in establishing the industry coordination system to further aid low power stations.

Comments

31. Pursuant to Sections 1.415 and 1.419 of the Commission's rules, 47 CFR 1.415, 1.419, interested parties may file comments on before March 29, 1999, and reply comments on or before April 28, 1999. Comments may be filed using the Commission's Electronic Comment Filing System (ECFS) or by filing paper copies. *See Electronic Filing of Documents in Rule Making Proceedings,* 63 FR 24121, published May 1, 1998.

32. Comments filed through the ECFS can be sent as an electronic file via the Internet to <http://www.fcc.gov/e-file/ecfs.html>. Generally, only one copy of an electronic submission must be filed. If multiple docket or rule making numbers appear in the caption of this proceeding, however, commenting parties must transmit one electronic copy of the comments to each docket or rule making number referenced in the caption. In completing the transmittal screen, commenting parties should include their full name, Postal Service mailing address, and the applicable docket or rule making number. Parties may also submit an electronic comment by Internet e-mail. To get filing instructions for e-mail comments, commenting parties should send an e-mail to ecfs@fcc.gov, and should include the following words in the body of the message, ''get form <your e-mail address>.'' A sample form and directions will be sent in reply.

33. Parties who choose to file by paper must file an original and four copies of each filing. If more than one docket or rule making number appear in the caption of this proceeding, commenting parties must submit two additional copies for each additional docket or rule making number. All filings must be sent to the Commission's Secretary, Magalie Roman Salas, Office of the Secretary, Federal Communications Commission, 445 12th St. SW, Room TW–A325, Washington, DC 20554.

34. Parties who choose to file by paper should also submit their comments on diskette. These diskettes should be submitted to: Alan Stillwell, Federal Communications Commission, Office of Engineering and Technology, 2000 M Street, NW, Suite 480, Washington, DC 20554C. Such a submission should be on a 3.5 inch diskette formatted in an IBM compatible format using WordPerfect 5.1 for Windows or compatible software. The diskette should be accompanied by a cover letter and should be submitted in ''read only'' mode. The diskette should be clearly labeled with the commenting party's name, proceeding (including the docket number in this case [ET Docket No. 99–34], type of pleading (comment or reply comment), date of submission, and the name of the electronic file on the diskette. The label should also include the following phrase ''Disk Copy—Not an Original.'' Each diskette should contain only one party's pleadings, preferably in a single electronic file. In addition, commenting parties must send diskette copies to the Commission's copy contractor, International Transcription Service, Inc., 1231 20th Street, NW, Washington, DC 20037.

Ex Parte Presentations

35. This is a permit-but-disclose notice and comment rule making proceeding. *Ex parte* presentations are permitted, except during any Sunshine Agenda period, provided they are disclosed as provided in the Commission's rules. See generally 47 CFR 1.1200(a), 1.1203, and 1.1206.

Ordering Clauses/Authority

36. *It is ordered* that the Commission's Office of Public Affairs, Reference Operations Division, *Shall send* a copy of this Notice of Proposed Rule Making, including the Initial Regulatory Flexibility Analysis, to the Chief Counsel for Advocacy of the Small Business Administration. Actions herein are taken pursuant to authority contained in Sections 4(i), 7, 301, 303, 307, and 336 of the Communications Act of 1934, as amended, 47 U.S.C. Sections 154(i), 301, 302, 303, 307, and 336.

37. For additional information concerning this matter, contact Alan Stillwell, Office of Engineering and Technology, (202) 418–2470.

List of Subjects in 47 CFR Parts 73 and 74

Television.

Federal Communications Commission.

Magalie Roman Salas,

Secretary.

[FR Doc. 99–3092 Filed 2–8–99; 8:45 am]

BILLING CODE 6712–01–P

Notices

Federal Register

Vol. 64, No. 26

Tuesday, February 9, 1999

This section of the FEDERAL REGISTER contains documents other than rules or proposed rules that are applicable to the public. Notices of hearings and investigations, committee meetings, agency decisions and rulings, delegations of authority, filing of petitions and applications and agency statements of organization and functions are examples of documents appearing in this section.

DEPARTMENT OF AGRICULTURE

Food Safety and Inspection Service

[Docket No. 99–010N]

Codex Alimentarius Commission: Sessions of the Executive Committee and the Codex Alimentarius Commission (Codex)

AGENCY: Food Safety and Inspection Service, USDA.

ACTION: Notice of public meeting; request for comment.

SUMMARY: The Office of Under Secretary for Food Safety; United States Department of Agriculture (USDA), the Food and Drug Administration (FDA); United States Department of Health and Human Services (HHS), and the Environmental Protection Agency (EPA) are sponsoring a public meeting on February 11, 1999. The purpose of this meeting is to provide information and receive public comments on agenda items to be discussed at the Forty-sixth Session of the Executive Committee of the Codex Alimentarius Commission and the Twenty-third Session of the Codex Alimentarius Commission which will be held in Rome, Italy from June 24–25, 1999, and June 28–July 3, 1999, respectively.

DATES: The public meeting is scheduled for Thursday, February 11, 1999, from 9:00 AM to 12:30 PM.

ADDRESSES: The public meeting will be held at the Arlington Hilton, 950 N. Stafford Street (Ballston Metro stop), Arlington, VA. Send an original and two copies of comments to: FSIS Docket Clerk, Docket #99–010N, U.S. Department of Agriculture, Food Safety and Inspection Service, Room 102, Cotton Annex, 300 12th Street, SW, Washington, DC 20250–3700. All comments submitted in response to this notice will be available for public inspection in the Docket Clerk's Office between 8:30 a.m. and 4:30 p.m., Monday through Friday.

FOR FURTHER INFORMATION CONTACT: F. Edward Scarbrough, Ph.D., U.S. Manager for Codex Alimentarius, Room 4861, South Building, U.S. Department of Agriculture, 14th and Independence Avenue SW, Washington, DC 20250; Telephone (202) 205–7760.

SUPPLEMENTARY INFORMATION:

Background

The Codex Alimentarius Commission (Codex) was established in 1962 by two United Nations organizations, the Food and Agriculture Organization and the World Health Organization. Codex is the principal international organization for encouraging fair international trade in food and protecting the health and economic interests of consumers. Through adoption of food standards, codes of practice, and other guidelines developed by its committees, and by promoting their adoption and implementation by governments, Codex seeks to ensure that the world's food supply is sound, wholesome, free from adulteration, and correctly labeled. Codex meets biennially. The Executive Committee serves as the executive body of Codex between the biennial meetings.

Issues To be Discussed at the February 11, 1999, Public Meeting

1. Report on the Forty-fifth Session of the Executive Committee. (This includes proposals to the Commission regarding the general orientation and program of work of the Commission.)

2. Reports by Coordinators on Regional Activities. (Coordinators of each of the five Regional Coordinating Committees report on regional concerns about food standards and food control.)

3. Consideration of Draft Standards and Related Texts. (These are items being considered at Step 5 or Step 8 of the Codex Procedure for the elaboration of Codex Standards and Related Texts.)

4. Consideration of Proposals to Elaborate New Standards and/or Related Texts and Other Matters Arising from Reports of Codex Committees. (Items 5 through 9 are issues currently being considered in the Codex Committee on General Principles. They pertain to matters affecting the operations of the Commission.)

5. Measures Intended to Facilitate Consensus Affecting the Operations of Codex.

6. Review of the General Principles of Codex.

A. Revision of the Acceptance Procedure.

B. Consideration of special treatment of developing Countries.

7. Review of the Status and Objectives of Codex Texts.

8. Review of the Statements of Principle on the Role of Science and the Extent to Which other Factors are Taken into Account—Application in the Case of BST and PST.

9. Procedures concerning the participation of International Non-governmental Organizations.

10. Designation of Host Governments for Codex Committees.

11. Welcome public comments on any matters believed to be appropriate by Codex.

Public Meeting

The public meeting is scheduled for February 11, 1999, at the Arlington Hilton, 950 N. Stafford Street, (Ballston Metro stop) Arlington, VA. Attendees will hear brief descriptions of the issues and will have the opportunity to pose questions and offer comments. Comments also may be sent to the FSIS Docket Room (see **ADDRESSES**). Please state that your comments relate to Codex activities and specify which issues your comments address.

Done at Washington, DC on February 3, 1999.

Patrick Clerkin,

Director, U.S. Codex Staff.

[FR Doc. 99–3116 Filed 2–4–99; 1:49 pm]

BILLING CODE 3410–DM–P

DEPARTMENT OF AGRICULTURE

Forest Service

Committee of Scientists Meeting

AGENCY: Forest Service, USDA.

ACTION: Notice.

SUMMARY: The Committee of Scientists will hold a public teleconference call on Tuesday, February 23, 1999. The teleconference call will begin at 11:00 a.m. and end at 2:00 p.m. (eastern standard time). The purpose of the telephone conference call is for the Committee of Scientists to continue discussion of its report and recommendations to the Secretary of Agriculture and the Chief of the Forest

Service. The public is invited to attend this teleconference call and may be provided an opportunity to comment on the Committee of Scientists' deliberations during the teleconference, only at the request of the Committee.

DATES: The teleconference call will be held on Tuesday, February 23, 1999, from 11:00 a.m. to 2:00 p.m. (eastern standard time).

ADDRESSES: The teleconference will be held at the USDA Forest Service headquarters, Sidney R. Yates Federal Building, 201 14th Street, S.W., Washington, D.C., in the Greely Conference Room (5th floor—SW Wing) and at all Regional Offices of the Forest Service, which are listed in the table under Supplementary Information.

Written comments on improving land and resource management planning may be sent to the Committee of Scientists, P.O. Box 2140, Corvallis, OR 97339. Also, the Committee may be accessed via the Internet at www.cof.orst.edu./org/scicomm/.

FOR FURTHER INFORMATION CONTACT: For additional information concerning the teleconference, contact Bob Cunningham, Designated Federal Official to the Committee of Scientists, by telephone (202) 205–1523.

SUPPLEMENTARY INFORMATION: The public may attend the teleconference at the following field locations:

USDA FOREST SERVICE REGIONAL OFFICE LOCATIONS

Region 1: Northern Region	Federal Building, 200 E Broadway	Missoula, MT.
Region 2: Rocky Mountain Region	740 Simms St.	Golden, CO.
Region 3: Southwestern Region	Federal Building, 517 Gold Ave., SW	Albuquerque, NM.
Region 4: Intermountain Region	Federal Building, 324 25th St.	Ogden, UT.
Region 5: Pacific Southwest Region	630 Sansome St.	San Francisco, CA.
Region 6: Pacific Northwest Region	333 SW 1st Ave.	Portland, OR.
Region 8: Southern Region	1720 Peachtree Rd. NW	Atlanta, GA.
Region 9: Eastern Region	310 W. Wisconsin Ave., Room 500	Milwaukee, WI.
Region 10: Alaska Region (office will open early)	Federal Office Building, 709 W. 9th St.	Juneau, AK.

The Committee of Scientists was chartered to provide scientific and technical advice to the Secretary of Agriculture and the Chief of the Forest Service on improvements that can be made to the National Forest System land and resource management planning process (62 FR 43691; August 15, 1997). Notice of the names of the appointed Committee members was published December 16, 1997 (62 FR 65795.

Dated: February 3, 1999.

Gloria Manning,

Acting Deputy Chief for National Forest System.

[FR Doc. 99–3104 Filed 2–8–99; 8:45 am]

BILLING CODE 3410–11–M

DEPARTMENT OF AGRICULTURE

Forest Service

Southwest Oregon Province Interagency Executive Committee (PIEC) Advisory Committee

AGENCY: Forest Service, USDA.

ACTION: Notice of meeting.

SUMMARY: The Southwest Oregon PIEC Advisory Committee will meet on February 23, 1999 in Medford, Oregon at the Medford Bureau of Land Management Office at 3040 Biddle Road. The meeting will begin at 9:00 a.m. and continue until 4:30 p.m. Agenda items to be covered include: (1) Aquatic Conservation Strategy background information and discussion; (2) Public comment; and (3) Current issues as perceived by Advisory Committee members.

FOR FURTHER INFORMATION CONTACT: Direct questions regarding this meeting to Chuck Anderson, Province Advisory Committee Coordinator, USDA, Forest Service, Rogue River National Forest, 333 W. 8th Street, Medford, Oregon 97501, phone (541) 858–2322.

Dated: February 2, 1999.

Charles J. Anderson,

Acting Designated Federal Official.

[FR Doc. 99–3010 Filed 2–8–99; 8:45 am]

BILLING CODE 3410–11–M

DEPARTMENT OF COMMERCE

Submission for OMB Review; Comment Request

The Department of Commerce (DOC) has submitted to the Office of Management and Budget (OMB) for clearance the following proposal for collection of information under the provisions of the Paperwork Reduction Act (44 U.S.C. Chapter 35).

Agency: Patent and Trademark Office (PTO).

Title: Recording Assignments (formerly Changes in Patent and Trademark Practices).

Form Numbers: PTO–1594 and PTO–1595.

Agency Approval Number: 0651–0027.

Type of Request: Reinstatement of a currently approved collection.

Burden: 104,520 hours.

Number of Respondents: 209,040 responses.

Avg. Hours Per Response: The PTO estimates that it will take 30 minutes to gather, prepare, and submit the patent and trademark recordation form cover sheets.

Needs and Uses: The patent and trademark recordation form cover sheets are used by the public to transfer the rights, title, and interest in patents or trademarks from one party to another. The public can also use these forms to submit patents and trademarks, patent and trademark assignments, other associated documents, and corrections to such items to the PTO for recording. The PTO uses these forms to process and record trademarks, patents, patent and trademark assignments, or other associated documents. The patent and trademark recordation form cover sheets also enable the PTO to ensure that all of the relevant bibliographic data related to these various documents is entered into the Patent and Trademark Assignment System (PTAS).

Affected Public: Individuals or households, businesses or other for-profit, not-for-profit institutions, farms, federal government, and state, local, or tribal governments.

Frequency: On occasion.

Respondent's Obligation: Required to obtain or retain benefits.

OMB Desk Officer: Maya A. Bernstein, (202) 395–3785.

Copies of the above information collection proposal can be obtained by calling or writing Linda Engelmeier, DOC Forms Clearance Officer, (202)

482–3272, Department of Commerce, Room 5327, 14th and Constitution Avenue, NW, Washington, DC 20230.

Written comments and recommendations for the proposed information collection should be sent within 30 days of publication to Maya A. Bernstein, OMB Desk Officer, Room 10236, New Executive Office Building, 725 17th Street, NW, Washington, DC 20503.

Dated: February 2, 1999.

Linda Engelmeier,

Departmental Forms Clearance Officer, Office of Management and Organization.

[FR Doc. 99–3076 Filed 2–8–99; 8:45 am]

BILLING CODE 3510–16–P

DEPARTMENT OF COMMERCE

Submission for OMB Review; Comment Request

The Department of Commerce (DOC) has submitted to the Office of Management and Budget (OMB) for clearance the following proposal for collection of information under the provisions of the Paperwork Reduction Act (44 U.S.C. Chapter 35).

Agency: Patent and Trademark Office (PTO).

Title: Disclosure Document Program.

Form Number: PTO/SB/95.

Agency Approval Number: 0651–0030.

Type of Request: Extension of a currently approved collection.

Burden: 5,400 hours.

Number of Respondents: 27,000 responses.

Avg. Hours Per Response: The PTO estimates that it will take 12 minutes to gather, prepare, and submit a Disclosure Document Deposit Request.

Needs and Uses: The Disclosure Document Deposit Request is used by the public to prove the date of conception for an invention. The PTO uses this form to establish the date of conception for an invention and to assign an identifying number to the Disclosure Document Deposit Request. The identifying number is used to verify whether the Disclosure Document is referenced in a related patent application filed within two years of the date that the Disclosure Document was filed.

Affected Public: Individuals or households, businesses or other for-profit, not-for-profit institutions, farms, federal government, and state, local, or tribal governments.

Frequency: On occasion.

Respondent's Obligation: Required to obtain or retain benefits.

OMB Desk Officer: Maya A. Bernstein, (202) 395–3785.

Copies of the above information collection proposal can be obtained by calling or writing Linda Engelmeier, DoC Forms Clearance Officer, (202) 482–3272, Department of Commerce, Room 5327, 14th and Constitution Avenue, NW, Washington, DC 20230.

Written comments and recommendations for the proposed information collection should be sent within 30 days of publication to Maya A. Bernstein, OMB Desk Officer, Room 10236, New Executive Office Building, 725 17th Street, NW, Washington, DC 20503.

Dated: February 1, 1999.

Linda Engelmeier,

Departmental Forms Clearance Officer, Office of the Chief Information Officer.

[FR Doc. 99–3077 Filed 2–8–99; 8:45 am]

BILLING CODE 3510–16–P

DEPARTMENT OF COMMERCE

Submission for OMB Review; Comment Request

The Department of Commerce (DOC) has submitted to the Office of Management and Budget (OMB) for clearance the following proposal for collection of information under the provisions of the Paperwork Reduction Act (44 USC Chapter 35).

Agency: National Oceanic and Atmospheric Administration (NOAA).

Title: Southeast Region Dealer and Interview Family of Forms.

Agency Form Number(s): None.

OMB Approval Number: 0648–0013.

Type of Request: Revision of a currently approved collection.

Burden: 4,357 hours.

Number of Respondents: 1,441.

Avg. Hours Per Response: 15 minutes for the requirement discussed below.

Needs and Uses: Fish dealers in the Southeast Region of the U.S. who purchase red snapper have been required to report these purchases to port agents when requested. This action proposes that dealers will now be required to mail or fax a written report to NOAA within 2 days of the end of each 7-day reporting period. The objective is to reduce misreporting and to make the dealer attest to the accuracy of the data submitted.

Affected Public: Businesses and other for-profit organizations.

Frequency: Weekly, monthly, other.

Respondent's Obligation: Mandatory.

OMB Desk Officer: David Rostker, (202) 395–3897.

Copies of the above information collection proposal can be obtained by calling or writing Linda Engelmeier, DOC Forms Clearance Officer, (202) 482–3272, Department of Commerce, Room 5033, 14th and Constitution Avenue, NW, Washington, DC 20230.

Written comments and recommendations for the proposed information collection should be sent within 30 days of publication of this notice to David Rostker, OMB Desk Officer, Room 10202, New Executive Office Building, 725 17th Street, NW, Washington, DC 20503.

Dated: February 2, 1999.

Linda Engelmeier,

Departmental Forms Clearance Officer, Office of the Chief Information Officer.

[FR Doc. 99–3078 Filed 2–8–99; 8:45 am]

BILLING CODE 3510–22–P

DEPARTMENT OF COMMERCE

Bureau of the Census

Current Retail Sales and Inventory Survey

ACTION: Proposed collection; comment request.

SUMMARY: The Department of Commerce, as part of its continuing effort to reduce paperwork and respondent burden, invites the general public and other Federal agencies to take this opportunity to comment on proposed and/or continuing information collections, as required by the Paperwork Reduction Act of 1995, Pub. L. 104–13 (44 U. S. C. 3506 (c)(2) (A)).

DATES: Written comments must be submitted on or before April 12, 1999.

ADDRESSES: Direct all written comments to Linda Engelmeier, Departmental Forms Clearance Officer, Department of Commerce, Room 5327, 14th and Constitution Avenue, NW, Washington, DC 20230.

FOR FURTHER INFORMATION CONTACT: Requests for additional information or copies of the information collection instrument(s) and instructions should be directed to Nancy Piesto, Bureau of the Census, Room 2654–FOB 3, Washington, DC 20233–6500, (301) 457–2708.

SUPPLEMENTARY INFORMATION:

I. Abstract

The Current Retail Sales and Inventory Survey provides estimates of monthly sales and end-of-month merchandise inventories of retail stores in the United States by selected kinds of business. The Bureau of Economic Analysis (BEA) uses this information to prepare the National Income and Products Accounts and to benchmark the annual input-output tables.

Statistics provided from the Current Retail Sales and Inventory Survey are used to calculate the gross domestic product (GDP).

Estimates produced from the Current Retail Sales and Inventory Survey are based on a probability sample. The sample design consists of one fixed panel where all cases are requested to report sales and/or inventories each month.

We currently publish retail sales and inventory estimates on the Standard Industrial Classification (SIC) basis. Starting in the spring of 2001, we will publish on the North American Industry Classification System (NAICS). The SIC definition of retail trade and the NAICS definition of retail trade are substantially different. The SIC defines retailers as establishments engaged in selling merchandise for personal or household consumption and rendering services incidental to the sale of the goods. Restaurants are included in retail trade under the SIC, but will move to the Accommodation and Food Services sector under NAICS. NAICS distinguishes retailers from wholesalers based on what the establishment does rather than to whom the establishment sells. Retailers are defined as those establishments that sell merchandise and attract customers using methods such as advertising, point-of-sale location, and display of merchandise. A store retailer has a selling place open to the public, merchandise on display or available through sales clerks, facilities for making cash or credit card transactions, and service provided to retail customers.

NAICS provides a better way to classify individual businesses, and will be widely adopted throughout both the public and private sectors. NAICS will change the information that is currently available with reclassifications, definitional changes, and movement of activities in or out of retail trade. NAICS is more relevant as it identifies more industries that contribute to today's growing economy. NAICS was developed by the United States, Canada, and Mexico in order to produce comparable data between neighboring countries.

Changes From SIC to NAICS—Sales

Conversion from the SIC to NAICS will significantly affect selected industries and retail trade in total. For example:

- Restaurants move from retail trade to a new sector-Accommodation and Food Services. We will continue to collect monthly sales on restaurants and publish a separate Food Services Total.
- Retail Bakeries (without seating) will move to the manufacturing sector.
- Pawn Shops will move to the finance sector.
- The Building Materials, SIC 52, currently includes mobile home dealers. Under NAICS , mobile home dealers will be included in Miscellaneous Store Retailers.
- Computer and Software Stores will be recognized as separate industries under NAICS because of growing interest among public and private data users.
- The Durable and Nondurable aggregate totals will be eliminated from publication under NAICS.

Changes From SIC to NAICS—Inventories

- Under NAICS, we will discontinue collecting inventories from the food service subsector. We will collect and publish inventories only for the Retail Sector.
- Under NAICS, all auxiliary facilities such as warehouses are classified based on the primary activity. Under SIC, warehouses are classified based on their industry classification of the establishments they primarily serve. We will continue to publish the warehouse inventory in its respective kind-of-business.
- The Durables and Nondurable aggregate totals will be eliminated from publication under NAICS.

In addition to changes concerning the conversion from SIC to NAICS, the Current Retail Sales and Inventory Survey is converting its monthly pin fed report forms to a print-on demand system referred to as DocuPrint. The key benefit of this system is its ability to print a specific document or set of related documents (when requested), and overlay variable data, bar code and address label in predetermined locations throughout the document(s), all in one pass through the printer. This process reduces the time and cost of preparing mailout packages that contain unique variable data, while improving the look and quality of the products being produced.

DocuPrint allows us to tailor survey questions to a specific respondent. For example, sales only reporters will now only see sales questions, and inventory only respondents will only see inventory questions. Company and EIN reporters will use the same report form. DocuPrint will print (overlay) the appropriate EIN or Company question.

The migration to DocuPrint will split the four forms currently used into seven in order to accommodate the sales only and inventory only respondents. The numbering system will change as follows as a result of this migration:

Old	New	Description
B–101(97)	B–101(97)S	Department Stores-Sales Only.
	B–101(97)B	Department Stores-Inventory Only.
B–111(97)	B–111(97)S	Non Department Stores-Sales Only.
	B–111(97)B	Non Department Stores-Sales and Inventory.
	B–111(97)L	Department and Non Department Stores-Sales and Inventory/LIFO.
	B–113(97)I	Department and Non Department Stores-Inventory Only.
	B–113(97)L	Department and Non Department Stores-Inventory/LIFO.
B–102(97)		Form eliminated-DocuPrint will print the appropriate EI/Company question on B–101.
B–112(97)		Form eliminated-DocuPrint will print the appropriate EI/Company question on B–111.

II. Method of Collection

We collect this information by mail, fax, and telephone follow-up.

III. Data

OMB Number: 0607–0717.

Form Number: B–101(97)S, B–101(97)B, B–111(97)S, B–111(97)B, B–111(97)L, B-113(97)I, and B–113(97)L.

Type of Review: Regular Submission.

Affected Public: Retail firms in the United States.

Estimated Number of Respondents: 10 ,500 under NAICS. 12,022 under SIC.

Estimated Time Per Response: 7.8 minutes.

Estimated Total Annual Burden Hours: 16,380 hours under NAICS. 18,754 hours under SIC.

Estimated Total Annual Cost: The cost to the respondents for fiscal year 1999 is estimated to be $313,754 based on the median hourly salary of $16.73 for accountants and auditors. (Occupational Employment Statistics-Bureau of Labor Statistics ''1996 National Occupational Employment and Wage Data Professional, Paraprofessional, and Technical Occupations,'' $16.73 represents the median hourly wage of the full-time wage and salary earnings of accountants and auditors) http://stats.bls.gov/oes/national/oes__prof.htm.

Respondent's Obligation: The collection of information is voluntary.

Legal Authority: Title 13, United States Code, Section 182.

IV. Request for 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 shall have practical utility; (b) the accuracy of the agency's estimate of the burden (including hours and cost) of the proposed collection of information; (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 respondents, including through the use of automated collection techniques or other forms of information technology.

Comments submitted in response to this notice will be summarized and/or included in the request for OMB approval of this information collection; they also will become a matter of public record.

Dated: February 3, 1999.

Linda Engelmeier,

Departmental Forms Clearance Officer, Office of the Chief Information Officer.

[FR Doc. 99–3075 Filed 2–8–99; 8:45 am]

BILLING CODE 3510–07–P

DEPARTMENT OF COMMERCE

International Trade Administration

[A–351–806]

Silicon Metal from Brazil: Notice of 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 August 6, 1998, the Department of Commerce (the Department) published the preliminary results of administrative review of the antidumping duty order on silicon metal from Brazil. This review covers five manufacturers/exporters of silicon metal from Brazil during the period July 1, 1996 through June 30, 1997.

Based on our analysis of the comments received and the correction of certain ministerial 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: January 9, 1999.

FOR FURTHER INFORMATION CONTACT: Zev Primor or Howard Smith, 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) 482–4114 and (202) 482–5193, 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 351 (1998).

Background

On August 6, 1998, the Department published its preliminary results of review, *Silicon Metal from Brazil: Preliminary Results of Antidumping Duty Administrative Review*, 63 FR 42001 *(Silicon Metal Preliminary Results),* of the antidumping duty order on silicon metal from Brazil (56 FR 36135, July 31, 1991).

We gave interested parties an opportunity to comment on the preliminary results. On October 2, 1998, we received comments from: Companhia Brasileira Carbureto De Calcio (CBCC); Ligas de Aluminio S.A. (LIASA); Companhia Ferroligas Minas Gerais-Minasligas (Minasligas); and RIMA Industrial S/A (RIMA), (collectively, the four respondents), American Silicon Technologies, Elkem Metals Company, Globe Metallurgical, Inc. and SKW Metals & Alloys, Inc., (collectively the petitioners) and General Motors Corporation (GM).

On October 21, 1998, the same parties submitted rebuttal comments. Eletrosilex Belo Horizonte (Eletrosilex) did not submit a case or rebuttal brief regarding the preliminary results. We held a public hearing on December 10, 1998, to give interested parties the opportunity to express their views directly to the Department. Based on our analysis of the comments received and the correction of certain ministerial and computer programming errors, we have made changes from the preliminary results, as described below in ''*Changes From the Preliminary Results*'' 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 covered by this administrative review is silicon metal from Brazil containing at least 96.00 percent but less than 99.99 percent silicon by weight. Also covered by this administrative review is silicon metal from Brazil containing between 89.00 and 96.00 percent silicon by weight but which contains more aluminum than the silicon metal containing at least 96.00 percent but less than 99.99 percent silicon by weight. Silicon metal is currently provided for under subheadings 2804.69.10 and 2804.69.50 of the Harmonized Tariff Schedule (HTS) as a chemical product, but is commonly referred to as metal. Semiconductor grade silicon (silicon metal containing by weight not less than 99.99 percent silicon and provided for in subheading 2804.61.00 of the HTS) is not subject to the order. Although the HTS item numbers are provided for convenience and for U.S. Customs purposes, the written description remains dispositive.

Changes From the Preliminary Results

We have made the following changes for these final results.

CBCC

We have recalculated the general and administrative (G&A) expense, financial expense, and depreciation expense included in CBCC's cost of production (COP) and constructed value (CV). In addition, we have recalculated U.S. credit expense and reclassified various expense adjustments for U.S. price as movement expenses rather than direct selling expenses. For further information refer to the discussion of CBCC in the ''Company-Specific Issues'' section below; also *see* the Memorandum to the File regarding

CBCC: Calculations for the Final Results of the 1996–1997 Antidumping Duty Administrative Review of Silicon Metal From Brazil, dated February 2, 1999, on file in the Central Records unit (CRU) located in room B–099 of the main Department of Commerce building.

Eletrosilex

We have applied an adverse facts available (FA) dumping margin for Eletrosilex because we determined that Eletrosilex's response is incomplete with respect to requested clarifications and that the data on the record is so insufficient that it cannot be used without undue difficulty. *See* the ''*Facts Available (FA)*'' section below for further discussion. Also see the ''Application of Facts Available for Eletrosilex Belo Horizonte (Eletrosilex) in the Final Results of the 1996–1997 Administrative Review'' memorandum, dated February 2, 1999, (Eletrosilex FA memo) on file in the CRU.

Minasligas

We have recalculated home market price to ensure that the ICMS tax charged to home market customers is only deducted once from home market price. We recalculated credit expense by using an interest rate of 6.7 percent. We did not allow a duty drawback for the final results. We recalculated G&A expenses included in CV and COP by using cost of manufacturing that is net of VAT. In addition, for the final results, we have revised our calculation of the G&A rate for Minasligas to exclude G&A expenses incurred by Minasligas's parent.

Rima

We have recalculated U.S. imputed credit expense, removed R$100 adjustment from both the U.S. and home market data, applied the 90/60 day contemporaneous window in the price matching analysis and removed an offset to financial expenses. For further information see the discussion of RIMA in the ''Company-Specific Issues'' section below; also see the Memorandum to the File on RIMA: Calculations for the Final Results of the 1996–1997 Antidumping Duty Administrative Review of Silicon Metal From Brazil, dated February 2, 1999, on file in the CRU.

Facts Available (FA)

In accordance with section 776(a) of the Act, we have determined that the use of adverse FA is warranted for Eletrosilex for these final results of review.

1. Application of Facts Available

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, Eletrosilex failed to provide the necessary information in the form and manner requested. 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*).

Eletrosilex responded only partially to one supplemental questionnaire and failed to respond altogether to two additional supplemental requests for information, which prevented the Department from making critical decisions involving the calculation of Eletrosilex's dumping margin. Accordingly, Eletrosilex did not act to the best of its ability to comply with the request for information and thus, under section 776(b) of the Act, an adverse inference is warranted. For further discussion of the Department's selection of FA, please refer to the *Department's Position* to Eletrosilex-specific *Comment 1* below and the Eletrosilex FA memo.

Thus, pursuant to section 776(b) of the Act, we are basing Eletrosilex's margin on adverse FA for purposes of the final results. As adverse FA for Eletrosilex, we have used the highest rate calculated for any respondent in any segment of this proceeding. This rate is 93.20 percent. *See Final Determination of Sales at Less Than Fair Value: Silicon Metal from Brazil*, 55 FR 38716 (September 20, 1990) (*Silicon Metal-LTFV*).

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 defined 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.'' *See* the Statement of Administrative Action (SAA) at 870.

The SAA further provides that the term ''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

corroborating 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 *AFBs–1997*.

As to the relevance of the margin used for adverse FA, the Department will consider information reasonably at its disposal as to whether there are circumstances that would render a margin irrelevant. *See Tapered Roller Bearings from Japan; Final Results of Antidumping Duty Administrative Review* 62 FR 47454 (September 9, 1997). 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). *See* the *Department's Position* to Eletrosilex-specific *Comment 1*, below, for further discussion.

We selected 51.23 percent as adverse because we find that this rate is sufficiently adverse to induce Eletrosilex's full cooperation in future reviews.

Interested Party Comments

We gave interested parties an opportunity to comment on the preliminary results. As noted above, we received case and rebuttal briefs from CBCC, LIASA, Minasligas, RIMA, petitioners, and GM.

General Issues

Value Added Taxes (VAT)

Comment 1: *The Department's Treatment of VAT*. The petitioners argue that the Department's new VAT policy with regard to calculating CV, which was announced in the preliminary results of this proceeding, violates the statute. According to the petitioners, under the current policy the Department will: 1) make no addition for such taxes in calculating CV where the producer/exporter can demonstrate that it was able to offset its tax liability on domestic sales; 2) include only a portion of such taxes in CV where a producer/exporter uses only a portion of the credits generated by the payment of VAT on inputs as an offset; and 3) include the entire amount of VAT in CV if a producer/exporter is unable to use any of the tax credits as an offset, or if the producer/exporter fails to provide satisfactory evidence of its tax experience on this question.

The petitioners state that there are two VAT taxes in Brazil: ICMS and IPI. The petitioners also state that, during the period of review (POR), the respondents paid VAT on input purchases regardless of whether the inputs were used in the production of silicon metal or in the production of other products. The petitioners further state that all VAT paid by the respondents were recorded indiscriminately as credits in VAT ledgers. The petitioners continue that no VAT were collected on export sales of silicon metal and that the Brazilian government did not remit or refund the VAT paid on inputs to any of the respondents upon exportation of silicon metal.

The petitioners argue that the Department's new policy is contrary to law in at least two respects. First, citing section 773(e) of the Act, the petitioners contend that the statute allows exclusion of VAT paid on inputs for export merchandise only when the VAT is remitted or refunded upon exportation of the merchandise made from the inputs. The petitioners contend that allowing for the exclusion of VAT from CV in circumstances other than those expressly provided by the statute violates the statute. Second, the petitioners maintain that, in applying its policy, the Department relied on information in the respondents' ICMS tax ledgers that does not distinguish between taxes paid on inputs for subject merchandise and other products, nor between taxes collected on sales of subject merchandise or other products. In addition, the petitioners contend that the policy does not require sales-specific tracing of taxes paid on inputs to the exported merchandise produced from such inputs. The petitioners argue that by indiscriminately considering taxes related to subject as well as non-subject merchandise, and by failing to require the sales-specific tracing of taxes, the policy contravenes the statute and case law, which require the calculation of CV to be specific to the subject merchandise and any determination regarding VAT recovery to be specific to the taxes paid on inputs for each U.S. sale.

The petitioners argue that, in order for Brazilian VAT paid on inputs not to constitute a cost of materials that must be included in CV, a respondent must demonstrate full recovery of the taxes paid on the materials used to produce the merchandise exported to the United States. In support of their argument, the petitioners cite *AIMCOR* v. *United States*, 19 CIT 966 (1995) (*AIMCOR 1995*), the subsequent redetermination upon remand *Final Redetermination of Remand in Ferrosilicon from Brazil* (January 16, 1996), and the Court of Appeals for the Federal Circuit's (CAFC's) affirmation of the Department's redetermination pursuant to *AIMCOR* v. *United States*, slip op. 96–79 at 2 (CIT 1996) (*AIMCOR 1996*).

Furthermore, the petitioners contend that the methodology the Department used in applying its new VAT policy to CBCC and LIASA is fundamentally flawed. The petitioners note that for CBCC and LIASA, the Department determined the amount of unrecovered VAT paid on inputs by multiplying a VAT ratio by the cost of manufacture.[1] The Department determined the numerator of the ratio, which is the total amount of unused VAT credits generated by the company during the POR, by subtracting the ICMS credit balance at the beginning of the POR from the ICMS credit balance at the end of the POR. The Department determined the denominator of the ratio (*i.e.*, the total COGS for export sales for 1996) by multiplying the company's total COGS for 1996 by the ratio of the total value of export sales during the POR to the total value of all sales during the POR. First, with respect to the numerator of the VAT ratio, the petitioners argue that the Department failed to recognize that ICMS tax ledgers provided by the respondents, from which the Department calculated the numerator, show only monthly total amounts of VAT paid and collected on all products, rather than VAT amounts that are specific to the subject merchandise. Second, in calculating the denominator of the VAT ratio, the petitioners argue that the Department used the annual COGS for 1996, but used export sales and total sales revenue for the POR. Also, the petitioners note that the figures used to calculate the denominator of the VAT ratio are not specific to subject merchandise.

The petitioners argue that these facts demonstrate that the current policy fails to distinguish between (1) VAT paid on inputs used to produce subject merchandise and VAT paid on inputs used to produce other products, and (2) the use of credits derived from VAT

[1] The Department added unrecovered VAT to CV in its cost calculations.

payments on inputs to reduce VAT liability generated by home market sales of subject merchandise, as opposed to home market sales of other products. As a result, the petitioners contend, the new policy fails to determine as accurately as possible the true cost to the respondent manufacturing the subject merchandise and is contrary to the statute and case law.

Minasligas, LIASA, CBCC, and RIMA agree with the Department's VAT policy as stated in the preliminary results of this proceeding because, they maintain, it recognizes the economic reality of the Brazilian tax system. The four respondents note that whether VAT paid is offset by VAT collected or is used to purchase electricity, VAT is not a cost under Brazil's tax scheme and should not be added to CV. These four respondents argue that the petitioners' argument that Brazilian VAT should always be added in full to CV because it is not ''remitted or refunded upon exportation of the subject merchandise produced from such materials ignores the economic reality of the Brazilian tax system. The respondents further assert that the Brazilian tax scheme creates a situation in which VAT may not be a cost of the materials and thus should not be included in the CV as part of the cost of the materials.

The four respondents, like the petitioners, cite *AIMCOR 1995* and the CAFC's affirmation of the Department's redetermination in *AIMCOR 1996* in support of their argument. The respondents contend that the Court of International Trade (CIT) noted ''[i]n a tax scheme such as Brazil's, a respondent may be able to show that a value-added tax on inputs did not in fact constitute a cost of materials for the exported product. For example, a respondent that has fully recovered value-added taxes upon input costs prior to exportation, has not in fact incurred the value-added tax as a cost of materials.'' *AIMCOR 1995*. Citing the CAFC's affirmation of *AIMCOR 1996* the respondents reiterate ''the method and rationale for complying with 19 U.S.C. 1677b(e)(1)(A) shall account for the economic reality that ICMS that is paid on inputs to export production, and recovered from taxes otherwise due the Brazilian government, is not a cost of producing silicon metal for export in Brazil.'' Accordingly, the respondents argue that the Department's approach does not violate the statute.

The respondents continue that the reality of the Brazilian tax system is that VAT paid and VAT collected are kept in separate tax books in accordance with Brazilian law, but are reported as one amount in each of the respective books. Therefore, the respondents state that the Department, in the preliminary results, performed the same type of analysis as that performed by the Brazilian government for determining tax liability and tax recovery.

The respondents state that if the Department were to adopt a different VAT recovery methodology for the final results, the Department should use a methodology that reconciles the petitioners' concerns with the language of the statute. The respondents suggest the following methodology for analyzing the tax recovery for each export sale: first, the respondents assert the Department could determine how much VAT was paid by each respondent on the material inputs used in the production of one ton of the exported subject merchandise. The respondents maintain that this information is on the record. Second, the respondents state that the Department could determine the total amount of VAT paid to produce the quantity sold to the United States during the POR. Finally, the respondents state that the Department could determine whether this amount was recovered from VAT collected from the domestic sales of subject merchandise, which can be found in the home market sales listings.

Department's Position: The petitioners incorrectly claim that the Department must include in CV the ICMS and IPI taxes paid on the purchase of material inputs because such taxes are not remitted or refunded upon exportation of the subject merchandise, as provided in section 773(e) of the Act. No party in this case disputes the fact that under the Brazilian VAT system, such taxes are not remitted or refunded *upon* exportation. However, as the CIT has stated, there is another statutory exception in which taxes on inputs will not constitute ''cost of materials.'' *Aimcor* v. *United States*, 19 CIT 966 (1995), aff'd, 141 F.3d 1098 (Fed. Cir. 1998) (*AIMCOR 1998*). In that case, the court held that the statute requires the inclusion in CV, of the cost of materials used in producing the merchandise ''at a time preceding the date of exportation of the merchandise.'' *Id.* at 976. The court then concluded that ''[i]n a tax scheme such as Brazil's, a respondent may be able to show that a value-added tax on inputs did not in fact constitute a 'cost of materials' for the exported product. For example, a respondent that has fully recovered value-added taxes paid upon input costs prior to exportation, has not in fact incurred the value-added tax as a 'cost of materials' *Id.* Thus, contrary to the petitioners' interpretation of the CIT rulings in *Camargo Correa Metals, S.A.* v. *United States*, 17 CIT 897, 911 (1993), *AIMCOR 1995, AIMCOR 1996*, and the CAFC ruling in *AIMCOR 1998*, we continue to believe that the courts have accorded substantial weight to the ''economic reality'' of the Brazilian tax system, which in some circumstances allows for the recovery of the tax paid on material inputs used in the production of exported merchandise. Therefore, for these final results, we have continued to calculate CV based upon the VAT methodology established in *Silicon Metal Preliminary Results*.

Further, we note that pursuant to amendments brought about by the URAA, the Act provides that CV shall be an amount equal to the sum of the cost of materials, ''during a period which would ordinarily permit the production of the merchandise in the ordinary course of business.'' *See* section 773(e)(1) of the Act. Thus, the statute does not prohibit the exclusion of such taxes from CV where recovery of the tax occurs after exportation of the subject merchandise. In the present case, the Department finds that taxes on inputs recovered during the period of the review reasonably and accurately measures the actual amount of taxes included in the cost of materials used in the production of the subject merchandise. *See* also the *Department's Position* to CBCC-specific *Comment 2* below. Thus, where a respondent demonstrates recovery of the taxes paid on material inputs during the period of review, we have determined that such taxes are not incurred, and therefore do not constitute cost of materials for purposes of calculating CV.

Moreover, the petitioners mistakenly contend that by considering taxes related to subject as well as non-subject merchandise, and by not requiring sales-specific tracing of taxes, the new policy contravenes the statute and case law. As discussed above, under the Brazilian VAT system, a tax credit issues upon the purchase of inputs used in the finished product. That credit can be used to offset tax liability to the government arising from home market sales (*i.e.*, ICMS taxes collected from home market customers). Thus, companies pay taxes on inputs, collect taxes on home market sales, and remit the difference (where the taxes collected on sales exceed those paid on inputs) to the government without regard to which inputs incurred the tax (and thus generated the credit) and which products were sold in the home market. Because any recovery of the tax paid on material inputs is contingent upon the receipt of a tax credit, and because the tax credit arises upon the purchase of inputs used in the production of

merchandise which includes subject merchandise, we find that the tax rebate is directly related to the production of the subject merchandise.

Furthermore, contrary to the petitioners' request, we have not required that respondents provide a sales-specific tracing in order to determine whether the tax is recovered. In this case, taxes paid on inputs (credits) and taxes collected on home market sales are recorded in tax ledgers without regard to the inputs generating the credits or the products sold. Given the nature of how the taxes are treated by the Brazilian government, and the corresponding manner in which they are recorded in the companies books and ledgers, we have determined that in this case, sale-specific reporting is unduly burdensome. *See* section 773(f)(1)(A) of the Act. Therefore, to the extent taxes paid on inputs (*i.e.*, credits) are not recovered, they are properly allocated across all products that generate tax credits.

Finally, we disagree with the petitioners' assertion that our VAT ratio calculation for CBCC and LIASA is flawed. The Department calculated the denominator of the ratio using sales figures from 1996, not the POR as petitioner contends. We have not addressed the VAT issues raised with respect to Rima because, for these final results, all of Rima's export sales matched to home market sales and, therefore we have not resorted to CV.

Company-Specific Issues

Eletrosilex

Comment 1: Facts Available

The petitioners argue that Eletrosilex's failure to respond to the Department's supplemental questionnaires regarding its reported U.S. and home market sales data, its COP/CV data, and ICMS taxes, warrant the application of total FA because the Department cannot perform an accurate margin calculation using the information on the record. The petitioners state that section 776(a) of the Act authorizes the Department to use the facts otherwise available where an interested party has withheld information requested by the Department. The petitioners recount several instances where the Department has resorted to total FA in a number of cases where a respondent, like Eletrosilex, responded to the Department's original questionnaire, but failed to respond to supplemental requests for information (*e.g., Certain Fresh Cut Flowers from Colombia; Final Results of Antidumping Duty Administrative Review* 61 FR 42833, 42836 (August 19, 1996) and *Notice of Final Determination of Sales at Less Than Fair Value: Steel Wire Rod from Venezuela* 62 FR 8946, 8947 (February 23, 1998)).

The petitioners argue that in this case the Department does not have enough data on the record to reasonably calculate a dumping margin. For instance, the petitioners maintain, Eletrosilex has not provided sufficient evidence for the Department to determine whether the involvement of Eletrosilex's affiliates in its U.S. sales requires use of constructed export price (CEP) as the basis for U.S. price, rather than export price (EP) as was used by the Department in the preliminary results.

Maintaining that the Department recognized the issue of affiliate involvement in U.S. sales in its March 24, 1998 and June 29, 1998, supplemental questionnaires, the petitioners note that Eletrosilex provided only invoices and payment notices, but failed to provide sales correspondence, internal or external sales order confirmations, or shipping and export documents on all its U.S. sales, as requested by the Department. The petitioners reiterate that, with the exception of invoices and payment notices, none of the requested sales information was provided by Eletrosilex.

Thus, the petitioners conclude the Department cannot resolve this issue given Eletrosilex's failure to properly respond to the Department's inquiries into this issue. Noting that section 772(d) of the Act requires additional deductions from U.S. price in the case of CEP margin comparisons, the petitioners reiterate, due to Eletrosilex's failure to respond, the Department cannot even identify the universe of required deductions to U.S. price under section 772 of the Act.

In addition to the CEP/EP issue, the petitioners contend that Eletrosilex's refusal to respond to the supplemental requests, led to Eletrosilex's failure to provide other critical information necessary to calculate an accurate margin. First, the petitioners state that the Department requested Eletrosilex to explain a major discrepancy between its reported depreciation for the POR and the depreciation recorded in its 1996 financial statements.

The petitioners argue that the Department's partial FA decision in the preliminary results (*i.e.*, the Department used the depreciation from the 1996 financial statements) on this issue did not account for a proper amount of Eletrosilex's depreciation for the portion of the POR in 1997 (*i.e.*, January through June) because Eletrosilex did not submit its 1997 financial statements. Similarly, the petitioners state that the Department included an amount for amortization of deferred expenses in Eletrosilex's COP/CV using only 1996 data. Second, the petitioners contend that Eletrosilex provided conflicting and inaccurate information regarding the basis on which it reported its U.S. and home market sales quantities. The petitioners state that Eletrosilex reported in its April 10, 1998, supplemental response that its U.S. prices were expressed on a gross-weight basis. However, the petitioners contend that invoices submitted by Eletrosilex indicate that the quantities reported in its revised U.S. sales listing are expressed on a net-weight basis. The petitioners note that for certain sales, documentation submitted by Eletrosilex listed identical gross and net weights, which the petitioners contend is not possible given the fact that silicon metal contains elements other than silicon. The petitioners maintain that Eletrosilex failed to provide a response to the Department's June 29, 1998, request that Eletrosilex report the gross and net weights for all U.S. sales and to confirm that its production volume was reported on a gross-weight basis. The petitioners argue that Eletrosilex's failure to provide all of the above information prevents the Department from ensuring that CV and U.S. price are compared on an equivalent basis.

Citing the *Final Determination of Sales at Less Than Fair Value: Vector Supercomputers From Japan* 62 FR 45623, 45625 (August 28, 1997), the petitioners argue that where a respondent's failures to provide requested information prevented the Department from fulfilling its statutory obligation to calculate an accurate margin, the Department must resort to total FA.

For the reasons stated above, the petitioners contend that the Department must apply total FA to determine Eletrosilex's dumping margin in this review. The petitioners argue that where a respondent has not cooperated to the best of its ability, the Department applies as total FA the higher of the margin from the petition or the highest rate calculated for any respondent in any prior segment of the proceeding. Given that the Department stated in its preliminary results that Eletrosilex failed to cooperate to the best of its ability, the petitioners maintain that the Department should apply as total FA the highest margin determined in any segment of this proceeding, which is 93.20 percent a rate determined in the LTFV investigation. Notwithstanding

their arguments above, the petitioners contend that if the Department does not resort to total FA for Eletrosilex, it would have to make several important changes in its calculations for the final results (*see* Eletrosilex-specific *Comments 2* through *5*).

Department's Position: We agree with petitioners that Eletrosilex failed to cooperate to the best of its ability. Moreover, we have determined that Eletrosilex's questionnaire responses on the record are insufficient for purposes of conducting a margin analysis. Pursuant to section 782(d) of the Act, we provided Eletrosilex the opportunity to explain its deficiencies in our supplemental questionnaires. In fact, as discussed above, we identified significant deficiencies in Eletrosilex's questionnaire responses and issued three separate supplemental questionnaires to Eletrosilex. Eletrosilex failed to respond in a complete manner to the first supplemental questionnaire, and did not respond at all to either of the latter two supplemental requests for information.

First, regarding the issue of whether Eletrosilex's net U.S. prices should be calculated based on CEP or EP, we issued supplemental questionnaires to Eletrosilex on March 24, June 29, and July 6, 1998. In our June 29, 1998, questionnaire, for example, we specifically requested Eletrosilex to provide sales documentation which could have resolved the issue (*see Eletrosilex FA Memo*).

In addition, in our other two supplemental questionnaires, we requested Eletrosilex to provide the financial statements and other relevant documents for certain of its affiliates. Furthermore, the Department asked Eletrosilex questions regarding the following expense and revenue items: depreciation expenses, by-product revenue, indirect selling expenses, electricity costs, fixed overhead, interest income, and duty drawback. Finally, our July 6, 1998, supplemental questionnaire, primarily requested Eletrosilex to provide further information on the ICMS tax.

After careful analysis, we have determined that Eletrosilex failed to satisfy the five requirements enunciated in section 782(e) of the Act. First, the information is so incomplete that it cannot serve as a reliable basis for reaching the applicable determination. Specifically, because of Eletrosilex's failure to provide certain sales documentation, the Department cannot properly determine whether Eletrosilex's net U.S. sales prices should be calculated based on CEP or EP. Although Eletrosilex stated that it had no CEP sales during the POR (*see* Eletrosilex's Section A questionnaire response, dated October 30, 1997, at page 4) and that all of its sales in the United States during the POR were EP sales (*see* Eletrosilex's Sections B, C, and D response dated December 1, 1997, at page C–4), the sales documentation provided by Eletrosilex in Exhibit 5 of its Section A response, indicates that this may not be the case (*see Eletrosilex FA memo*).

As stated above, Eletrosilex did not respond to the June 29, 1998, supplemental questionnaire. As a result, without the requested sales documentation, we are unable to determine from the information on the record whether Eletrosilex's U.S. sales were CEP or EP. The distinction between CEP and EP is the fundamental basis for calculating U.S. price. Furthermore, Eletrosilex did not provide the financial statements requested in the March 24 and June 29, 1998, supplemental questionnaires, nor did it respond to our June 29, 1998, supplemental questionnaire in which we requested Eletrosilex to demonstrate that its reported depreciation expense ties to its fixed assets recorded in the 1996 and 1997 financial statements. Moreover, we are unable to accurately determine inland freight for U.S. sales given that Eletrosilex failed to respond to the July 6, 1998, supplemental questionnaire, which requested clarification as to whether this expense was exclusive or inclusive of ICMS tax and requested Eletrosilex to provide the ICMS tax rate levied on inland freight for each destination on the sales tape. Eletrosilex's failure to respond to the above-referenced supplemental questionnaires also prevents the Department from accurately determining whether Eletrosilex's calculation methodology was appropriate for the following items: (1) by-product offset, (2) indirect selling expenses, (3) duty drawback adjustment, and income offset to interest expenses.

Since we are unable to make the distinction between CEP and EP and we are unable to properly determine POR depreciation and financial expenses, inland freight for U.S. sales, by-product offset, indirect selling expenses, duty drawback adjustment, and income offset to interest expenses in this case, we find that the information on the record is so incomplete that it cannot serve as a reliable basis for reaching the applicable determination and thus, Eletrosilex has not satisfied the third criterion under section 782(e) of the Act.

In addition, Eletrosilex did not act to the best of its ability to comply with requests for information. As stated in the *Silicon Metal Preliminary Results*, Eletrosilex has demonstrated, in prior reviews, an understanding for requests of additional information by the Department. In this review, Eletrosilex responded on April 10, 1998, to the Department's March 24, 1998, supplemental questionnaire. However, its failure to provide responses to our other supplemental questionnaires (*i.e.*, dated June 29 and July 6, 1998) despite numerous opportunities to do so, constitutes a failure to cooperate to the best of its ability. Thus, Eletrosilex has also failed to satisfy the fourth criterion of section 782(e) of the Act.

Lastly, the information cannot be used without undue difficulties. Although, the Department, as FA, recalculated numerous expenses (*i.e.*, fixed overhead, direct materials, financial expenses, G&A expenses, and total cost of manufacturing) in the preliminary results due to Eletrosilex's failure to respond to the two supplemental questionnaires, because we cannot resolve the EP–CEP issue and because of additional problems identified above, we are unable to calculate a margin for Eletrosilex for the final results. Even if the Department were to make an inference regarding Eletrosilex's U.S. sales and classify them as CEP, the Department does not have the information necessary to make the CEP adjustments required by section 772(d) of the Act, without undue difficulties. For instance, in our June 29, 1998, supplemental questionnaire, we requested Eletrosilex to provide the relevant financial statements. Eletrosilex did not do so. As a result, we are unable to determine the appropriate amount of selling expenses and profit to use in a CEP calculation. Moreover, there are numerous other adjustments affected by the lack of information on the record that the Department is unable to accurately calculate. Although Eletrosilex originally provided its 1996 financial statements, the Department requested Eletrosilex's 1997 audited financial statements given that the POR does not fall within Eletrosilex's fiscal year. As a result of Eletrosilex's failure to provide the 1997 statements, we are unable to calculate appropriate POR depreciation and financial expenses. Moreover, Eletrosilex's failure to respond to the June 29, 1998, supplemental questionnaire prevents the Department from analyzing whether Eletrosilex is entitled to a by-product offset, a duty drawback adjustment, or an income offset to interest expenses. Furthermore, Eletrosilex's failure to respond to the June 29 and July 6, 1998,

supplemental questionnaires prevents the Department from making determinations regarding ICMS taxes as it may apply to cost. Thus, in light of this (and in particular with respect to the CEP adjustments), the Department cannot use the information without undue difficulties. Therefore, Eletrosilex has also failed to satisfy the fifth criterion of section 782(e) of the Act.

Given the foregoing analysis, it is clear that Eletrosilex has not met all five factors enumerated in section 782(e) of the Act. Therefore, for the reasons stated above, the use of total FA is warranted in this case.

Thus, pursuant to section 776(b) of the Act, we are basing Eletrosilex's margin on adverse facts available for purposes of the final results. As adverse facts available for Eletrosilex, we have used the highest rate calculated for any respondent in any segment of this proceeding. This rate is 93.20 percent. *See Silicon Metal-LTFV*.

Comment 2: Adjustments to Eletrosilex's Reported Costs in Calculating CV

The petitioners argue that although the Department made a number of adjustments to elements of Eletrosilex's reported costs for purposes of calculating COP, the Department failed to make the same adjustments to CV. The petitioners contend that if the Department does not apply total FA to Eletrosilex, it must correct this error for the final results.

Department's Position: This issue is moot as a result of the Department's application of total FA to Eletrosilex. Therefore, we are not addressing this issue for these final results.

Comment 3: Duty Drawback

The petitioners note that in the preliminary results of this review, the Department made an upward adjustment to Eletrosilex's EP for duty drawback. However, the petitioners contend that Eletrosilex has not substantiated its eligibility for this adjustment and argue, therefore, that for the final results of review, the Department should disallow any adjustment for duty drawback for Eletrosilex.

Department's Position: This issue is moot as a result of the Department's application of total FA to Eletrosilex. Therefore, we are not addressing this issue for these final results.

Comment 4: By-Product Offset

The petitioners argue that Eletrosilex is not entitled to its claimed by-product offset to reported costs since the claimed adjustment is not based on revenue net of all expenses incurred in connection with the sale of by-products.

Department's Position: This issue is moot as a result of the Department's application of total FA to Eletrosilex. Therefore, we are not addressing this issue for these final results.

Comment 5: Production Quantities Related to COP/CV

The petitioners maintain that the Department calculated Eletrosilex's per-unit cost of manufacture (COM) using the incorrect production quantity. The petitioners argue that the Department's use of a higher production quantity than the one reported by Eletrosilex resulted in an understatement of Eletrosilex's per-unit COP/CV and its margin of dumping. Therefore, the petitioners contend that the Department should use Eletrosilex's reported production quantity.

Department's Position: This issue is moot as a result of the Department's application of total FA to Eletrosilex. Therefore, we are not addressing this issue for these final results.

CBCC

Comment 1: Overstatement of G&A Expenses

CBCC claims that the Department overstated its G&A expenses in the preliminary results of this review. Specifically, CBCC claims that the Department included in G&A expenses not only CBCC's expenses, but also a portion of the consolidated G&A expenses from CBCC's indirect parent, Solvay & Cie,[2] which included CBCC's expenses. CBCC contends that this calculation methodology double counts CBCC's G&A expenses. Moreover, CBCC suggests that Solvay & Cie's G&A as recorded on its financial statements includes selling expenses and thus further distorts the calculation. Consequently, CBCC maintains that the Department should accept its reported G&A calculation. In the alternative, CBCC proposes that the Department calculate CBCC's G&A expenses by multiplying CBCC's cost of manufacturing by the ratio of Solvay & Cie's consolidated G&A expenses to consolidated COGS. According to CBCC, this methodology is consistent with that used to calculate: (1) CBCC's financial expense in the instant review; (2) G&A expenses for Minasligas in the instant review; and (3) CBCC's G&A expense in prior segments of these proceedings (*see e.g., Silicon Metal From Brazil; Final Results of Antidumping Duty Administrative Review and Determination not to Revoke in Part* 62 FR 1970, 1981 (January 14, 1997) (*Silicon Metal 1994–1995*)).

The petitioners agree with CBCC that the methodology the Department used to calculate CBCC's G&A expenses in the preliminary results partially double counts those expenses. However, the petitioners claim that the same flaw exists in CBCC's calculation of G&A expenses. Moreover, the petitioners claim that both calculation methodologies are based on the G&A expenses of CBCC's indirect parent, Solvay & Cie, which do not include the cost of certain administrative services performed for CBCC by its direct parent, Solvay do Brasil. Despite CBCC's claims to the contrary, the petitioners maintain that the administrative services in question were performed on behalf of CBCC. Nevertheless, for this review, the petitioners agree with CBCC that the Department should calculate CBCC's G&A expenses by multiplying CBCC's cost of manufacturing by the ratio of Solvay & Cie's consolidated G&A expenses to consolidated COGS.

Department's Position: We agree with both the petitioners and CBCC, in part. In the preliminary results of this review, the Department partially double counted G&A expenses by adding to CBCC's G&A expenses a portion of the consolidated G&A expenses from CBCC's indirect parent which included CBCC's expenses. However, for these final results we have not used consolidated figures from CBCC's indirect parent, as was suggested by the petitioners and CBCC, because ''it is the Department's normal practice to calculate the G&A expense rate based on the respondent company's unconsolidated operations plus a portion of G&A expenses incurred by affiliated companies on behalf of the respondent.'' (*See Notice of Final Determination of Sales at Less Than Fair Value: Stainless Steel Wire Rod From Japan* 63 FR 40434, 40440 (July 29, 1998) and *Final Determination of Sales at Less Than Fair Value: Fresh Atlantic Salmon From Chile*, 63 FR 31411, 31433 (June 9, 1998) (*Salmon From Chile*), wherein the Department stated that its ''normal methodology does not rely on consolidated level G&A expense'').

Further, in response to the petitioners' allegation that we did not include relevant G&A costs incurred by CBCC's direct parent, we note that CBCC, in its questionnaire response stated that its direct parent performed certain administrative services in connection with CBCC's operations. CBCC claimed, however, that these services were performed on behalf of the direct parent,

[2] Solvay & Cie owns Solvay do Brazil, which in turn owns CBCC.

not CBCC. We disagree with CBCC's claim. The services in question, the nature of which is proprietary, are typically required by owners or managers of businesses in order to control and manage their business operations. CBCC benefits from any service that promotes the effective management of its operations and, thus, these services can be viewed as being performed on CBCC's behalf. Consequently, in order to account for the administrative services performed on behalf of CBCC, for the final results we recalculated CBCC's G&A expenses by adding to CBCC's G&A expenses a portion of the G&A expenses incurred by the company's direct parent. With respect to our calculation of G&A expenses for Minasligas, please see the *Department's Position* to Minasligas-specific *Comment 6*.

Comment 2: Exclusion of ICMS Tax Expense From Reported Costs

CBCC claims that a portion of the ICMS tax paid by the company during the POR is not a cost of producing the subject merchandise because it was used to reduce payments on electricity costs after the POR. According to CBCC, the Department verified that the company records ICMS tax paid to suppliers as a credit, rather than a cost in its accounting records. Furthermore, CBCC notes that Brazilian law allows companies to reduce the amount of tax that is payable to the government as a result of tax collections on sales, or to reduce payments due on electricity costs. CBCC argues that the Department does not consider the portion of ICMS tax payments used to offset tax collections to be a cost of production and, thus, it follows that ICMS tax payments used to purchase electricity are not a cost either.

The petitioners submit that the Department should not consider this issue because in the preliminary results, the Department calculated CBCC's margin based on home market sales, not CV (petitioners assume CBCC is arguing with respect to CV). Nevertheless, the petitioners urge the Department to reject CBCC's argument because they claim that respondents must report costs based on the costs incurred during the POR and the record shows that none of the respondents in this review used ICMS tax credits during the POR to reduce payments on electricity costs.

Department's Position: We agree, in part, with the petitioners. However, before elaborating on our position, it would be useful to make two observations regarding the preceding arguments. First, although CBCC argued that the Department should not consider the ICMS tax paid on inputs to be a cost of production, we assumed, as did petitioners, that CBCC was arguing that the ICMS tax should not be included in CV since in the preliminary results, the Department did not intentionally include any ICMS tax in CBCC's cost of production. Second, we need to address this issue because, contrary to petitioners' claim, in the preliminary results the Department based normal value (NV) for CBCC on both CV and home market sales.

The record of this review demonstrates that CBCC did not use any of its ICMS tax credits to reduce payments on electricity costs during the POR. CBCC pays ICMS tax on various purchases. The Brazilian government allows companies to recover the amount of ICMS tax paid on purchases by retaining ICMS tax collected on home market sales of finished products or by reducing payments on electricity costs. If a company pays more ICMS tax on purchases than it collects on sales or than it can use to pay electricity costs, the company maintains unused ICMS tax credits. Even though a company does not record the ICMS tax credits as a cost in its records, the credits reflect actual expenditures (to the extent they are not recovered or used to offset electricity costs). Thus, ICMS tax credits that are generated during the POR but that are not used during the POR to either offset tax collections or to pay electricity costs, represent unreimbursed expenditures or costs for the POR. If a respondent recovers in a subsequent POR some or all of the ICMS tax credits that were generated during the POR, this should be taken into account in calculating costs for the subsequent period, not the current POR. This is consistent with the Department's practice where the Department has ''consistently required and used the per-unit weighted-average costs incurred during the POR.'' *See Final Results of Antidumping Duty Administrative Review: Canned Pineapple Fruit From Thailand* 63 FR 7392, 7399 (February 13, 1998). Therefore, we did not use CBCC's ICMS tax credits used to pay electricity costs to reduce CV because these credits were not used during the POR.

Comment 3: Revocation of the Antidumping Order as to CBCC

CBCC urges the Department to consider its request for revocation of the order as to CBCC, and to revoke said order if the results of the instant administrative review supports such action. In making its argument for revocation, CBCC notes that it received zero or de minimis dumping margins in the two administrative reviews preceding the instant review. Furthermore, CBCC notes that the following events, pertaining to the issue of revocation, occurred in the instant review: (1) July 29, 1997—CBCC requested an administrative review of its sales; (2) July 31, 1997—the petitioners requested an administrative review of CBCC's POR shipments; (3) October 30, 1997—CBCC withdrew its request for administrative review; (4) November 12, 1997—CBCC rescinded its withdrawal of request for review and requested that the order be revoked with regard to CBCC.

CBCC claims that it did not receive the service copy of the petitioners' July 31, 1997 request for an administrative review and, thus, was unaware of this request at the time that it withdrew its request for an administrative review. According to CBCC, the company terminated its withdrawal request and made a request for revocation upon learning of the petitioners' review request.

CBCC argues that the statute does not preclude the Department from considering its request for revocation of the order. Moreover, CBCC contends that it would be overly legalistic for the Department to refuse to consider the revocation request given that there is no procedural difference between the instant review and a revocation review other than the fact that the Department has not published a notice of request for revocation. CBCC maintains that there is no deadline for the Department to publish such a notice and, thus, the Department can amend its prior notice of initiation to include the request for revocation. In light of the confusing chain of events that are outlined above, CBCC states, the Department should consider its request for revocation.

The petitioners argue that the Department should not consider CBCC's request for revocation for two reasons. First, the petitioners maintain that CBCC's request is invalid because it does not contain the necessary certification pursuant to 19 CFR 351.222(e)(1) that CBCC sold silicon metal to the United States in commercial quantities during the three relevant consecutive years. Second, the petitioners contend that CBCC's revocation should not be considered because it was untimely (*i.e.*, the Department's regulations provide that revocation may be requested in writing during the annual anniversary month); however, CBCC filed its request for revocation more than three months after the end of the anniversary month. The petitioners dismiss the reason cited by CBCC for the timing of the revocation

request, namely that CBCC was unaware of petitioners' request for review because it never received the service copy of the petitioners' request as disingenuous and note that they had placed on the record of this review a copy of the messenger request bearing the signature of an employee of CBCC's counsel which acknowledges receipt of the petitioners' request for review. Furthermore, the petitioners note that CBCC's failure to file a timely request for revocation resulted in the Department not publishing with the initiation notice, a ''Request for Revocation of the Order.'' Moreover, argue the petitioners, because revocation was not at issue, the Department never inquired into, or examined at verification, the likelihood of future dumping by CBCC. Thus, according to the petitioners, the Department did not make a determination in its preliminary results as to whether there is a reasonable basis to believe that the requirements of revocation are met. For the foregoing reasons, the petitioners contend that there is no basis on which the Department could revoke the order with respect to CBCC.

Department's Position: We agree with the petitioners. Section 351.222(e)(1) of the Department's regulations state that ''during the third and subsequent annual anniversary months of the publication of an antidumping order * * * an exporter or producer may request in writing that the Secretary revoke an order * * *'' During the instant review, CBCC failed to file a timely written request for revocation of the order with respect to CBCC. It was not until more than three months after the anniversary month that CBCC requested that the Department ''construe'' its timely request for an administrative review as a request for revocation of the antidumping duty order. Any confusion on CBCC's part that resulted in the withdrawal of its request for an administrative review, the subsequent cancellation of that withdrawal, and its request that the Department ''construe'' its request for administrative review as a request for revocation, occurred after the deadline to request a revocation of the order. Thus, these facts cannot be viewed as mitigating CBCC's failure to file a timely request for revocation of the order with respect to CBCC. Moreover, the Department's refusal to ''construe'' CBCC's request for an administrative review as a request for revocation is not an ''overly legalistic'' position. Contrary to CBCC's assertion, there are procedural differences between an administrative review conducted pursuant to a revocation request and other administrative reviews. Most notably, before the Department revokes an antidumping order with respect to a party, section 351.222 (b)(2)(ii) of the Department's regulations require the Department to conclude that it is not likely that the party ''will in the future sell the subject merchandise at less than normal value.'' Typically, when the likelihood of the resumption of dumped sales is at issue, the Department considers evidence, submitted by the parties to the review, regarding the likelihood of future dumping (*see Brass Sheet and Strip From Canada; Preliminary Results of Antidumping Duty Administrative Review and Notice of Intent to Revoke Order in Part*, 63 FR 6519, 6522 (February 9, 1998)). A party may raise, and thus the Department will consider, a number of factors in that context, such as conditions and trends in the United States and exporting country markets, currency movements, and the ability of the foreign entity to compete in the U.S. market without selling at LTFV (*see e.g., Brass Sheet and Strip From Germany; Final Results of Antidumping Duty Administrative Review and Determination Not to Revoke in Part*, 61 FR 49727, 49730 (September 23, 1996) and *Dynamic Random Access Modules; Final Results of Antidumping Duty Administrative Review*). None of this was done in the instant review because CBCC did not file a timely written request for revocation of the order. Thus, because procedures required in a revocation review were not followed in the instant review, the Department will not amend the notice of initiation for the instant review and transform the current administrative review into a review conducted pursuant to a revocation request. As the Department noted in *Color Television Receivers From the Republic of Korea; Final Results of Antidumping Duty Administrative Reviews*, 61 FR 4408, 4414 (February 6, 1996), a respondent can only preserve its right to revocation by filing a timely revocation request. Therefore, for the foregoing reasons, we have not considered revocation with respect to CBCC for these final results of review.

Comment 4: Inclusion of Depreciation Expense on Common and Idle Assets in Reported Cost

The petitioners claim that the Department incorrectly calculated CBCC's depreciation expense in the preliminary results because it failed to include in its calculation the depreciation expense incurred on common and idle assets. According to the petitioners, the Department's established practice is to include such depreciation expense in the reported cost. *See Final Determinations of Sales at Less Than Fair Value: Certain Hot-Rolled Carbon Steel Flat Products, Certain Cold-Rolled Carbon Steel Flat Products, and Certain Cut-To-Length Carbon Steel Plate From Belgium* 58 FR 37083, 37089 (July 9, 1993) and *Silicon Metal 1993–1994* at 1958).

CBCC did not comment on this issue.

Department's Position: We agree with the petitioners. The Department's practice is to include in reported costs a portion of the depreciation expense incurred on idle assets and on assets that are associated with the overall operations of the company, rather than a specific product (*i.e.,* common assets). *See Salmon From Chile* at 31436 and *Elemental Sulphur From Canada; Final Results of Antidumping Duty Administrative Review* 62 FR 37958, 37959 (July 15, 1997). In Exhibit 2 of its April 30, 1998 supplemental response, CBCC reported depreciation expense incurred on idle and common assets. However, in the preliminary results, the Department failed to include this expense in its calculation of total depreciation expense incurred in the production of silicon metal. We have corrected this oversight in the final results by including depreciation expense on common assets in the cost of manufacturing and depreciation expense on idle assets in G&A expenses. *See Silicomanganese From Brazil; Final Results of Antidumping Duty Administrative Review* 62 FR 37869, 37871 (July 15, 1997) regarding the Department's practice of including costs associated with idle assets in G&A expenses.

Comment 5: Interest Income Offset to Financial Expenses

The petitioners contend that the Department should not allow CBCC to reduce total financial expenses by ''income from current assets'' because CBCC failed to substantiate and document that this category of income qualifies as an offset to financial expenses under the Department's established practice. The petitioners maintain that the Department only allows respondents to reduce financial expense by *interest* income derived from short-term investments of working capital. According to petitioners, CBCC has the burden of establishing its right to reduce financial expense by such interest income. However, in the instant review, the petitioners claim that CBCC never demonstrated that ''income from current assets'' constituted interest income, nor did it demonstrate that the

interest income was derived from short-term investments of working capital.

CBCC claims that it correctly reduced total financial expenses by income from current assets because by definition current assets are short-term in nature and, thus, the income generated from these assets is short-term in nature.

Department's Position: We agree with the petitioners. In calculating COP and CV, it is the Department's practice to allow a respondent to offset (*i.e.*, reduce) financial expenses with short-term interest income earned from the general operations of the company. *See e.g., Timken* v. *United States,* 852 F. Supp. 1040, 1048 (CIT 1994) (*Timken*). In calculating a company's cost of financing, we recognize that, in order to maintain its operations and business activities, a company must maintain a working capital reserve to meet its daily cash requirements (*e.g.*, payroll, suppliers, etc.). The Department further recognizes that companies normally maintain this working capital reserve in interest-bearing accounts. The Department, therefore, allows a company to offset its financial expense with the short-term interest income earned on these working capital accounts. The Department does not, however, allow a company to offset its financial expense with income earned from investing activities (*e.g.*, long-term interest income, capital gains, dividend income) because such activities are not related to the current operations of the company. *See e.g., Antifriction Bearings (Other Than Tapered Roller Bearings) and Parts Thereof From The Federal Republic of Germany; Final Results of Antidumping Duty Administrative Review* 56 FR 31734 (July 11, 1991). We note that the CIT has upheld the Department's approach to calculating the financial expense offset with only short-term interest income. *See Gulf States Tube Division of Quanex Corp.* v. *United States,* 981 F. Supp. 630 (CIT 1997) and *NTN Bearing Corp.* v. *United States,* 905 F. Supp.1083, 1097 (CIT 1995) (citing *Timken* at 1048), in which the CIT held that, to qualify for an offset, interest income must be related to the ''ordinary operations of the company''.

Furthermore, we note that the burden of proof to substantiate and document this adjustment is on the respondent making a claim for an offset. *See e.g., Timken Company* v. *United States,* 673 F. Supp. 495, 513 (CIT 1987); and *Gray Portland Cement and Clinker from Japan; Final Results of Antidumping Duty Administrative Review* 60 FR 43761, 43767 (August 23, 1995). In the instant review, the Department requested that CBCC list ''all interest income and expense items and other financing amounts used to compute net interest expense.'' *See* the Department's antidumping questionnaire dated September 22, 1997 at page D–12. In response to the Department's request, CBCC provided a worksheet wherein it calculated net interest expense by reducing total consolidated financial expenses by total consolidated financial income from current assets. However, CBCC never listed all of the income items that were included in the total consolidated financial income from current assets and, thus, we are unable to determine whether the total claimed income offset includes only interest income that is short-term in nature. Moreover, the types of current assets held by the consolidated entity do not clearly demonstrate that the assets generated only interest income (*e.g.*, the consolidated entity listed among its current assets, ''Short-term cash investments—Other investments''). Therefore, by simply offsetting financial expense by the total financial income from current assets, CBCC failed to demonstrate that the ''income from current assets'' constituted short-term interest income. Accordingly, for the final results we disallowed the claimed offset to financial expense.

LIASA

Comment 1: Whether LIASA's sale to the United States is a bona fide sale

The petitioners contend that the Department should disregard LIASA's U.S. sale for purposes of calculating a dumping margin because the sale in question is not a bona fide arm's-length transaction. The petitioners claim that the CIT has recognized in *FAG U.K. LTD.* v. *United States,* 945 F. Supp. 260, 265 (CIT 1996) (*FAG U.K.*) and *Chang Tieh Industry Co., Ltd.* v. *United States,* 840 F. Supp. 141 (CIT 1993) (*Chang Tieh Industry*) that the Department may exclude from its margin calculations U.S. sales that are not the result of a bona fide arm's-length transaction. Also, the petitioners note that in *Certain Cut-To-Length Carbon Steel Plate From Romania: Notice of Rescission of Antidumping Duty Administrative Review,* 63 FR 47232, 47234 (September 4, 1998) (*Steel Plate From Romania*), the Department in fact excluded the U.S. sales transaction from its calculations because it was not commercially reasonable and, thus, not a bona fide sale. The petitioners note that the Department rejected the U.S. sales transaction in *Steel Plate From Romania* based on, among other things, the total costs borne by the U.S. importer and the fact that the sale involved selling practices atypical of the parties' normal selling practices. Furthermore, the petitioners point out that the Department made its determination despite respondent's argument that the sale may not have been commercially viable in all respects because it was a test shipment.

According to the petitioners, the circumstances surrounding LIASA's sale, which was also a test shipment, are similar to those in *Steel Plate From Romania.* Moreover, the petitioners maintain that regardless of whether a sale is a test shipment, the Department's practice is to exclude from its calculations sales that are not commercially reasonable and, thus, not bona fide.

According to the petitioners, LIASA's test sale was not commercially reasonable because it: (1) was made at an artificial, noncommercial price; (2) was delivered using costly air transportation; and (3) involved atypical selling practices. The petitioners claim that there was nothing unusual about the chemical specifications of the merchandise sold by LIASA; however, they allege that LIASA's sale price was noncommercial when compared to contemporaneous prices charged by other silicon metal suppliers and by LIASA on silicon metal sales in Brazil. Additionally, the petitioners claim LIASA's sale price was noncommercial because, according to the petitioners, the price was aberrational when compared to the average contemporaneous Metals Week U.S. dealer price for imported silicon metal. Also, the petitioners submitted affidavits which they argue indicate that the price charged by LIASA was not consistent with the price that would typically be charged for a test sale. Furthermore, the petitioners contend that it is not commercially reasonable for a producer in a highly competitive market, such as the silicon metal market, to charge a noncompetitive price on a test sale when the purpose of such a sale is to qualify for further sales to a new customer. The petitioners dismiss LIASA's claim that market conditions dictated the price of its transaction. According to the petitioners, the Metals Week dealer import price for silicon metal, which is often used as a guide in price negotiations, steadily and significantly declined during the POR due to an increasing supply of silicon metal in the U.S. market.

In addition, the petitioners contend that there was no commercial reason for LIASA to transport silicon metal to the United States by air. First, the petitioners argue that the U.S.

customer's operations were closed at the time LIASA's shipment was scheduled to arrive in the United States. Second, the petitioners claim that the U.S. customer could have obtained the merchandise from other suppliers around the same time that LIASA's shipment was scheduled to arrive in the United States. Third, the petitioners note that the use of air freight significantly increased the costs borne by the U.S. customer. Consequently, the petitioners maintain that the use of air freight in the absence of any commercial reason for doing so, demonstrates that the sale was not commercially reasonable, and thus not *bona fide*. According to the petitioners, the sole reason that LIASA used air freight was in order to enter its shipment in time for a new shipper review so that LIASA could avoid the 91.06 percent ''all others'' rate. The petitioners base their assertion, in part, on the fact that LIASA's sale entered the U.S. just before the deadline for requesting a new shipper review (*i.e.*, are review of the six-month period immediately preceding the sem-iannual anniversary month). Additionally, the petitioners maintain that their assertion is confirmed by LIASA's sales correspondence that contains references to the instant review and the effects of the antidumping duty order on silicon metal on the U.S. sale at issue.

Lastly, the petitioners argue that LIASA's U.S. sale involved atypical selling practices. Specifically, the petitioners contend that although LIASA was entering into its first business relationship with the U.S. customer, LIASA abandoned its normal selling practice and shipped the merchandise without receiving a purchase order from the customer. The petitioners state that this is further evidence that LIASA's U.S. sale was not commercially reasonable.

General Motors (GM), an interested party in the instant review, argues that the petitioners are incorrect because (1) the statute does not permit exclusion of the sale; and (2) there is no basis on which to conclude that the transaction is not bona fide. According to GM, the Department must include all U.S. sales in its margin calculations for administrative reviews because section 751(a)(2)(A) of the Act requires the Department to determine the NV and EP of each entry of subject merchandise and the dumping margin for each such entry. Furthermore, GM maintains that the Department has clearly stated and long held that it does not have the discretion to disregard U.S. sales in administrative reviews. GM notes that examples of the Department's long-standing practice of including all U.S. sales in its analysis for administrative reviews can be found in *Carbon Steel Wire Rope From Mexico; Final Results of Antidumping Duty Administrative Review* 63 FR 46753 (September 2, 1998) (*Wire Rope From Mexico*), *Antifriction Bearings (Other Than Tapered Roller Bearings) and Parts Thereof From France, et al; Final Results of Antidumping Duty Administrative Reviews, Partial Termination of Administrative Reviews, and Revocation in Part of Antidumping Duty Orders* 60 FR 10900 (February 28, 1995), *Color Television Receivers From the Republic of Korea; Final Results of Antidumping Duty Administrative Review* 56 FR 12701 (March 27, 1991), and *Tapered Roller Bearings and Parts Thereof, Finished and Unfinished, From Japan and Tapered Roller Bearings, Four Inches or Less in Outside Diameter, and Components Thereof, From Japan; Final Results of Antidumping Duty Administrative Reviews and Revocation in Part of an Antidumping Finding* 61 FR 57629 (November 7, 1996). GM notes that in *Wire Rope From Mexico*, the Department held that section 751 of the Act, which the petitioners refer to as a ''statutory mandate,'' requires the Department to analyze each entry into the United States within the review period, and thus, the Department based the results of the review on the single reported U.S. transaction.

In contrast, GM claims that the two court decisions cited by the petitioners fail to support exclusion of LIASA's U.S. sale because in neither case did the Department exclude a U.S. sale from an administrative review. GM notes that in *FAG U.K.*, the CIT held that the Department's authority to eliminate unusual sales from LTFV investigations ''does not extend to administrative reviews, which require that each entry be included.'' Additionally, GM contends that *Chang Tieh Industry* does not support the petitioners' position because that case involved an investigation, not an administrative review. In fact, GM maintains that the CIT has never ruled that the Department has the authority to exclude U.S. sales from an administrative review.

Moreover, GM submits that the purpose of an administrative review is for the Department to accurately assess antidumping duties on all entries during the POR, rather than consider dumping that may occur in the future. GM notes that in the preamble to its regulations the Department dismissed the concerns of one commentator regarding the *bona fide* nature of transactions used to calculate antidumping duty rates. In the context of new shipper reviews, the commentator suggested that the Department send out a ''questionnaire to the U.S. customer seeking information concerning the *bona fide* nature of the new shipper transaction.'' GM notes that the commentator claimed this approach ''would safeguard against new shippers conspiring with an unaffiliated U.S. customer to engage in a single transaction at a high price that would generate a dumping margin and deposit and assessment rates of zero.'' GM points out that the Department rejected the commentator's suggestion, noting that the new shipper would not be excluded from the order and, thus, if the ''new shipper later began to sell at dumped prices antidumping duties could be assessed with interest for any underpayment of estimated duties.'' (*International Trade Administration, Antidumping Duties; Countervailing Duties; Final Rule*, 62 FR 27296, 27320 (May 19, 1997)).

Furthermore, GM claims that the petitioners have been able to find only one case that appears to support their argument; however, according to GM, this case offers no support because the facts of the case are considerably different from the facts in the instant review. GM submits that in *Steel Plate From Romania*, the Department deviated from its long-standing practice of including all U.S. sales in its analysis during an administrative review, and terminated the administrative review based on a determination that the single U.S. sale was not *bona fide*. GM points out that the U.S. sale in *Steel Plate From Romania* was to a trading company that took a tremendous loss on the sale when it resold the merchandise. According to GM, trading companies value merchandise based on their ability to resell the merchandise at a profit. Thus, a resale of the merchandise at a loss might raise questions about the legitimacy of the initial sale. On the other hand, GM states that consumers who are testing the products of new suppliers, as was the case for LIASA's sale, may not focus on obtaining bargain prices because they know that the test quantity being purchased is small and they focus on other factors such as quality and consistency. Furthermore, GM contends that *Steel Plate From Romania* relies almost exclusively on decisions in previous proceedings involving investigations (*i.e., Chang Tieh Industry* and the *Final Determination of Sales at Less Than Fair Value: Manganese Metal From the People's Republic of China*, 60 FR 56045 (November 6, 1995) (*Manganese Metal From the PRC*)), not administrative

reviews. Because the Department may disregard U.S. sales in an investigation but not a review, GM argues that *Steel Plate From Romania* should not be controlling in the instant review.

Nevertheless, GM contends that even if Congress had placed the Department in the position of excluding U.S. sales from administrative reviews based on whether the sale was *bona fide,* the petitioners have not provided a valid reason why the Department should question LIASA's U.S. sale. GM maintains that the Department thoroughly verified the sale and found no discrepancies. Also, GM dismisses the data and affidavits submitted by the petitioners to show that the price of the sale is not commercially reasonable. GM argues that a decision as to whether the price of a transaction is commercially reasonable can only be made after considering many factors that are unique to the parties involved. GM maintains that consumers that are testing the products of new suppliers may value quality, consistency, and the relationship with a new supplier over the price obtained on the test purchase. According to GM, the petitioners' argument that the price is not commercially reasonable fails because they did not address any of these considerations. Furthermore, GM claims the Department determined in *Titanium Sponge From the Russian Federation; Notice of Final Results of Antidumping Duty Administrative Review,* 62 FR 48601 (September 16, 1997) (*Titanium Sponge From Russia*), that a price that is higher than prevailing U.S. and world prices is not a sufficient basis on which to disregard sales. Finally, with regard to the issue of price, GM characterizes the petitioners' affidavits as irrelevant arguing that they merely offer opinions as to the likely price for a test run transaction, such as LIASA's sale, while the reported price was fairly established at arm's-length.

With respect to the issue of mode of transport, GM disputes the petitioners' accusation that LIASA's U.S. sale was not commercially reasonable because it was transported via costly air freight. GM argues that the petitioners mistakenly assume that the only commercially reasonable goal is to obtain a low price for a product. GM contends that in an era of ''just-in-time delivery,'' the value of having an item in place, on time, might mitigate other factors (such as cost) involved in a transaction. For instance, GM explains, heavy goods may be shipped via air freight, for example, if a supplier is late delivering parts that are needed in order to keep a production line running, or if the parts are needed in order to meet testing schedules or delivery deadlines. GM maintains that obtaining the lowest price is not the only factor to consider when judging whether a method of transportation is commercially reasonable. Finally, GM rejects the petitioners' assertion that LIASA used air freight in order to enter its shipment in time for a new shipper review. GM notes that LIASA never requested a new shipper review and that it made its shipment a full six months prior to the end of the POR. Moreover, GM maintains that even if a single U.S. transaction is undertaken in order to establish a deposit rate in a particular review period, there is no basis to reject the transaction because the Department has stated that the statutory and regulatory structure offer sufficient safeguards to petitioners in such situations.

Additionally, GM discounts the petitioners' claim that LIASA's U.S. sale involved atypical selling practices. In particular, GM argues that the purchase order for LIASA's U.S. sale was issued in accordance with the U.S. customer's usual business practices (i.e., there was no unusual delay in issuing the purchase order given the U.S. customer's operating schedule between the time the purchase order was generated and issued).

Lastly, GM urges the Department not to reject LIASA's U.S. sale based on the petitioners' characterization of the motives of the parties involved. Specifically, GM refers to the petitioners' claim that LIASA's U.S. sale was not commercially reasonable because the sole purpose for the sale was to eliminate the antidumping duty deposit requirement for LIASA. GM notes that the petitioners reached this conclusion based on LIASA's sales correspondence that contains references to the 1997–1998 administrative review and the effects of the antidumping duty order on silicon metal on the U.S. sale at issue. However, GM maintains that the petitioners' claims are irrelevant because, according to GM, the Department has stated that it will not inquire into motives since the statutory and regulatory structure of the antidumping law provide protection to petitioners without such inquiry. Nonetheless, GM notes that there is nothing unusual about parties considering the antidumping duty order in setting prices and, in fact, GM maintains that this is precisely what the antidumping law encourages.

The petitioners contend that GM has misrepresented the case law and Departmental practice with respect to excluding non-bona fide U.S. sales from its calculations for administrative reviews. According to the petitioners, GM selectively quoted from a footnote in the CIT's decision in *FAG U.K.,* while ignoring the statement in the body of the court's decision that the Department can exclude U.S. sales from margin calculations in administrative reviews in exceptional circumstances. Moreover, the petitioners note that in *American Permac, Inc.* v. *United States,* 783 F. Supp. 1421, 1424 (CIT 1992) (*American Permac*), the court indicated that it is unfair to include distortive sales in administrative reviews ''without some methodology which compensates for the distortion.'' Furthermore, the petitioners maintain that none of the final results cited by GM involved circumstances where there was evidence (or even a claim) that the U.S. sales in question were not *bona fide* transactions. The petitioners also note that while the Department decided not to issue questionnaires in new shipper reviews seeking information regarding the *bona fide* nature of U.S. sales, it did so because it believed ''that the statutory and regulatory schemes provide adequate safeguards against such manipulation.'' Thus, the petitioners maintain that contrary to GM's claims, the Department did not address the issue of whether it can exclude U.S. sales from its margin calculations in administrative reviews in its recent rule making. However, the petitioners note that the Department stated in *Fresh and Chilled Atlantic Salmon From Norway: Final Results of New Shipper Antidumping Duty Administrative Review,* 62 FR 1430, 1432 (January 10, 1997) (*Salmon From Norway*) that it ''may disregard a U.S. sale if its is determined that the sale is not the result of a *bona fide* arm's-length transaction.'' Finally, the petitioners maintain that GM is wrong when it claims that the Department cannot exclude a U.S. sale from an administrative review because, in fact, the Department has done so in *Steel Plate From Romania.*

Department's Position: The Department has proper authority to disregard U.S. sales in administrative reviews as non-bona fide transactions. However, in this review we did not disregard LIASA's U.S. sale because the information on the record does not support a finding that the sale was not a *bona fide* transaction. While there is no express statutory or regulatory provision that addresses the exclusion of U.S. sales, the Department's authority to disregard U.S. sales for purposes of calculating a dumping margin in an administrative review has been recognized by the Court of International Trade (CIT). *See e.g., American Permac*

and PQ Corp. v. *United States,* 652 F. Supp. 724, 729 (CIT 1987). However, the CIT noted in *FAG U.K.* (at 265) that ''Commerce can only exclude sales from USP [United States Price] in an administrative review in exceptional circumstances when those sales are unrepresentative and extremely distortive.'' (Emphasis added). Accordingly, the Department has established a practice of examining and disregarding U.S. sales, where warranted. *See Salmon From Norway* at 1431–32 and *Steel Plate From Romania* at 47233–34.

However, contrary to the petitioners' claim, the basis for disregarding U.S. sales as non-bona fide transactions is not whether such sales are ''commercially unreasonable.'' *See e.g., Steel Plate From Romania* at 47234. While this factor is relevant to whether the sales are bona fide, the Department only disregards U.S. sales in exceptional circumstances where the sale is commercially unreasonable and other facts and circumstances indicate an attempt to manipulate the dumping margin. Other facts and circumstances may be, for example, the timing of the sale, the quantity involved, whether the customer is an end-user of the merchandise or is in the business of buying and reselling the subject merchandise. *See Manganese Metal From the PRC,* where the Department disregarded the sales because the evidence indicated that the sale was orchestrated to manipulate the margin calculation and was commercially unreasonable.

In the instant review, the Department has not exercised its authority to exclude LIASA's U.S. sale because there is not sufficient evidence on the record which demonstrates the existence of exceptional circumstances that warrant exclusion of this sale. First, it is important to note that the Department verified LIASA and found no discrepancies with the information the company reported regarding its U.S. sale. Additionally, unlike *Steel Plate From Romania* and *Manganese Metal From the PRC,* the facts on the record of the instant review fail to demonstrate that there was no commercial basis for the U.S. customer to engage in the transaction other than for the purpose of manipulating the dumping margin. The petitioners' claim that LIASA's sale is not a bona fide, arm's-length transaction primarily rests on their contention that the terms of LIASA's sale did not make commercial sense for the U.S. customer given the allegedly non-commercial price charged by LIASA and the related freight costs borne by the U.S. customer. While it is consistent with good business practices to purchase acceptable material at favorable prices, a purchaser's failure to obtain prices that may be favorable does not necessarily mean the transaction is not at arm's-length. Arm's-length transactions are those transactions whose terms are negotiated based on the independent interests of the parties involved. Those interests may vary depending on the parties and the nature of the sale. While obtaining a commercially reasonable price for a purchase may be of critical concern to a party who intends to resell the items purchased, price may not be as critical to an original equipment manufacturer (OEM) or an end-user which is seeking to evaluate the quality of the product. Other considerations, such as establishing supplier relationships and alternative supplier sources, may affect the price an end-user is willing to pay. In such situations, the price of the transaction may not be the primary concern because only a limited quantity is purchased for testing purposes. The record in the instant review shows that LIASA's U.S. customer was a producer that was actively searching for potential silicon metal suppliers. Also, the record indicates that the U.S. customer purchased a limited quantity of silicon metal from LIASA in order to test the quality of the merchandise. Consequently, in the instant review a potentially ''non-commercial'' cost to the U.S. purchaser (*i.e.* purchase price and transportation costs) is not sufficient to indicate that this was not a bona fide sale.

Moreover, the timing of the sale also does not support a finding that the sale was a non-bona fide transaction. Although the importer in the instant review did incur high costs for air freight, unlike *Steel Plate From Romania,* there is no indication that the merchandise was shipped by air freight solely to ensure that it entered the United States before the end of the POR. In fact, the purchaser has stated on the record that based on its time requirements it may transport various inputs using air freight, and we note that the merchandise entered the United States fully six months prior to the end of the POR. The petitioners' argument that the merchandise was air freighted to the United States in order for the party to be able to request a new-shipper review is not indicative of a non-bona fide sale since no such review has been requested by the exporter of the subject merchandise.

Finally, the fact that the U.S. customer did not issue a purchase order until after LIASA had shipped the subject merchandise is not such a significant deviation from typical commercial practice as to call into question, inter alia, the commercial reasonableness of the transaction. This is particularly so in light of the U.S. customer's operating schedule between the time the purchase order was generated and issued. Therefore, as in the preliminary results, we have treated LIASA's sale as a bona fide, arm's-length transaction.

Minasligas

Comment 1: Double Deduction of the ICMS Tax

The petitioners argue that the Department understated Minasligas's NV, by twice deducting the ICMS tax from Minasligas's reported home market sales price.

Department's Position: The Department agrees that we inadvertently deducted the ICMS tax twice from Minasligas's reported home market sales price and have corrected this error in the final results.

Comment 2: Duty Drawback Adjustment. The petitioners argue that Minasligas should not receive a duty drawback adjustment because Minasligas did not prove that while it paid duties and taxes on its purchases of imported electrodes used to produce silicon metal for sales in the home market, it did not pay such duties on inputs used to produce merchandise for export. The petitioners argue that under section 772(c)(1)(B) of the Act, the U.S. price is only adjusted upwards if the payment of duties and taxes is suspended (*i.e.*, rebated or not collected) on imported merchandise used to produce exported merchandise.

The petitioners argue that despite the Department's request that Minasligas specifically identify which electrodes had been used in the production of export merchandise and thus might have been exempt from import duties, Minasligas only provided general information regarding all electrode purchases during the POR and the duties paid on those imported purchases. The documentation provided by Minasligas, argue the petitioners, did not relate to specific importations and did not identify the imported inputs on which the duties and taxes were either paid and rebated or not collected.

The petitioners state that in the final results of the 1995–1996 review, the Department rejected a duty drawback claim made by another respondent because that respondent did not provide documentation explaining payment of duties and IPI and ICMS taxes on imported electrodes used in the home market, and failed to substantiate non-

payment of duties and IPI and ICMS taxes on imported electrodes used to produce silicon metal for export. The petitioners note that the Department employs a practice of requiring the respondent to bear the burden of demonstrating the right to an adjustment under section 772(c)(1)(B) of the Act. The petitioners argue that Minasligas did not meet that burden with respect to a duty drawback adjustment because Minasligas failed to provide documentation explaining how and why Minasligas was exempt from the payment of duties and taxes on imported electrodes used to produce merchandise for export, under the Brazilian duty drawback system.

The petitioners further argue that Minasligas's ratio of the volume of Minasligas's home market shipments of silicon metal to the volume of its total shipments exceeds the ratio of the volume of Minasligas's electrode imports on which Minasligas did not pay taxes and duties to Minasligas's total volume of electrode imports. The petitioners conclude that because these ratios differ, there is a strong indication that Minasligas did not pay taxes and duties on electrodes used in the production of silicon metal for export sales, as well as on a portion of electrodes used in production for home market sales.

Minasligas argues that since it used the same drawback calculation and has shown the same proof of payment of duties and taxes as those verified by the Department in the preceding review, it is entitled to a duty drawback adjustment for this POR. Minasligas also notes that, for this current review, it submitted government receipts which document the amount of duties and taxes it paid on electrodes.

Moreover, Minasligas objects to the petitioners implication that it could have provided more specific information regarding which electrodes are used in the production of merchandise for export as opposed to the home market. Minasligas states that it does not unscrew electrodes from its furnaces when it shifts between silicon metal production for export and silicon metal production for sales in the home market. Minasligas contends that the information it provided (*i.e.*, information documenting all of its purchases of electrodes during the POR and taxes and input duties paid on those imports) is sufficient to substantiate its claim for a duty drawback adjustment.

Finally, Minasligas states that the discrepancy in the comparison of the ratio discussed by the petitioners is a result of two things: (1) a portion of the silicon metal produced goes into inventory before it is sold, while some sales are made from inventory existing before the POR, and (2) a portion of silicon metal sold during the POR is produced with electrodes entered before the POR.

Department's Position: We agree with the petitioners that Minasligas has not met the burden of demonstrating that it is entitled to a duty drawback adjustment. The Department's practice concerning duty drawback requires that a company satisfy the requirements of a two prong test. *See Notice of Final Determination of Sales at less than Fair Value: Stainless Steel Wire Rod from Korea.* 63 FR 40420 (July 29, 1998). The two prong test used to determine whether a company is entitled to a duty drawback adjustment is as follows: ''(1) the import duty and rebate must be directly linked to, and dependent upon, one another, and (2) the company claiming the adjustment must demonstrate that there were sufficient imports of imported raw materials to account for the duty drawback received on exports of the manufactured products.''

In this segment of the proceeding Minasligas has not provided sufficient documentation to satisfy either the first or the second prong of the test. Minasligas submitted a chart that simply listed the imports for which a duty payment was made and those for which none was made. As to the first prong of the test, Minasligas did not provide adequate documentation establishing a sufficient link between import duties paid and drawback duties received. Minasligas' chart and the government receipt documentation submitted did not explain or show why it was entitled to the duty drawback claimed on certain imports. As to the second prong of the test, Minasligas did not provide adequate documentation indicating that Minasligas imported electrodes in sufficient quantities to account for the rebates received on the export of silicon metal. Accordingly, we have not made any adjustment to the U.S. price for duty drawback.

Comment 3: U.S. Credit Expense

Minasligas states that the Department used the wrong interest rate in re-calculating the U.S. credit expense. Minasligas asserts that the Department's margin program used an interest rate of 14.75 percent instead of the rate referenced in the *Minasligas Preliminary Results Analysis Memorandum* (July 30, 1998) (*Minasligas Prelim Analysis Memo*).

Department's Position: The Department agrees that we inadvertently used the wrong interest rate in re-calculating the U.S. credit expense. We have corrected this matter in the final results by using the rate calculated in the *Minasligas Prelim Analysis Memo.*

Comment 4: Double Conversion of Duty Drawback

Minasligas states that the Department converted the duty drawback twice into U.S. dollars. Minasligas argues that this double conversion resulted in a smaller duty drawback amount being added to the U.S. price.

Department's Position: The Department agrees that for the preliminary results calculations we inadvertently converted the duty drawback twice into U.S. dollars. However, this issue is moot for the final results because the Department has found that Minasligas is not entitled to a duty drawback adjustment. *See* the *Department's Position* to Minasligas-specific *Comment 2.* Therefore, for these final results we have removed all duty drawback adjustment language from our margin calculations.

Comment 5: PIS/COFINS Taxes and the Calculation of Normal Value

Minasligas contends that the Department's failure to deduct PIS and COFINS taxes from NV caused a faulty price comparison with USP because the taxes are paid on the home market sales, but not on U.S. sales. Minasligas asserts that the Department should account for this difference in the final results and make a circumstance of sale (COS) adjustment for these taxes, as directed by section 773(a)(6)(C)(iii) of the Act, or an adjustment to NV in accordance with section 773(a)(6)(B)(iii) of the Act. Minasligas asserts that while it is aware that this issue has been raised in previous reviews, the Department's decision not to make a COS adjustment for PIS and COFINS taxes is incorrect and should be amended for these final results.

Minasligas cites to *Frozen Concentrated Orange Juice from Brazil: Final Results and Termination in Part of Antidumping Duty Administrative Review* 55 FR 47502 (November 14, 1990), in which the Department made a COS adjustment for PIS and COFINS taxes. Minasligas argues that, until recently, it was the Department's long-standing policy to make COS adjustments for PIS and COFINS taxes and asserts that there was no valid reason for the Department to have changed its practice with respect to this issue.

Minasligas asserts that the Brazilian PIS and COFINS taxes are imposed on revenue from the sales of products

produced and sold in the domestic market. Further, Minasligas contends these taxes are not imposed on the sale of assets, interest revenue, export revenue or miscellaneous income. Therefore, Minasligas claims that the PIS and COFINS taxes are only imposed if a sale is made, which means that the taxes are directly tied to the sale of silicon metal. Minasligas argues that the only noticeable difference between PIS and COFINS taxes and other Brazilian taxes is that PIS and COFINS taxes are not recorded on commercial invoices. Minasligas argues that the exclusion of the taxes on the invoices does not mean that the taxes are not related to the sale of silicon metal. Minasligas refers to *Torrington* v. *United States,* 82 F. 3d 1039 (Fed. Cir.1996), where the CAFC found that many allocated expenses are considered directly related to a sale even if the expenses are not recorded on the commercial invoices. Therefore, Minasligas concludes that if an allocated expense is considered directly related to a sale, then so should PIS and COFINS taxes.

Minasligas argues that the Department cannot rely on its determination in the *Notice of Final Determination of Sales at Less Than Fair Value: Silicon Metal From Argentina* 56 FR 37891 (August 9, 1991) (*Silicon Metal From Argentina*) to support its position with respect to the Brazilian PIS and COFINS taxes because there are key differences between the Brazilian and the Argentine taxes. One difference, Minasligas notes, is that the Brazilian PIS and COFINS taxes are imposed only on revenue from home market sales and not on a company's gross revenue, as are Argentine taxes which are imposed on interest income, bond revenue, sales revenue and other miscellaneous revenues. Therefore, Minasligas notes, Argentine taxes are imposed even in the absence of home market sales, while a home market sale must occur in order to impose the Brazilian PIS and COFINS taxes. Thus, Minasligas contends that the Department's conclusion in *Ferrosilicon From Brazil: Notice of Final Results of Antidumping Duty Administrative Review* 62 FR 43504, 43508 (August 14, 1997) (*Ferrosilicon From Brazil*), that the Brazilian taxes are gross revenue taxes is faulty and should be revised in these final results.

The petitioners assert that the Department was correct in not reducing the NV by an amount for PIS and COFINS taxes. The petitioners argue that under section 773(a)(6)(B)(iii) of the Act, NV may only be reduced by taxes imposed on the ''foreign like product or components thereof.'' The petitioners contend that this language is identical to that of section 772(d)(1)(C), the parallel provision in effect prior to the enactment of the URAA, which the petitioners claim provides for an upward adjustment to the U.S. price only through demonstration of a direct relationship between the tax and the product. The petitioners cite several prior determinations in this case as well as *Ferrosilicon From Brazil* and *Silicon Metal From Argentina* where, the petitioners contend, the Department found that the relevant taxes are not imposed directly on the merchandise or components thereof, and thus do not warrant an adjustment to U.S. price. The petitioners conclude that the Department did not focus on whether revenue subject to the tax consisted of revenue other than sales revenue, but rather based its determination not to make the adjustment on the fact that taxes on revenue or income of any kind do not constitute taxes imposed ''directly on the merchandise or components thereof.'' The petitioners assert that under section 773(a)(6)(B)(iii) of the Act, the type of taxes that warrant adjustment are home market consumption taxes. Consumption taxes are paid by the consumer on specific sales transactions, while the PIS and COFINS taxes are revenue taxes paid by the seller. The petitioners contend that this difference clearly demonstrates that PIS and COFINS taxes are not consumption taxes. Therefore, the petitioners conclude that the Department should not make an adjustment to NV for these taxes in the final results.

In response to Minasligas's argument that the Department should have made a COS adjustment for the PIS and COFINS taxes, the petitioners state that section 773(a)(6)(B)(iii) of the Act is the sole provision in the antidumping law for determining adjustments for taxes in price-to-price margin calculations. The petitioners contend that it is an established principle of statutory interpretation that when, in the same statute, there are specific terms governing a particular subject matter and general terms that could be seen as addressing the same subject matter, the specific terms prevail over the general. Therefore, the petitioners assert, if the COS provision in section 773(a)(6)(C)(iii) of the Act could be invoked to make an adjustment for taxes other than those identified in section 773(a)(6)(B)(iii) or in circumstances different from those delineated in that provision, section 773(a)(6)(B)(iii) would be superfluous. The petitioners argue that even if the Department could make a COS adjustment for taxes, the PIS and COFINS taxes would not qualify for an adjustment for the same reason that they do not qualify for an adjustment pursuant to section 773(a)(6)(B)(iii). Claiming that the Department's regulations only allow for COS adjustments for direct selling expenses, the petitioners assert that, because the PIS and COFINS taxes are not imposed directly on silicon metal sales transactions, they are not eligible for a COS adjustment.

Department's Position: We agree with the petitioners. Minasligas has not provided any documentation to support its claim that the Department has erred in its conclusion that the PIS and COFINS taxes are taxes on gross revenue exclusive of export revenue and, thus, are not imposed specifically on the merchandise or components thereof. Therefore, in accordance with our consistent practice with respect to these taxes, we have determined for these final results that, because these taxes cannot be tied directly to silicon metal sales, we have no statutory basis to deduct them from NV. *See Certain Cut-To-Length Crbon Steel Plate From Brazil: Final Results of Antidumping Duty Administrative Review* 63 FR 12744, 12746 (March 16, 1998).

Comment 6: G&A

Minasligas notes that the Department calculated Minasligas's G&A expense ratio as a percentage of cost of sales from the 1996 financial statements. Minasligas further notes that VAT is not reflected in the cost of sales on the financial statements. Therefore, Minasligas argues that it would be inappropriate to calculate a G&A cost from the financial statements and then apply the ratio to a cost of manufacturing (for CV purposes) which includes VAT.

Department's Position: We agree with Minasligas that the record in this review indicates that Minasligas' COGS, as recorded on its financial statements, is exclusive of VAT. Therefore, for these final of review, we have recalculated Minasligas's G&A expenses using a cost of manufacturing that is net of VAT. *See Silicon Metal Amended Final 1994–1995* at 54090.

In addition, we note that in the notice of preliminary results we stated that we calculated Minasligas' G&A rate by adding together G&A expenses incurred by Minasligas and its parent company, Delp Engenharia Mecanica S.A. (Delp) ''because it is the Departmental practice to include both the parent (Delp) and subsidiary company (Minasligas) G&A expenses in its calculation of total G&A'' (*See Silicon Metal Preliminary Results* at 42005). However, while the

Department may calculate the G&A rate by adding to the respondent's G&A expenses a portion of the unconsolidated G&A expenses incurred by a parent, it will only do so where the parent, or other affiliated party, has provided general or administrative services on behalf of the respondent. In the instant review, there is no evidence that Delp provided general or administrative services for Minasligas. Therefore, for the final results, we have revised our calculation of the G&A rate for Minasligas to exclude G&A expenses incurred by Delp.

RIMA

Comment 1: Application of the Depreciation Methodology

The petitioners argue that RIMA failed to report depreciation of all of its assets used in the production of silicon metal during the POR. According to the petitioners, RIMA shifted all depreciation of its equipment to the years 1987–1995, periods prior to the current POR, thus reporting virtually no depreciation in the current administrative review. Although the Department agreed with RIMA's depreciation methodology in the prior POR (1995–1996), the petitioners claim that the appropriateness of this methodology is not supported by the record evidence in the current POR.

Specifically, the petitioners argue that there is a large gap between the depreciation amount reported in RIMA's financial statements and the fixed asset values reported in those statements. The petitioners maintain that this approach violates the basic accounting requirement that a corresponding deduction to the fixed asset values be made for the amount of depreciation taken for those assets. Additionally, the petitioners claim that while normally the Department relies on audited financial statement depreciation as probative of a company's actual depreciation, the Department cannot similarly rely on financial statement depreciation that is inconsistent with the financial statements' fixed asset values.

The petitioners also allege that RIMA's use of accelerated depreciation is inconsistent with Brazilian Generally Accepted Accounting Principles (GAAP). Although the petitioners acknowledge that the Department, in the 1995–1996 POR, recognized RIMA's accelerated depreciation method as consistent with Brazilian GAAP, they argue that the 1996–1997 audit opinion on RIMA's financial statements does not indicate (as the 1995–1996 statements did) that the statements were prepared in accordance with Brazilian GAAP. Instead, the petitioners claim that the 1996–1997 financial statements were prepared according to generally accepted accounting practice and, even more specifically, according to accounting practices of Brazilian corporate law. The petitioners state that Brazilian corporate law is not equivalent to Brazilian GAAP. Moreover, according to the petitioners, Brazilian GAAP stipulates that depreciation should be based on the economic useful life of an asset, not the useful life based on tax legislation. The petitioners argue that RIMA's own information demonstrates that RIMA's furnaces have been operating for years after the end of the five-year useful life used by RIMA to record depreciation expense. Thus, they conclude, the reported five-year useful life is also not in accordance with Brazilian GAAP.

Furthermore, the petitioners contend that RIMA's use of accelerated depreciation does not reasonably reflect its actual cost of producing silicon metal. They claim that even if the accelerated five-year method was permissible under the Brazilian GAAP, it is not allowed under the U.S. antidumping law which, according to the petitioners, states that COP/CV may not be determined using foreign accounting practices that are unreliable or distortive of actual costs, (*i.e.*, that do not reasonably reflect the cost of producing the subject merchandise). The petitioners cite section 773(e) of the Act as enumerating which specific costs are to be included in CV. According to the petitioners, the Act stipulates that general expenses are to be included, and the petitioners argue the general expenses include overhead which, in turn, includes depreciation. Since RIMA's reported costs do not include an appropriate amount for depreciation, according to the petitioners, they are distorted and unreliable.

Finally, the petitioners dispute the Department's position (as discussed in the final results of the prior review of this order) that calculating depreciation for RIMA in a current review on a 20-year period would result in double counting of the actual depreciation. According to the petitioners, the Department in the 1994–1995 period of review resorted to FA when determining RIMA's depreciation. Consequently, the petitioners argue that there cannot be double-counting of depreciation because a FA calculation is not intended to reflect the correct amount of cost. Moreover, the petitioners argue that a respondent's failure to provide the information necessary to calculate depreciation properly in one segment of the proceeding should not and could not require the use of distortive depreciation for the respondent's productive assets in all later segments of the proceeding. Additionally, the petitioners argue that no double counting occurred with respect to the 1995–1996 administrative review. In that review, according to the petitioners, RIMA shifted the great bulk of the depreciation of its primary productive assets to periods prior to the 1995–1996 POR resulting in minimal depreciation amounts for these assets. The petitioners further argue that since RIMA ''fully depreciated'' its assets prior to the 1995–1996 POR, no double-counting is possible since the Department did not ''capture'' any depreciation for these assets in the 1995–1996 review. The petitioners, argue that the proper method of correcting RIMA's shift of depreciation to prior years is to disregard RIMA's hypothetical depreciation calculation and calculate the proper annual amount of depreciation using the normal 20-year useful life for machinery, equipment and installations under Brazilian GAAP. The petitioners argue that the actual life of a silicon metal furnace is at least 20 years and often significantly longer. The petitioners also argue that it is the Department's established practice to reject accelerated depreciation of assets where such depreciation fails to allocate costs of the asset over the life of the asset. *See Final Determination of Sales at Less Than Fair Value: Dynamic Random Access Memory Semiconductors of One Megabit and Above From the Republic of Korea* 56 FR 15467, 15479 (March 23, 1993) (*DRAMs from Korea*) and *Final Determination of Sales at Less Than Fair Value: Fresh and Chilled Atlantic Salmon from Norway*, 56 FR 7661 (Feb. 25, 1991) (*Salmon from Norway-LTFV*).

RIMA states that in this review, the company continued to follow the same methodology of reporting depreciation expenses as that approved by the Department in the prior administrative review. As to specific claims by the petitioners pertaining to its depreciation methodology, RIMA maintains that its calculations are correct and reconcile with its audited financial statements. RIMA argues that contrary to the petitioners' allegations, there is no understatement of the depreciation amount when compared to the value of the reported assets in the audited financial statements. RIMA notes that the same issue was raised in the 1995–1996 administrative review and the Department, in that review, stated that RIMA's depreciation worksheets

reconciled to its financial statements. With regard to its accelerated depreciation, RIMA refers to prior cases involving ferrosilicon and silicon metal from Brazil where the Department accepted the accelerated depreciation reported by the respondents. *See Ferrosilicon from Brazil* and *Silicon Metal 1993–1994* at 1958. Specifically, in the prior review of this case, RIMA contends, the Department accepted the five-year depreciation methodology by stating that using a longer depreciation period would result in double-counting of costs which were captured in the prior segment of this proceeding. RIMA believes that audited financial statements in the current review demonstrate properly the same accelerated depreciation as the one used in the prior review.

As to the petitioners' claims that RIMA's audited statements were not prepared in accordance with Brazilian GAAP, RIMA contends that the claimed difference between the term ''practices'' and ''principles'' is an inconsequential mistake in the translation into English and amounts to little more than hair-splitting on the petitioners' part. Furthermore, RIMA suggests that in order to put to rest petitioners' various questions pertaining to depreciation and deferred expenses, the Department is welcome to conduct on site verification of its books and records even in the post-preliminary stage of the review. In conclusion, RIMA urges the Department to accept its depreciation methodology, as it did in prior reviews.

Department's Position: We agree with Rima. Rima demonstrated that its assets contained in the depreciation worksheets reconciled to its financial statements. Specifically, RIMA demonstrated that the depreciation expense shown on the worksheets reconciled to the depreciation expense reported in RIMA's audited financial statements. In prior segments of this proceeding, when the Department did not resort to total FA (or total best information available), we included in RIMA's COP and CV the depreciation expense which the auditors reported in RIMA's audit opinion. *See Silicon Metal from Brazil; Final Results of Antidumping Duty Administrative Review* 61 FR 46763 (September 5, 1996) (*Silicon Metal 1992–1993*), *Silicon Metal 1994–1995*, and *Silicon Metal 1995–1996*. In the current review, because the amount of depreciation expense detailed in RIMA's depreciation worksheets (which support the depreciation expense included in the submitted COP and CV) reconcile to RIMA's audited financial statements, we believe that RIMA's reported depreciation expense does not distort its COP and CV figures. Additionally, our use of RIMA's financial statement depreciation expense is consistent with *Salmon from Norway*, where we relied on the depreciation expense reported in the financial statements.

With regard to the issue of the Brazilian GAAP, although we agree with the petitioners that Brazilian GAAP specifies that the cost of an asset should be systematically depreciated over the estimated useful economic life of the asset, we disagree that Brazilian GAAP dictates how useful economic life should be defined. The definition of useful life depends on each individual situation. It can be determined by consideration of such factors as legal life, the effects of obsolescence, and other economic factors. *See Silicon Metal 1995–1996* at 6903. We agree with Rima that in the 1995–1996 administrative review of ferrosilicon from Brazil, and in the preliminary review of this case, we accepted the reported accelerated depreciation expense based on amounts recorded in the financial statements because they were calculated in accordance with Brazilian GAAP and they did not distort actual costs. *See Ferrosilicon from Brazil* at 43512.

As to the petitioners' claim that no double-counting of the depreciation expense would occur should we extend the depreciation schedule to 20 years, in the prior segments of this proceeding, we included in RIMA's COP and CV depreciation expense that the auditors identified in their audit opinion and which was calculated using RIMA's estimated useful life of five years for machinery and equipment. *See Silicon Metal 1992–1993* at 46767, 46768. The petitioners' claim that in the 1994–1995 administrative review, the Department resorted to FA while calculating RIMA's depreciation, does not acknowledge the fact that in that review the Department rejected RIMA's depreciation worksheets and relied instead on RIMA's audited financial statements. The depreciation amount from the audited financial statements was based upon RIMA's five-year depreciation schedule for machinery and equipment. Thus, if we were to follow the petitioners' request and recalculate RIMA's depreciation expense using a 20-year useful life for machinery and equipment, we would double count depreciation costs which were captured in prior segments of this proceeding. Furthermore, we disagree with the petitioners that FA were not intended to reflect the correct amount of cost. Section 776(a) of the Act requires the Department to ''make determinations on the basis of facts available where requested information is missing from the record or cannot be used because, for example, it has not been provided * * *'' (SAA at 869), as was the case in the 1994–1995 review. Accordingly, the Department ''must make [its] determinations based on all evidence of record, weighing the record evidence to determine that which is most probative of the issue under consideration.'' SAA at 869. In that review, as FA, we calculated RIMA's depreciation expense using the accelerated depreciation methodology recorded in the company's financial statements. Therefore, if the Department were to require RIMA to report depreciation using a 20-year useful life schedule, as the petitioners request, the Department would clearly double-count depreciation captured in the 1994–1995 review.

Comment 2: Amortization of Deferred Expenses

The petitioners request that the Department include amortization of RIMA's deferred expenses in the calculation of RIMA's financial expense ratio. According to the petitioners, in the 1995–1996 POR, RIMA included amortization of deferred financial expenses in its reported depreciation expenses. The Department rejected this methodology and included amortization of the deferred expenses in RIMA's financial expense ratio. The petitioners argue that in the current POR, to negate this increase to its financial expenses, RIMA shifted a significant portion of the deferred expenses to two newly created fixed assets accounts, resulting in no significant depreciation of the deferred expenses being reported. Additionally, the petitioners argue RIMA recharacterized these expenses as dedicated solely to magnesium production, whereas in the prior POR, RIMA had reported them as being related to both the magnesium and the silicon metal production facilities.

The petitioners object to RIMA's characterization and claim that the relevant expenses include expenses associated with silicon metal production. The petitioners argue that based on RIMA's own description of these expenses in its July 8, 1998 response, these expenses represent loans taken by RIMA to allow continued operation while experiencing production problems. As such, according to the petitioners, these expenses do not qualify for capitalization as part of fixed assets under the Brazilian accounting standards because they are not financial expenses incurred in connection with fixed asset construction. Moreover, the

petitioners dispute the relevance of one of the regulations cited by RIMA, and claim that RIMA did not provide the full text of the other. They further contend that regulations established by the Brazilian Securities Commission, allow for the capitalization of such financial expenses as those discussed above, only until the asset is substantially completed or placed in condition for sale or use. The petitioners claim that the controlling Brazilian legislation further stipulates that such expenses must be classified in the same asset group as the asset for which it was incurred. The petitioners argue that RIMA did not so classify these expenses.

The petitioners further assert that the expenses RIMA shifted to the hydroelectric fixed asset account are actually costs associated with all of RIMA's various products, including the subject merchandise. According to the petitioners, RIMA itself has noted on its website that these expenses are associated with the company's goal to produce its own power. Nevertheless, the petitioners contend that even if these expenses are not directly related to the production of silicon metal, the Department's practice is to determine electricity costs on a company-wide basis and there is no reason for the Department to deviate from that policy in this review. Moreover, according to the petitioners, the Statute, the SAA, and the Department's practice dictate that the Department reject any respondent's change in accounting practice which shifts costs away from the subject merchandise. Finally, with respect to this issue, the petitioners conclude that the Department should include a five percent amortization ratio of the total deferred expenses (including those shifted to the new fixed assets accounts) in the calculation of RIMA's financial expense.

RIMA notes that in the prior review of this order, the Department accounted for RIMA's deferred expenses as part of its financial expense. In the current POR, RIMA claims its financial statements clearly show that all deferred expenses for 1996 were fully amortized. As to 1997, according to RIMA, it incurred new expenses for several projects and those expenses were amortized according to accepted Brazilian accounting principles. RIMA argues that ultimately, the amortized amount was included in the total depreciation amount, as specified in the financial statements under ''demonstration of the origins and application of resources'' and was finally included in RIMA's account of ''operational income (expense) as part of RIMA's G&A expenses. Thus, according to RIMA, the amortization amount was included in RIMA's COP and CV because in the preliminary results the Department used a ratio of G&A (inclusive of amortization) to COGS and applied it to RIMA's COM for determining COP and CV. RIMA adds that should the Department decide to include amortization in the financial expenses rather than in G&A expenses for its final determination, it should deduct the amortization amount from G&A to avoid double counting.

RIMA disputes the petitioners' argument that RIMA improperly shifted deferred expenses related to new technology and hydroelectric expenses to fixed assets accounts. RIMA claims this transfer was in accordance with Brazilian law, since fully amortized deferred assets are no longer subject to amortization. According to RIMA, the petitioners' request that the Department include in RIMA's costs amortization of deferred assets that were fully amortized in 1996 would result in the double counting of these assets.

Moreover, RIMA argues that since these deferred assets were fully amortized already, their classification as fixed assets does not shift costs away from subject merchandise as alleged by the petitioners. Furthermore, with regard to the alleged production expenses common to both magnesium and silicon metal, RIMA argues that it provided ample evidence to contradict the petitioners' claim that the relevant expenses do relate to the production of silicon metal. RIMA also argues that the petitioners cite parts of that submission out of context in order to infer that certain expenses relate to silicon metal production. According to RIMA, once the submission is read in its entirety, it becomes clear that these expenses related to magnesium production only, and have no bearing on the production of silicon metal. RIMA suggests that all these issues can be clarified through verification of the appropriate records, however, it also believes that the entire issue is moot since deferred expenses were fully amortized in 1996 and thus are not costs related to silicon metal production in 1997.

Department's Position: We agree with RIMA. As with RIMA's depreciation expense, in prior segments of this proceeding, when the Department did not resort to total FA (or total best information available), we included in COP and CV the amortization expense reported in the auditors' opinion to RIMA's financial statements. *See* the 1992–1993, 1994–1995 and the 1995–1996 administrative reviews. In this review, because the amount of amortization expense in RIMA's worksheets is supported by the audited financial statements and does not distort the reported costs, we believe that the amortization expense included in the submitted COP and CV is correct. Additionally, since all of the deferred assets were fully amortized prior to 1997, if we were to follow the petitioners' request and recalculate RIMA's amortization expenses using a longer useful life for the deferred assets, we would double count amortization costs which we captured in the prior segments of this proceeding. With regard to the petitioners' claim that RIMA shifted a significant portion of the deferred expenses to the newly created fixed assets accounts (*i.e.*, hydroelectric, and development and technology), thus significantly reducing the depreciation of these expenses, our review of the record indicates that the petitioners' allegations are unsubstantiated. According to the independent auditors' statement, these accounts refer to magnesium metal production (a product that is not subject merchandise) and contain expenses relevant only to magnesium production. We also disagree with the petitioners' statement that the hydroelectric plant is supplying electricity used in the silicon metal production. As stated above, the record in the current review indicates that the plant is located in Bocaiuva, a facility dedicated to production of magnesium (*i.e.*, non-subject merchandise). We further disagree with the petitioners' claim that if the said hydroelectric plant supplied electricity to a magnesium plant only, based on the 1991–1992 silicon metal review, the Department should allocate electricity costs on a company-wide basis even if these costs were not related to production of subject merchandise. Our review of that segment of the proceeding indicates that the case involved another respondent, CBCC, which used plants and furnaces capable of producing both subject and non-subject merchandise. Accordingly, we state in that review that ''[t]he facts of the instant case are consistent with the Department's position requiring the weight-averaging of the costs of merchandise produced in more than one facility.'' This is not the case in the current review where there is a clear distinction between plants and furnaces producing silicon metal and those dedicated to production of non-subject merchandise. *See Silicon Metal from Brazil; Final Results of Antidumping Duty Administrative Review*, 59 FR 42808 (August 19, 1994). Consequently, our treatment of amortization in the preliminary results remains unchanged.

Comment 3: Offset to Financial Expenses

According to the petitioners, the Department stated in the preliminary results that RIMA failed to provide sufficient information to warrant granting it an offset to its financial expenses. However, the petitioners argue that despite the Department's statement in the preliminary results that it did not grant RIMA an offset to its financial expenses, it appears that the Department in its margin calculation did allow an offset for financial income related to RIMA's headquarters. Moreover, the petitioners argue, certain categories of income claimed by RIMA as an offset to financial expense do not qualify as an offset and should be disallowed on those grounds. The petitioners conclude that the Department should not grant RIMA any offset for interest income.

RIMA did not comment on this issue.

Department's Position: We agree with the petitioners. In the Department's March 31, 1998, supplemental questionnaire, we requested RIMA to provide a breakdown of the financial expense line item in its financial statements and to describe fully each type of financial income reflected in that line item. In its April 18, 1998, supplemental response, RIMA identified four types of financial income used to offset its financial expenses: ''Currency Adjustments,'' ''Asset Discounts,'' ''Asset Interest,'' and ''Income on Financial Investments.''

RIMA claimed no income from the ''Currency Adjustments'' category, and therefore, we did not grant an offset for this item. With regard to RIMA's ''Asset Discounts'' account, described as discounts received from suppliers, RIMA failed to provide any additional information as to the nature of the discounts nor any supporting documentation for this adjustment. It is the Department's long-standing policy that the burden of proof to substantiate the legitimacy of a claimed adjustment falls on the respondent party making that claim. However, we note that in this instance, if RIMA had demonstrated that this category represents discounts from suppliers, we would still not grant an offset for this item because the Department considers such discounts to be an adjustment to the purchase price rather than interest income. Therefore, for these final results we have not allowed this item as an offset to RIMA's reported financial expense. Regarding the income account ''Asset Interest,'' RIMA characterized this item as ''expenses on late payments,'' but did not provide any additional explanation. Since the Department considers interest on late payments from customers to be an adjustment to price (not interest income) and RIMA did not meet its burden of proof (*i.e.*, it failed to provide documentation demonstrating how this income can qualify as income derived from short-term investments), we are denying this offset to RIMA's financial expense.

With respect to RIMA's account referred to as ''Income of Financial Investments,'' in the April 18, 1998, supplemental response, RIMA defines this account as representing financial investment income derived from short-term investment. On June 29, 1998, the Department issued a second supplemental questionnaire requesting RIMA to provide a breakout for this account by the type of investment. In its July 8, 1998, supplemental response, RIMA stated that it did not have financial investments during this period. This statement appears to contradict the company's financial statements, which record income in this category. Since RIMA failed to substantiate its original claim for this adjustment, the company has not met its burden of proof and, therefore, we have not granted RIMA an offset to financial expense for this item. Thus, for these final results of review, we have not granted RIMA any offset for interest income to its financial expenses.

Comment 4: Data Set Discrepancy

The petitioners claim that the Department made an erroneous adjustment to certain of RIMA's U.S. and home market prices and expenses based on the Department's incorrect determination that the electronic version of the data submitted to the Department did not correspond to that presented in the hard copy response. The petitioners argue that they compared both versions of the data files and found no discrepancies. Specifically, the petitioners contest the R$100 deduction that the Department made to these reported prices and expenses and argue that these deductions resulted in understated dumping margins.

RIMA did not comment on this issue.

Department's Position: We agree with the petitioners. We reviewed both the hard copy and the electronic version of the submitted data sets and found no discrepancies between them. Consequently, for the final results of this review, we have removed the relevant adjustment from the margin calculation.

Comment 5: U.S. Imputed Credit Expense

The petitioners claim that the Department erroneously recalculated U.S. imputed credit and revenue using a reais-denominated borrowing rate. The petitioners ask the Department to revise RIMA's imputed credit expenses by using appropriate U.S.-based borrowing rate (*i.e.*, the U.S. prime rate).

RIMA did not comment on this issue.

Department's Position: We agree with the petitioners. In its original questionnaire response, RIMA calculated its U.S. imputed credit expense and revenue using an interest rate related to reais-denominated borrowing. In the March 31, 1998, Deficiency Questionnaire (Deficiency Questionnaire), the Department requested RIMA to ''recalculate the credit expenses by using the appropriate U.S. short term borrowing rate.'' *See* Deficiency Questionnaire, at 5. In its April 17, 1998, Deficiency Response Questionnaire (Deficiency Response Questionnaire), RIMA stated that it recalculated U.S. imputed credit expense using a U.S. short-term borrowing rate. *See* Deficiency Response Questionnaire at 6 and Exhibit 10. However, RIMA did not identify what rate it actually used. In the preliminary results the Department inadvertently calculated the U.S. imputed credit using the reais-denominated borrowing rate. In the Department's Policy Bulletin 98.2, issued on February 23, 1998, the Department stated that:

> [f]or purposes of calculating imputed credit expenses, we will use a short-term interest rate tied to the currency in which the sales are made. * * * In cases where a respondent has no short-term borrowings in the currency of the transaction, we will use publicly available information to establish a short-term interest rate applicable to the currency of transaction.

Consequently, for these final results, we have recalculated RIMA's U.S. imputed credit expense using the U.S. short-term prime interest rate.

Comment 6: Unit Weights Measurements

The petitioners claim that silicon metal quantities can be expressed in terms of the gross weight of the silicon metal or the net weight of contained silicon (pure silicon) and that those two types of weight measurements are being used inconsistently in the preliminary results analysis. The petitioners rely on RIMA's response to the Department's Deficiency Questionnaire, where it was asked to explain which type of weight units are used in both the U.S. and home market sales. In its April 17, 1998,

deficiency response questionnaire, RIMA stated that ''the quantity in the sales listing both in the home market and in the foreign market is based on gross weight, *i.e.*, [sic] the total weight of Silicon Metal excluding the big bags.'' Following that statement, the petitioners claim that upon review of RIMA's sample of shipping documents it appears that the reported sales quantities are based not on gross weight, as reported by RIMA, but rather on net weight of contained silicon. Subsequently, the petitioners claim that the Department, while conducting a sales-below-cost test, erroneously compared home market sales which are measured in units of weight of contained silicon with cost of production figures based on silicon metal gross weight units. The petitioners conclude, therefore, that the Department's comparison of U.S. sales to constructed values (which are based on the COP figures) is flawed. Consequently, the petitioners request that the Department adjust the appropriate units' weight in order to ensure proper comparisons.

RIMA claims that the same issue was raised in the prior review within the context of a different respondent and rejected by the Department. RIMA argues that the petitioners failed to provide evidence that RIMA's U.S. prices reflect different weights than those used in the below-cost and CV analysis and urge the Department to reject the petitioners' contention.

Department's Position: We agree with RIMA. The petitioners' main argument rests on RIMA's shipping document submitted as part of one of its supplemental responses. In that document, RIMA lists the quantity shipped in both net and gross terms. The petitioners infer that RIMA's net weights on the shipping documents are not net of packaging, but rather net weight of contained silicon. Consequently, the petitioners conclude that our use of weight units is incorrect.

Our review of the shipping document finds no reference to net weight of contained silicon metal. Rather, the exhibit provides two weight quantities measured in gross and net terms. The record indicates that the difference between the two weights represents the weight of packaging which is listed separately on the same document. Thus the petitioners' claim that the net weights reported on the invoice somehow represent ''net weight of contained silicon'' is not supported by the record of this proceeding. Consequently, there is no reason to adjust the weight measurements used in the per-unit calculations from those used in the preliminary results of review.

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
Eletrosilex Belo Horizonte	93.20
Companhia Ferroligas Minas Gerais—Minasligas	9.47
Companhia Brasileira Carbureto de Calico	(1)
LIASA	(1)
Rima Eletrometalurgia S.A.	(1)

[1] Zero.

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 this notice of final results of administrative review for all shipments of the subject merchandise from Brazil 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 91.06 percent, the ''all others'' rate established in the LTFV investigation. 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 silicon metal. 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 those same sales. We calculated the estimated entered value by subtracting international movement expenses and expenses incurred in the United States from the gross sales value. For 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 that importer and dividing this amount by the total quantity of subject merchandise in those same sales. In accordance with 19 CFR 351.106(c)(2), where we have calculated an importer-specific assessment rate that is less than 0.5 percent, and therefore, *de minimis*, we will instruct the Customs' Service to liquidate that importer's entries during the POR without regard to antidumping duties.

This notice serves as a final reminder to importers of their responsibility under 19 CFR 351.402(f)(2) 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 351.105(a). 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 published in accordance with sections 751(a)(1) and 777(i)(1) of the Act.

Dated: February 2, 1999.

Robert S. LaRussa,

Assistant Secretary for Import Administration.

[FR Doc. 99–3137 Filed 2–8–99; 8:45 am]

BILLING CODE 3510–DS–P

DEPARTMENT OF COMMERCE

International Trade Administration

[A–351–806]

Silicon Metal From Brazil; Antidumping Duty Administrative Review; Time Limit

AGENCY: Import Administration, International Trade Administration, Department of Commerce.

ACTION: Notice of Extension of Time Limit for Preliminary Results of Review.

SUMMARY: The Department of Commerce is extending the time limit for the preliminary results of the administrative review of the antidumping duty order on silicon metal from Brazil. The review covers five manufacturer/exporters of the subject merchandise to the United States for the period July 1, 1997, through June 30, 1998.

EFFECTIVE DATE: February 9, 1999.

FOR FURTHER INFORMATION CONTACT: Howard Smith or Wendy Frankel, Office 4, Office of AD/CVD Enforcement, Import Administration, U.S. Department of Commerce, 14th Street and Constitution Avenue, N.W., Washington, D.C. 20230, telephone: (202) 482–5193, or (202) 482–5849, respectively.

SUPPLEMENTARY INFORMATION: Because it is not practicable to complete the preliminary results of this review within the initial time limit established by the Uruguay Round Agreements Act (245 days after the last day of the anniversary month), pursuant to section 751(a)(3)(A) of the Tariff Act of 1930, as amended (the Act), the Department is extending the time limit for completion of the preliminary results until July 31, 1999. *See* the Memorandum from Holly A. Kuga to Robert S. LaRussa, dated January 8, 1999, on file in the Central Records Unit located in room B–099 of the main Department of Commerce building.

This extension is in accordance with section 751(a)(3)(A) of the Act (19 U.S.C. 1675(a)(3)(A)).

Dated: January 19, 1999.

Holly A. Kuga,

Acting Deputy Assistant Secretary for Import Adminstration.

[FR Doc. 99–3138 Filed 2–8–99; 8:45 am]

BILLING CODE 3510–DS–P

DEPARTMENT OF COMMERCE

National Oceanic and Atmospheric Administration

DEPARTMENT OF THE INTERIOR

Fish and Wildlife Service

[I.D. 012599D]

Notice of Intent to Prepare an Environmental Impact Statement Regarding Proposed Issuance of an Incidental Take Permit to Simpson Timber Company, Northwest Operations, for Forest Management in Thurston, Mason, and Grays Harbor Counties, Washington

AGENCY: National Marine Fisheries Service (NMFS), National Oceanic and Atmospheric Administration, Commerce; Fish and Wildlife Service (USFWS), Interior

ACTION: Notice of intent to prepare an environmental impact statement.

SUMMARY: Pursuant to the National Environmental Policy Act, NMFS and USFWS (the Services) intend to prepare an Environmental Impact Statement (EIS) related to the proposed issuance of an incidental take permit (Permit) to Simpson Timber Company, Northwest Operations (Simpson), for take of endangered and threatened species in accordance with the Endangered Species Act of 1973, as amended (Act). As required by the act, the applicant is preparing a Habitat Conservation Plan (Plan). The Permit application is related to forest management and timber harvest on a portion of Simpson's fee-owned timberlands in Thurston, Mason, and Grays Harbor Counties, Washington. Simpson intends to request an Permit for the marbled murrelet (*Brachyramphus marmoratus*), and the bald eagle (*Haliaeetus leucocephalus*). Simpson may also seek coverage for three fish species proposed for listing under the Act and approximately 60 currently unlisted fish and wildlife species under specific provisions of the Permit should these species be listed in the future.

The Services are furnishing this notice in order to advise other agencies and the public of our intentions and to announce the initiation of a 30-day public scoping period during which other agencies and the public are invited to provide written comments on the scope of issues to be included in the EIS.

DATES: Written comments must be received on or before March 11, 1999.

ADDRESSES: Comments and requests for additional information should be sent to Kathy Cushman, Fish and Wildlife Service, 510 Desmond Drive, SE, Suite 102, Lacey, Washington 98503, telephone (360) 753–9000; or Mike Parton, National Marine Fisheries Service, 510 Desmond Drive SE, Suite 103, Lacey, Washington 98503, telephone (360) 753–4650.

SUPPLEMENTARY INFORMATION: Simpson owns and manages approximately 267,000 acres of commercial timberland in Thurston, Mason, and Grays Harbor counties, Washington. Simpson proposes to manage, pursuant to the Plan, approximately 214,000 acres of its Washington properties located north of Highway 8 and west of Highway 101, and possible future inclusions of additional lands within 10 miles. The Plan area extends into the southern foothills of the Olympic Mountains and across the Wynoochee River Valley to the City of Aberdeen's Wishkah Watershed. Management activities include timber harvest and other forest management activities.

Some of Simpson's management activities have the potential to impact species subject to protection under the Act. Section 10(a)(2)(B) of the Act contains provisions for the issuance of incidental take permits to non-Federal land owners for the take of endangered and threatened species, provided the take is incidental to otherwise lawful activities and will not appreciably reduce the likelihood of the survival and recovery of the species in the wild. An applicant for a Permit under section 10 of the Act must prepare and submit to the Services for approval a Plan containing a strategy for minimizing and mitigating all take associated with the proposed activities to the maximum extent practicable. The applicant must also ensure that adequate funding for the Plan will be provided.

Simpson has initiated discussions with the Services regarding the possibility of a Permit and associated Plan for their activities on their land to be covered by a Permit. Activities proposed for Permit coverage include mechanized timber harvest; log transportation; road construction, maintenance, and abandonment; site preparation; tree planting; fertilization; silvicultural thinning; experimental silviculture; controlled burns; wildfire suppression; stream restoration; and the harvest and sale of minor forest products. The Plan and Permit would also cover certain monitoring activities and related scientific experiments in the Plan area.

The Services will conduct an environmental review of the Plan and prepare an EIS. The environmental

review will analyze the proposal as well as a full range of reasonable alternatives and the associated impacts of each. The Services are currently in the process of developing alternatives for analysis. Under a No Action Alternative, incidental take permits would not be issued, and Simpson would continue a forest management program, which avoids take of federally listed species. The applicant's Plan alternative proposes that the Services issue incidental take permits and that Simpson would implement the Plan on 214,000 acres of Simpson's Washington timberlands. Another alternative proposes blending the standards and guidelines of the Northwest Forest Plan and the proposed Plan. Under this alternative, the Services would issue incidental take permits, and Simpson would manage their lands in accordance with standards and guidelines less restrictive than the Northwest Forest Plan but which exceed those of the proposed Plan. A fourth alternatives proposes that Simpson manage their lands in accordance with the standards and guidelines of the Northwest Forest Plan. Under this alternative, the Services would issue incidental take permits, and Simpson would manage their land accordingly.

Comments and suggestions are invited from all interested parties to ensure that the full range of issues related to these proposed actions are addressed and that all significant issues are identified. Comments or questions concerning this proposed action and the environmental review should be directed to the Fish and Wildlife Service or the National Marine Fisheries Service (see **ADDRESSES**).

The environmental review of this project will be conducted in accordance with the requirements of the National Environmental Policy Act of 1969, as amended (42 U.S.C. 4321 *et seq*.) and implementing regulations (40 CFR parts 1500 through 1508) and of other appropriate Federal laws and regulations and policies and procedures of the Services for compliance with those regulations. It is estimated that the draft EIS will be available for public review during the second quarter of 1999.

Dated: January 19, 1999.

Thomas J. Dwyer,

Acting Regional Director, Region 1, U.S. Fish and Wildlife Service, Portland, Oregon.

Dated: February 2, 1999.

Kevin Collins,

Chief, Endangered Species Division, Office of Protected Resources, National Marine Fisheries Service.

[FR Doc. 99–3130 Filed 2–8–99; 8:45 am]

BILLING CODE 3510–22–F, 4310–55–F

DEPARTMENT OF COMMERCE

National Oceanic and Atmospheric Administration

[I.D. 012999C]

Marine Mammals; File No. 77–4#2

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

ACTION: Receipt of application for amendment.

SUMMARY: Notice is hereby given that the Northeast Fisheries Science Center, National Marine Fisheries Service, 166 Water Street, Woods Hole, MA 02543–1097, has requested an amendment to scientific research Permit No. 917.

DATES: Written or telefaxed comments must be received on or before March 11, 1999.

ADDRESSES: The amendment request and related documents are available for review upon written request or by appointment in the following office(s):

Permits and Documentation Division, Office of Protected Resources, NMFS, 1315 East-West Highway, Room 13705, Silver Spring, MD 20910 (301/713–2289);

Regional Administrator, Northeast Region, NMFS, One Blackburn Drive, Gloucester, MA 01930, (978/281–9250); and

Regional Administrator, Southeast Region, NMFS, 9721 Executive Center Drive North, St. Petersburg, FL 33702–2432 (813/570–5312).

Written comments or requests for a public hearing on this request should be submitted to the Chief, Permits and Documentation Division, F/PR1, Office of Protected Resources, NMFS, 1315 East-West Highway, Room 13130, Silver Spring, MD 20910. Those individuals requesting a hearing should set forth the specific reasons why a hearing on this particular amendment request would be appropriate.

Comments may also be submitted by facsimile at (301) 713–0376, provided the facsimile is confirmed by hard copy submitted by mail and postmarked no later than the closing date of the comment period. Please note that comments will not be accepted by e-mail or other electronic media.

FOR FURTHER INFORMATION CONTACT: Ruth Johnson or Sara Shapiro 301/713–2289.

SUPPLEMENTARY INFORMATION: The subject amendment to Permit No. 917, issued on May 12, 1994 (59 FR 25872), as amended July 12, 1995 (60 FR 37054) and November 24, 1997 (62 FR 48821) is requested under the authority of the Marine Mammal Protection Act of 1972, as amended (16 U.S.C. 1361 *et seq*.), the Regulations Governing the Taking and Importing of Marine Mammals (50 CFR part 216), the Endangered Species Act of 1973, as amended (16 U.S.C. 1531 *et seq*.), and the regulations governing the taking, importing, and exporting of endangered fish and wildlife (50 CFR 222.23).

Permit No. 917 authorizes the permit holder to conduct a number of studies on several cetacean species as well as gray and harbor seals in the northeastern U.S. and Canadian waters. The research activities include: Vessel surveys, aerial surveys and photogrammetry, photo-identification studies, and the collection of biopsies.

The permit holder requests authorization to: (1) increase the number of biopsies for most species; (2) biopsy mother/calf pairs; (3) expand the study area to include all waters of the North Atlantic, from the equator to latitude 66.5 degrees North; (4) approach for non-invasive ultra sound measurements; (5) take Bryde's whales, harp and hooded seals; (6) capture, tag and sample harbor seals; (7) up to 3 accidental mortalities of harbor seals; (8) import/export samples for genetic studies; and (9) tag sperm whales.

In compliance with the National Environmental Policy Act of 1969 (42 U.S.C. 4321 *et seq*.), an initial determination has been made that the activity proposed is categorically excluded from the requirement to prepare an environmental assessment or environmental impact statement.

Concurrent with the publication of this notice in the **Federal Register**, NMFS is forwarding copies of this application to the Marine Mammal Commission and its Committee of Scientific Advisors.

Dated: February 2, 1999.

Ann D. Terbush,

Chief, Permits and Documentation Division, Office of Protected Resources.

[FR Doc. 99–3131 Filed 2–8–99; 8:45 am]

BILLING CODE 3510–22–F

COMMODITY FUTURES TRADING COMMISSION

Sunshine Act Meeting

AGENCY HOLDING THE MEETING: Commodity Futures Trading Commission.

TIME AND DATE: 2:00 p.m., Wednesday, February 24, 1999.

PLACE: 1155 21st St., N.W., Washington, D.C., 9th Floor Conference Room.

STATUS: Closed.

MATTERS TO BE CONSIDERED: Enforcement Matters.

CONTACT PERSON FOR MORE INFORMATION: Jean A. Webb, 202–418–5100.

Jean A. Webb,

Secretary of the Commission.

[FR Doc. 99–3191 Filed 2–5–99; 10:32 am]

BILLING CODE 6351–01–M

CORPORATION FOR NATIONAL AND COMMUNITY SERVICE

Notice of Cancellation of Technical Assistance Workshops for Potential Applicants for AmeriCorps Indian Tribes and America Reads Challenge Program Funds

AGENCY: Corporation for National and Community Service.

ACTION: Notice of cancellation of pre-application technical assistance workshop.

SUMMARY: The Corporation for National and Community Service (Corporation) previously announced that it would hold two workshops and two conference calls to provide technical assistance to Indian Tribes and organizations representing Alaska Natives interested in applying for AmeriCorps Indian Tribes and America Reads Challenge program funds. (64 FR 483, January 5, 1999). The Corporation has cancelled both workshops. The conference calls will proceed as scheduled on February 16 and 18, 1999 at 3 p.m. Eastern time.

FOR FURTHER INFORMATION CONTACT: Pattie Howell, (202) 606–5000, ext. 105. T.D.D. (202) 565–2799.

Dated: February 3, 1999.

Kenneth L. Klothen,

General Counsel, Corporation for National and Community Service.

[FR Doc. 99–3081 Filed 2–8–99; 8:45 am]

BILLING CODE 6050–28–P

DEPARTMENT OF DEFENSE

Office of the Secretary

Strategic Environmental Research and Development Program, Scientific Advisory Board

ACTION: Notice.

In accordance with Section 10(a)(2) of the Federal Advisory Committee Act (Pub. L. 92–463), announcement is made of the following Committee meeting:

Date of Meeting: March 16, 1999 from 0830 to 1700 and March 17 from 0830 to 1200.

Place: National Rural Electric Cooperative Association, 4301 Wilson Boulevard, Conference Center Room 1, Arlington, VA.

Matters to be Considered: Research and Development proposals and continuing projects requesting Strategic Environmental Research and Development Program funds in excess of $1M will be reviewed.

This meeting is open to the public. Any interested person may attend, appear before, or file statements with the Scientific Advisory Board at the time and in the manner permitted by the Board.

FOR FURTHER INFORMATION CONTACT: Mrs. Amy Kelly, SERDP Program Office, 901 North Stuart Street, Suite 303, Arlington, VA or by telephone at (703) 696–2124.

Dated: February 3, 1999.

L.M. Bynum,

Alternate OSD Federal Register Liaison Officer, DoD.

[FR Doc. 99–3022 Filed 2–8–99; 8:45 am]

BILLING CODE 5000–04–M

DEPARTMENT OF ENERGY

Chicago Operations Office; Notice of Solicitation Entitled ''Energy Efficiency and Waste Reduction for Plant/Crop Based Resources Technology in The Agriculture Industry,'' Financial Assistance Solicitation No. DE–SC02–99CH10965

AGENCY: DOE, Chicago Operations Office.

ACTION: Notice of availability of a financial assistance solicitation for cooperative agreement proposals.

SUMMARY: The Department of Energy (DOE) Office of Industrial Technologies (OIT) announces its interest in receiving applications for research and development to help meet the directional targets laid out in the strategic vision, ''Plant/Crop-based Renewable Resources 2020.'' Applications are sought that would reduce energy consumption and waste in agricultural and related industries, and enhance U.S. economic competitiveness with the ultimate goal of commercialization. This solicitation is limited to research and development projects which have a high priority ranking and address specific barriers in the Processing and Utilization categories set forth in Technology Roadmap and Research Priorities document. Both this roadmap and the vision can be found on the internet at **http://www.oit.doe.gov/agriculture.** Teaming among two or more organizations and 50% cost-sharing of proposed project costs are required in order for an application to be considered for award. A solicitation overview conference will be held on February 25, 1999 in Chicago, IL at the Hyatt Regency O'Hare. Specific details regarding this conference will be provided in the solicitation. As a result of this solicitation, DOE anticipates awarding approximately three (3) to six (6) cooperative agreements with total DOE estimated funding for each award ranging between $200,000.00 and $600,000.00 per year over a two (2) to three (3) year period, depending upon the availability of funds. Awards are anticipated on or about August 1, 1999.

DATES: The complete solicitation document will be available on the Internet on or about February 1, 1999 by accessing the DOE Chicago Internet Home Page at http://www.ch.doe.gov/business/ACQ.htm under the heading ''Current Solicitations'' Solicitation No. DE-SC02–99CH10965. Pre-applications are due no later than 3:00 p.m. local time, on March 12, 1999. Applications are due no later than 3:00 p.m. local time, on April 23, 1999. Any amendments to the solicitation will also be posted on the Internet. Please note that users are not alerted when the solicitation is issued or when amendments are posted. Prospective offerors are therefore advised to check the above Internet address on a daily basis.

ADDRESSES: Completed pre-applications and applications referencing Solicitation No. DE-SC02–99CH10965 must be submitted to the U.S. Department of Energy, Chicago Operations Office, Attn: Roberta D. Schroeder, Bldg. 201, Rm. No. 3E–15, 9800 South Cass Avenue, Argonne, IL 60439–4899.

FOR FURTHER INFORMATION CONTACT: Carla V. Harper, Acquisition and Assistance Group, Chicago Operations Office, 9800 South Cass Avenue, Argonne, Illinois 60439, Telephone No. (630) 252–2842 Fax No. (630) 252–5045, or by e-mail at carla harper@ch.doe.gov

Issued in Chicago, Illinois on January 25, 1999.

John D. Greenwood,

Group Manager, Acquisition and Assistance Group.

[FR Doc. 99–3112 Filed 2–8–99; 8:45 am]

BILLING CODE 6450–01–P

DEPARTMENT OF ENERGY

Environmental Management Site-Specific Advisory Board, Kirtland Area Office (Sandia)

AGENCY: Department of Energy.

ACTION: Notice of open meeting.

SUMMARY: Pursuant to the provisions of the Federal Advisory Committee Act (Public Law 92–463, 86 Stat. 770) notice is hereby given of the following Advisory Committee meeting: Environmental Management Site-Specific Advisory Board, Kirtland Area Office (Sandia).

DATES: Wednesday, February 24, 1999: 5:30 p.m.–9:00 p.m. (MST).

ADDRESSES: Cesar Chavez Community Center, 7505 Kathryn SE, Albuquerque, New Mexico 87108.

FOR FURTHER INFORMATION CONTACT: Mike Zamorski, Acting Manager, Department of Energy Kirtland Area Office, P.O. Box 5400, Albuquerque, NM 87185 (505) 845–4094.

SUPPLEMENTARY INFORMATION:

Purpose of the Board: The purpose of the Board is to make recommendations to DOE and its regulators in the areas of environmental restoration, waste management, and related activities.

Tentative Agenda:

5:30 p.m. Call to Order/Roll Call—Hubert Joy, Chair
5:35 p.m. Public Comments
5:45 p.m. Approval of Agenda
5:50 p.m. Approval of 1/20/99 Minutes
6:00 p.m. Chair's Report—Hubert Joy
6:30 p.m. Environmental Protection Agency—Nancy Morlock
7:30 p.m. DOE Quarterly Meeting—Bob Galloway, Sandia National Laboratory
8:00 p.m. Self-evaluation Report—Sally Moore
8:40 p.m. New/Other Business
8:50 p.m. Public Comments
9:00 p.m. Adjourn

A final agenda will be available at the meeting Wednesday, February 24, 1999.

Public Participation: The meeting is open to the public. Written statements may be filed with the Committee either before or after the meeting. Individuals who wish to make oral statements pertaining to agenda items should contact Mike Zamorski's office at the address or telephone number listed above. Requests must be received 5 days prior to the meeting and reasonable provision will be made to include the presentation in the agenda. The Designated Federal Officer is empowered to conduct the meeting in a fashion that will facilitate the orderly conduct of business. Each individual wishing to make public comment will be provided a maximum of 5 minutes to present their comments.

Minutes: The minutes of this meeting will be available for public review and copying at the Freedom of Information Public Reading Room, 1E–190, Forrestal Building, 1000 Independence Avenue, SW, Washington, DC 20585 between 9:00 a.m. and 4 p.m., Monday–Friday, except Federal holidays. Minutes will also be available by writing to Mike Zamorski, Department of Energy Kirtland Area Office, P.O. Box 5400, Albuquerque, NM 87185, or by calling (505) 845–4094.

Issued at Washington, DC on February 4, 1999.

Rachel M. Samuel,

Deputy Advisory Committee Management Officer.

[FR Doc. 99–3110 Filed 2–8–99; 8:45 am]

BILLING CODE 6450–01–P

DEPARTMENT OF ENERGY

Environmental Management Site-Specific Advisory Board, Pantex Plant, Amarillo, TX

AGENCY: Department of Energy.

ACTION: Notice of open meeting.

SUMMARY: This notice announces a meeting of the Environmental Management Site-Specific Advisory Board (EM SSAB), Pantex Plant, Amarillo, Texas. The Federal Advisory Committee Act (Pub. L. 92–463, 86 Stat. 770) requires that public notice of these meetings be announced in the **Federal Register**.

DATE AND TIME: Tuesday, February 23, 1999: 1:30 p.m.—5:30 p.m.

ADDRESSES: Amarillo Association of Realtors, Amarillo, Texas.

FOR FURTHER INFORMATION CONTACT: Jerry S. Johnson, Assistant Area Manager, Department of Energy, Amarillo Area Office, P.O. Box 30030, Amarillo, TX 79120 (806) 477–3125.

SUPPLEMENTARY INFORMATION: *Purpose of the Committee:* The Board provides input to the Department of Energy on Environmental Management strategic decisions that impact future use, risk management, economic development, and budget prioritization activities.

Tentative Agenda

1:30 p.m. Welcome—Agenda Review—Approval of Minutes
1:40 p.m. Co-Chair Comments
2:00 p.m. Groundwater Presentation
3:00 p.m. Groundwater Question & Answer
3:30 p.m. Break
3:45 p.m. Task Force/Subcommittee Minutes
4:15 p.m. Ex-Officio Reports
4:45 p.m. Updates—Occurrence Reports—DOE
5:20 p.m. Closing Remarks
5:30 p.m. Adjourn

Public Participation: The meeting is open to the public, and public comment will be invited throughout the meeting. Written statements may be filed with the Committee either before or after the meeting. Written comments will be accepted at the address above for 15 days after the date of the meeting. Individuals who wish to make oral statements pertaining to agenda items should contact Jerry Johnson's office at the address or telephone number listed above. Requests must be received 5 days prior to the meeting and reasonable provision will be made to include the presentation in the agenda. The Designated Federal Official is empowered to conduct the meeting in a fashion that will facilitate the orderly conduct of business. Each individual wishing to make public comment will be provided a maximum of 5 minutes to present their comments at any time throughout the meeting.

Minutes: The minutes of this meeting will be available for public review and copying at the Pantex Public Reading Rooms located at the Amarillo College Lynn Library and Learning Center, 2201 South Washington, Amarillo, TX phone (806) 371–5400. Hours of operation are from 7:45 am to 10:00 pm, Monday through Thursday; 7:45 am to 5:00 pm on Friday; 8:30 am to 12:00 noon on Saturday; and 2:00 pm to 6:00 pm on Sunday, except for Federal holidays. Additionally, there is a Public Reading Room located at the Carson County Public Library, 401 Main Street, Panhandle, TX phone (806) 537–3742. Hours of operation are from 9:00 am to 7:00 pm on Monday; 9:00 am to 5:00 pm, Tuesday through Friday; and closed Saturday and Sunday as well as Federal Holidays. Minutes will also be available by writing or calling Jerry S. Johnson at the address or telephone number listed above.

Issued at Washington, DC on February 3, 1999.

Rachel M. Samuel,

Deputy Advisory Committee Management Officer.

[FR Doc. 99–3111 Filed 2–8–99; 8:45 am]

BILLING CODE 6450–01–P

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

[Docket No. ER97–697–000]

Allegheny Power Service Corporation, Cleveland Electric Illuminating Company, Toledo Edison Company, Ohio Edison Company, Pennsylvania Power Company, Southern Company Services, Inc., and Virginia Electric & Power Company; Notice Canceling Technical Conference

February 3, 1999.

On December 4, 1998, the participants in the Experiment Participation Agreement of the General Agreement on Parallel Paths (GAPP Participants) filed a request that the Commission cancel a technical conference in the above-captioned proceeding.

The GAPP Experiment Participation Agreement was accepted by the Commission in an order in Docket No. ER97–697–000 dated February 17, 1997. In that order the Commission directed the GAPP Participants to host a technical conference on the experiment. By order dated December 23, 1997, the Commission deferred the technical conference until a date to be identified later. In their December 4 motion to cancel this conference, the GAPP Participants state that, after the initial term of the two-year experiment is over, the GAPP Participants will file an overview of the knowledge derived from data collected and analyzed during the course of the experiment and that based on that overview, the Commission may determine what, if any, additional procedures are appropriate in this proceeding.

Upon consideration, notice is hereby given that the technical conference in this proceeding is hereby canceled.

By direction of the Commission.

Linwood A. Watson, Jr.,

Acting Secretary.

[FR Doc. 99–3106 Filed 2–8–99; 8:45 am]

BILLING CODE 6717–01–M

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

[Docket No. ER99–1115–000]

Cabrillo Power I LLC; Notice of Filing

February 3, 1999.

Take notice that on January 29, 1999, Cabrillo Power I LLC tendered for filing a supplement to its petition filed on December 31, 1998, in the above-captioned docket.

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 February 12, 1999. 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 the filing are on file with the Commission and are available for public inspection.

David P. Boergers,

Secretary.

[FR Doc. 99–3066 Filed 2–8–99; 8:45 am]

BILLING CODE 6717–01–M

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

[Docket No. ER99–1116–000]

Cabrillo Power II LLC; Notice of Filing

February 3, 1999.

Take notice that on January 29, 1999, Cabrillo Power II LLC tendered for filing a supplement to its petition filed on December 31, 1998 in the above-captioned docket.

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 February 12, 1999. 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.

David P. Boergers,

Secretary.

[FR Doc. 99–3065 Filed 2–8–99; 8:45 am]

BILLING CODE 6717–01–M

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

[Docket No. TM99–5–23–001]

Eastern Shore Natural Gas Company; Notice of Proposed Changes in FERC Gas Tariff

February 3, 1999.

Take notice that on January 29, 1999 Eastern Shore Natural Gas Company (ESNG) tendered for filing as part of its FERC Gas Tariff, Second Revised Volume No. 1, certain revised tariff sheets in the above captioned docket bear a proposed effective date of February 1, 1999.

ESNG states that the purpose of this instant filing is for ESNG to refile its Storage Tracker rates, previously filed on January 14, 1999. ESNG inadvertently failed to properly track the SST Commodity Charge for storage service purchased from Columbia Gas Transmission Corporation (Columbia) under its Rate Schedules SST and FSS, the costs of which comprise the rates and charges payable under ESNG's Rate Schedule CFSS. This tracking filing is being made pursuant to Section 3 of ESNG's Rate Schedule CFSS.

ESNG states that copies of the filing have been served upon its jurisdictional customers and interested State Commissions.

Any person desiring to protest this filing should file a protest with the Federal Energy Regulatory Commission, 888 First Street, NE., Washington, DC 20426, in accordance with Section 385.211 of the Commission's Rules and Regulations. All such protests must be filed as provided in Section 154.210 of the Commission's Regulations. Protests will be considered by the Commission in determining the appropriate action to be taken, but will not serve to make protestants parties to the proceedings. Copies of this filing are on file with the Commission and are available for public

inspection in the Public Reference Room.

Linwood A. Watson, Jr.,

Acting Secretary.

[FR Doc. 99–3059 Filed 2–8–99; 8:45 am]

BILLING CODE 6717–01–M

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

[Docket No ER99–852–000]

Edison Mission Marketing & Trading, Inc.; Notice of Issuance of Order

February 3, 1999.

Edison Mission Marketing & Trading, Inc. (EMMT), a subsidiary of Edison Mission Energy and an affiliate of Southern California Edison Company and Edison Source, filed an application requesting Commission approval to sell capacity and energy at market-based rates, and for certain waivers and authorizations. In particular, EMMT requested that the Commission grant blanket approval under 18 CFR Part 34 of all future issuances of securities and assumptions of liabilities by EMMT. On January 28, 1999, the Commission issued an Order Conditionally Accepting For Filing Proposed Market-Based Rates (Order), in the above-docketed proceeding.

The Commission's January 28, 1999 Order granted the request for blanket approval under Part 34, subject to the conditions found in Ordering Paragraphs (E), (F), and (H):

(E) Within 30 days of the date of this order, any person desiring to be heard or to protest the Commission's blanket approval of issuances of securities or assumptions of liabilities by EMMT should file a motion to intervene or protest with the Federal Energy Regulatory Commission, 888 First Street, N.E., Washington, D.C. 20426, in accordance with Rules 211 and 214 of the Commission's Rules of Practice and Procedure, 18 CFR 385.211 and 385.214.

(F) Absent a request to be heard within the period set forth in Ordering Paragraph (E) above, EMMT is hereby authorized to issue securities and assume obligations and liabilities as guarantor, indorser, surety or otherwise in respect of any security of another person; provided that such issue or assumption is for some lawful object within the corporate purposes of EMMT, compatible with the public interest, and reasonably necessary or appropriate for such purposes.

(H) The Commission reserves the right to modify this order to require a further showing that neither public nor private interests will be adversely affected by continued Commission approval of EMMT's issuances of securities or assumptions of liabilities * * *

Notice is hereby given that the deadline for filing motions to intervene or protests, as set forth above, is March 1, 1999.

Copies of the full text of the Order are available from the Commission's Public Reference Branch, 888 First Street, N.E., Washington, D.C. 20426.

David P. Boergers,

Secretary.

[FR Doc. 99–3073 Filed 2–8–99; 8:45 am]

BILLING CODE 6717–01–M

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

[Docket No. ER99–806–000]

Genesee Power Station Limited Partnership; Notice of Issuance of Order

February 3, 1999.

Genesee Power Station Limited Partnership (Genesee), a limited partnership organized under the laws of the State of Michigan, exclusively engaged in owning and operating an approximately 38MW small power production facility located in Genesee township, Michigan, filed a proposed rate schedule that would allow it to make sales of power at market-based rates, and for certain waivers and authorizations. In particular, Genesee requested that the Commission grant blanket approval under 18 CFR Part 34 of all future issuances of securities and assumptions of liabilities by Genesee. On January 28, 1999, the Commission issued an Order Accepting For Filing Proposed Market-Based Rates (Order), in the above-docketed proceeding.

The Commission's January 28, 1999 Order granted the request for blanket approval under Part 34, subject to the conditions found in Ordering Paragraphs (C), and (D), and (F):

(C) Within 30 days of the date of this order, any person desiring to be heard or to protest the Commission's blanket approval of issuances of securities or assumptions of liabilities by Genesee should file a motion to intervene or protest with the Federal Energy Regulatory Commission, 888 First Street, N.E., Washington, D.C. 20426, in accordance with Rules 211 and 214 of the Commission's Rules of Practice and Procedure, 18 CFR 385.211 and 385.214.

(D) Absent a request to be heard within the period set forth in Ordering Paragraph (C) above, Genesee is hereby authorized to issue securities and assume obligations and liabilities as guarantor, indorser, surety or otherwise in respect of any security of another person; provided that such issue or assumption is for some lawful object within the corporate purposes of Genesee, compatible with the public interest, and reasonably necessary or appropriate for such purposes.

(F) The Commission reserves the right to modify this order to require a further showing that neither public nor private interests will be adversely affected by continued Commission approval of Genesee's issuances of securities or assumptions of liabilities * * *.

Notice is hereby given that the deadline for filing motions to intervene or protests, as set forth above, is March 1, 1999.

Copies of the full text of the Order are available from the Commission's Public Reference Branch, 888 First Street, N.E., Washington, D.C. 20426.

David P. Boergers,

Secretary.

[FR Doc. 99–3072 Filed 2–8–99; 8:45 am]

BILLING CODE 6717–01–M

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

[Docket No. ER99–791–000]

Grayling Generating Station Limited Partnership; Notice of Issuance of Order

February 3, 1999.

Grayling Generating Station Limited Partnership, a limited partnership organized under the laws of the State of Michigan, exclusively engaged in owning and operating an approximately 38 MW small power production facility located in Grayling, Michigan, (hereafter, Grayling) filed a proposed rate schedule that would allow it to make sales of power at market-based rates, and for certain waivers and authorizations. In particular, Grayling requested that the Commission grant blanket approval under 18 CFR Part 34 of all future issuances of securities and assumptions of liabilities by Grayling. On January 28, 1999, the Commission issued an Order Accepting For Filing Proposed Market-Based Rates (Order), in the above-docketed proceeding.

The Commission's January 28, 1999 Order granted the request for blanket approval under Part 34, subject to the conditions found in Ordering Paragraphs (C), (D), and (F):

(C) Within 30 days of the date of this order, any person desiring to be heard

or to protest the Commission's blanket approval of issuances of securities or assumptions of liabilities by Grayling should file a motion to intervene or protest with the Federal Energy Regulatory Commission, 888 First Street, N.E., Washington, D.C. 20426, in accordance with Rules 211 and 214 of the Commission's Rules of Practice and Procedure, 18 CFR 385.211 and 385.214.

(D) Absent a request to be heard within the period set forth in Ordering Paragraph (C) above, Grayling is hereby authorized to issue securities and assume obligations and liabilities as guarantor, indorser, surety or otherwise in respect of any security of another person; provided that such issue or assumption is for some lawful object within the corporate purposes of Grayling, compatible with the public interest, and reasonably necessary or appropriate for such purposes.

(F) The Commission reserves the right to modify this order to require a further showing that neither public nor private interests will be adversely affected by continued Commission approval of Grayling's issuances and securities or assumptions of liabilities* * *

Notice is hereby given that the deadline for filing motions to intervene or protests, as set forth above, is March 1, 1999.

Copies of the full text of the Order are available from the Commission's Public Reference Branch, 888 First Street, N.E., Washington, D.C. 20426.

David P. Boergers,

Secretary.

[FR Doc. 99–3071 Filed 2–8–99; 8:45 am]

BILLING CODE 6717–01–M

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

[Docket No. MG98–15–001]

Maritimes and Northeast Pipeline, L.L.C.; Notice of Filing

February 3, 1999.

Take notice that on December 9, 1998, Maritimes and Northeast Pipeline, L.L.C., (Maritimes) filed a report in response to the Commission's November 17, 1998 Order on Standards of Conduct. 85 FERC ¶ 61,237 (1998).

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 Rule 211 or 214 of the Commission's Rules of Practice and Procedure (18 CFR 385.211 or 385.214). All such motions to intervene and protest should be filed on or before February 18, 1999. Protests will be considered by the Commission in determining the appropriate action to be taken, but will not serve to make protestants parties to the proceeding. Any person wishing to become a party must file a motion to intervene. Copies of this filing are on file with the Commission and are available for public inspection.

Linwood A. Watson, Jr.,

Acting Secretary.

[FR Doc. 99–3068 Filed 2–8–99; 8:45 am]

BILLING CODE 6717–01–M

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

[Docket No. CP99–172–000]

National Fuel Gas Supply Corporation; Notice of Request Under Blanket Authorization

February 3, 1999.

Take notice that on January 24, 1999, National Fuel Gas Supply Corporation (National Fuel), 10 Lafayette Square, Buffalo, New York 14203, filed in Docket No. CP99–172–000, a request pursuant to Sections 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 points of delivery in Venango and Clarion Counties, Pennsylvania under National Fuel's blanket certificate issued in Docket No. CP83–4–000, 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.

Specifically, National Fuel proposes to abandon seven points of delivery which provide service to seven residential gas customers of National Fuel Gas Distribution Corporation (Distribution), who have all consented to the discontinuation of National Fuel's gas service. National Fuel states that these points of delivery are located along non-jurisdictional production pipelines that will be conveyed to Van Hampton Gas & Oil Co., Inc., who will assume service obligations to five of these customers following the conveyance of these facilities, with one customer electing service from North Penn Gas Company. According to Distribution, the remaining customer will acquire his own utility service. It is further indicated that Distribution has consented to the abandonment.

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, N.E., Washington, D.C. 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 Section 157.205 of the Regulations under the Natural Gas Act (18 CFR 157.205) a protests to the request. If no request 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. 99–3062 Filed 2–8–99; 8:45 am]

BILLING CODE 6717–01–M

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

[Docket No. CP99–174–000]

Natural Gas Pipeline Company of America; Notice of Application

February 3, 1999.

Take notice that on January 25, 1999, Natural Gas Pipeline Company of America (Natural), 747 East 22nd Street, Lombard, Illinois 60148, filed in Docket No. CP99–174–000, an application pursuant to Section 7(c) of the Natural Gas Act (NGA) for a certificate of public convenience and necessity authorizing the looping of a lateral and the upgrade of two other laterals at Natural's Cooks Mills Storage Field (Cooks Mills), all as more fully set forth in the application which is on file with the Commission and open to public inspection.

Specifically, Natural proposes to loop approximately one mile of its 12-inch main gathering lateral with 12-inch pipe, and replace two 4-inch laterals with 6-inch and 8-inch laterals, respectively, at Cooks Mills. Natural states that Cooks Mills is located in Coles and Douglas Counties, Illinois but that the proposed laterals to be modified are located in Douglas County, Illinois. Natural also states that it is not proposing to increase the maximum daily deliverability or the current certificated capacity of Cooks Mills. Natural asserts that the estimated cost of the project is approximately $1.3 million and will be financed from funds on hand. Natural states that it proposes

to roll-in the cost of the proposed facilities in its next rate case following their construction. Natural further states that the replacement work is necessary in order to improve the operational performance of the field.

Any person desiring to be heard or to make any protest with reference to said application should on or before February 24, 1999, file with the Federal Energy Regulatory Commission, 888 First Street, N.E., Washington, D.C. 20426, a motion to intervene or a protest in accordance with the requirements of the Commission's Rules of Practice and Procedure (18 CFR 385.211 or 385.214) and the regulations under the NGA (18 CFR 157.10). All protests filed with the Commission will be considered by it in determining the appropriate action to be taken but will not serve to make the protestants parties to the proceeding. The Commission's rules require that protestors provide copies of their protests to the party or parties directly involved. Any person wishing to become a party in any proceeding herein must file a motion to intervene in accordance with the Commission's rules.

A person obtaining intervenor status will be placed on the service list maintained by the Secretary of the Commission and will receive copies of all documents filed by the applicant and by every one of the intervenors. An intervenor can file for rehearing of any Commission order and can petition for court review of any such order. However, an intervenor must submit copies of comments or any other filing it makes with the Commission to every other intervenor in the proceeding, as well as 14 copies with the Commission.

A person does not have to intervene, however, in order to have comments considered. A person, instead, may submit two copies of comments to the Secretary of the Commission. Commenters will be placed on the Commission's environmental mailing list, will receive copies of environmental documents and will be able to participate in meetings associated with the Commission's environmental review process. Commenters will not be required to serve copies of filed documents on all other parties. However, commenters will not receive copies of all documents filed by other parties or issued by the Commission and will not have the right to seek rehearing or appeal the Commission's final order to a Federal court.

The Commission will consider all comments and concerns equally, whether filed by commenters or those requesting intervenor status.

Take further notice that, pursuant to the authority contained in and subject to the jurisdiction conferred upon the Commission by Sections 7 and 15 of the NGA and the Commission's Rules of Practice and Procedure, a hearing will be held without further notice before the Commission or its designee on this application if no motion to intervene is filed within the time required herein, if the Commission on its own review of the matter finds that a grant of the certificate is required by the public convenience and necessity. If a motion for leave to intervene is timely filed, or if the Commission on its own motion believes that a formal hearing is required, further notice of such hearing will be duly given.

Under the procedure herein provided for, unless otherwise advised, it will be unnecessary for Natural to appear or be represented at the hearing.

Linwood A. Watson, Jr.,

Acting Secretary.

[FR Doc. 99–3064 Filed 2–8–99; 8:45 am]

BILLING CODE 6717–01–M

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

[Docket No. CP99–176–000]

Northwest Pipeline Corporation; Notice of Request Under Blanket Authorization

February 3, 1999.

Take notice that on January 27, 1999, Northwest Pipeline Corporation (Northwest) 295 Chipeta Way, Salt Lake City, Utah 84158, filed in Docket No. CP99–176–000 a request pursuant to Sections 157.205, 157.211 and 157.216 of the Commission's Regulations under the Natural Gas Act (18 CFR 157.205, 157.211, and 157.216) for authorization to modify its Canyonville Meter Station in Douglas County, Oregon under Northwest's blanket certificate issued in Docket No. CP82–433–000 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.

Northwest proposes to remove the two existing 1-inch self operating regulators and appurtenances and install modified replacement facilities consisting of two new 1-inch pilot operated regulators, with 10 percent throttle plates, and appurtenances. Northwest states that the maximum design capacity of the meter station will increase from approximately 450 Dth per day at 150 psig to approximately 550 Dth per day at 150 psig. Northwest states that cost of the proposed modification is estimated to be approximately $2,500.

Any person or the Commission's staff may, within 45 days after issuance of the instant notice by the Commission, file pursuant to Rule 214 of the Commission's Procedural Rules (18 CFR 385.214) a motion to intervene or notice of intervention and pursuant to Section 157.205 of the Regulations under the Natural Gas Act (18 CFR 157.205) a protest to the request. If no protest is filed within the time allowed therefor, the proposed activity shall be deemed to be authorized effective the day after the time allowed for filing a protest. If a protest is filed and not withdrawn within 30 days after the time allowed for filing a protest, the instant request shall be treated as an application for authorization pursuant to Section 7 of the Natural Gas Act.

Linwood A. Watson, Jr.,

Acting Secretary.

[FR Doc. 99–3060 Filed 2–8–99; 8:45 am]

BILLING CODE 6717–01–M

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

[Docket No. RP99–213–000]

Panhandle Eastern Pipe Line Company; Notice of Filing Reconciliation Report

February 3, 1999.

Take notice that on January 29, 1999, Panhandle Eastern Pipe Line Company (Panhandle) tendered for filing its reconciliation report in accordance with section 18.13 of the General Terms and Conditions of its FERC Gas Tariff, First Revised Volume No. 1 and the Commission's October 29, 1997 and December 24, 1997 orders in Docket No. RP97–536–000. The orders require the filing of a final reconciliation report as soon as practicable following the termination of the Stranded Transportation Cost Volumetric Surcharge reconciliation recovery period.

Panhandle states that in Docket No. RP97–536–000 it establishes the Stranded Transportation Cost Volumetric Surcharge applicable to Rate Schedules IT and EIT for the twelve month reconciliation recovery period commencing December 1, 1997. On October 30, 1998, Panhandle filed in Docket No. RP99–107–000 to remove the Stranded Transportation Cost Volumetric Surcharge from its rates effective December 1, 1998. Panhandle's

filing was approved by Commission letter order issued November 27, 1998.

Panhandle states that copies of this filing are being served on all parties to the proceeding in Docket No. RP97–536.

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, DC 20426, in accordance with Sections 385.214 or 385.211 of the Commission's Rules and Regulations. All such motions or protests must be filed on or before February 10, 1999. 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. 99–3056 Filed 2–8–99; 8:45 am]

BILLING CODE 6717–01–M

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

[Docket No. RP99–209–000]

Tennessee Gas Pipeline Company; Notice of Cashout Report

February 3, 1999.

Take notice that on January 29, 1999, Tennessee Gas Pipeline Company (Tennessee) tendered for filing its fifth annual cashout report for the September 1997 through August 1998 period.

Tennessee states that the cashout report reflects a net cashout gain during this period of $4,930,456. The report also reflects a reduction in Tennessee's cumulative loss to date from cashout operations to $3,207,374.

In anticipation of filing a settlement of its pending cashout proceedings which shall include this fifth year cashout report, Tennessee has requested an extended time period for filing motions to intervene or protests. Therefore, the Commission will not establish a date for filing a motion to intervene or protest with the Commission until after the referenced settlement has been filed. 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. 99–3055 Filed 2–8–99; 8:45 am]

BILLING CODE 6717–01–M

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

[Docket No. GT99–10–000]

Tennessee Gas Pipeline Company; Notice of Filing

February 3, 1999.

Take notice that on January 29, 1999, Tennessee Gas Pipeline Company (Tennessee), tendered for filing (1) an Electronic Data Interchange (EDI) Trading Partner Agreement (TPA) between Tennessee and Enron Capital & Trade Resources Corp. (Enron) and (2) Second Revised Sheet No. 413 of Tennessee's FERC Gas Tariff, Second Revised Volume No. 1 (Volume No. 1 Tariff). Tennessee requests an effective date of February 10, 1999.

Tennessee states that it is submitting the TPA for Commission approval because the TPA contains language which differs from the form of TPA contained in Tennessee's Volume No. 1 Tariff (Pro Forma TPA). Tennessee further states that the TPA differs from the Pro Forma TPA due to the parties' desire to adopt the provisions of the Model TPA of the Gas Industry Standards Board (GISB) which GISB filed with the Commission on November 3, 1998.

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 in accordance with Section 154.210 of the Commission's Regulations. Protests will be considered by the Commission in determining the appropriate action to be taken, but will not serve to make protestants parties to the 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. 99–3067 Filed 2–8–99; 8:45 am]

BILLING CODE 6717–01–M

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

[Docket No. RP98–170–003]

Texas Gas Transmission Corporation; Notice of GSR Reconciliation Report

February 3, 1999.

Take notice that on January 29, 1999, Texas Gas Transmission Corporation (Texas Gas) tendered for filing a report that compares gas supply realignment (GSR) costs with amounts recovered through the GSR recovery filings.

Texas Gas states that this reconciliation filing is being made in accordance with Section 33.3(h)(i) as found in Texas Gas's FERC Gas Tariff, First Revised Volume No. 1, and in compliance with Commission Order dated December 24, 1998. Texas Gas states that it has over-recovered its GSR costs due from the firm customers, which may be applied toward costs resulting from a minor unresolved issue and subsequently refunded. The report also details the under-recovery of GSR costs from IT service, which will continue to be recovered pursuant to the cost-sharing mechanism agreed to in the GSR settlement.

Texas Gas states that copies of the revised tariff sheets are being mailed to Texas Gas's jurisdictional customers and interested state commissions.

Any person desiring to protest this filing should file a protest with the Federal Energy Regulatory Commission, 888 First Street, NE, Washington, DC 20426, in accordance with Section 385.211 of the Commission's Rules and Regulations. All such protests must be filed on or before February 10, 1999. 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. 99–3054 Filed 2–8–99; 8:45 am]

BILLING CODE 6717–01–M

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

[Docket No. RP99–214–000]

Texas Gas Transmission Corporation; Notice of Annual Cash-Out Reporting

February 3, 1999.

Take notice that on January 29, 1999, Texas Gas Transmission Corporation (Texas Gas) tendered for filing a report which compares its cash-out revenues with cash-out costs incurred for the annual billing period November 1, 1997, through October 31, 1998.

Texas Gas states that the filing is being made in accordance with the Federal Energy Regulatory Commission's December 16, 1993 ''Order on Third Compliance Filing and Second Order on Rehearing'' in Docket Nos. RS92–24, et al. There is no rate impact to customers as a result of this filing.

Texas Gas states that copies of this filing have been served upon Texas Gas' jurisdictional customers and interested state commissions.

Any person desiring to be heard or to protest said filing should file a motion to intervene or a protest with the Federal Energy Regulatory Commission, 888 First Street, NE, Washington, DC 20426, in accordance with Sections 385.214 or 385.211 of the Commission's Rules and Regulations. All such motions or protests must be filed on or before February 10, 1999. 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. 99–3057 Filed 2–8–99; 8:45 am]

BILLING CODE 6717–01–M

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

[Docket No. RP92–122–007]

Trunkline LNG Company; Notice of Annual Reconciliation Report

February 3, 1999.

Take notice that on January 29, 1999 Trunkline LNG Company (TLC) tendered for filing working papers reflecting its annual reconciliation report.

TLC states that the information is submitted pursuant to Article VIII, Section 4 of the Stipulation and Agreement in the above-captioned proceeding which requires TLC to submit, on an annual basis, a report of the cost and revenues which result from the operation of Rate Schedule PLNG–2 dated June 26, 1987, as amended December 1, 1989.

TLC states that copies of this filing have been served on all participants in the proceeding and applicable state regulatory agencies.

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 on or before February 10, 1999. Protest 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. 99–3053 Filed 2–8–99; 8:45 am]

BILLING CODE 6717–01–M

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

[Docket No. RP99–215–000]

Wyoming Interstate Company, Ltd.; Notice of Proposed Changes in FERC Gas Tariff

February 3, 1999.

Take notice that on January 29, 1999, Wyoming Interstate Company, Ltd; (WIC), tendered for filing to become part of its FERC Gas Tariff, Second Revised Volume No. 2, the tariff sheets listed in Appendix A to the filing, to be effective March 1, 1999.

WIC states that the purpose of this filing is to set forth the pro forma service agreements contained in its tariff the specific types of discounts that WIC may agree to enter into with its shippers.

WIC further states that copies of this filing have been served on WIC's jurisdictional customers and public bodies.

Any person desiring to be heard or to protest said filing should file a motion to intervene or a protest with the Federal Energy Regulatory Commission, 888 First Street, NE, Washington, DC 20426, in accordance with Sections 385.214 or 385.211 of the Commission's Rules and Regulations. All such motions or protests must be filed in accordance with Section 154.210 of the Commission's Regulations. Protests will be considered by the Commission in determining the appropriate action to be taken, but will not serve to make 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. 99–3058 Filed 2–8–99; 8:45 am]

BILLING CODE 6717–01–M

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

[Docket No. ER91–195–036, et al.]

Western System Power Pool, et al.; Electric Rate and Corporate Regulation Filings

February 2, 1999.

Take notice that the following filings have been made with the Commission:

1. Western Systems Power Pool

[Docket No. ER91–195–036]

Take notice that on February 1, 1999, Western Systems Power Pool (WSPP) filed certain information as required by Ordering Paragraph (D) of the Commission's June 27, 1991 Order (55 FERC ¶ 61,495) and Ordering Paragraph (C) of the Commission's June 1, 1992 Order on Rehearing Denying Request Not To Submit Information And Granting in Part And Denying in Part Privileged Treatment. Pursuant to 18 CFR 385.211, WSPP has requested privileged treatment for some of the information filed consistent with the June 1, 1992 order.

Copies of WSPP's informational filing are on file with the Commission and the non-privileged portions are available for public inspection.

Comment date: February 22, 1999, in accordance with Standard Paragraph E at the end of this notice.

2. Allegheny Power Service Corp., on behalf of Monongahela Power Co., The Potomac Edison Company and West Penn Power Company (Allegheny Power)

[Docket No. ER96–58–002]

Take notice that on January 27, 1999, Allegheny Power Service Corporation on behalf of Monongahela Power Company, The Potomac Edison Company and West Penn Power Company tendered for filing a compliance filing regarding the Allegheny Power Pro Forma Open Access Transmission Tariff. This filing is intended to comply with the Commission's order issued on November 25, 1998 in Docket No. ER96–58–000.

Copies of the filing have been provided to the Public Utilities Commission of Ohio, the Pennsylvania Public Utility Commission, the Maryland Public Service Commission, the Virginia State Corporation Commission, the West Virginia Public Service Commission, and all parties of record.

Comment date: February 16, 1999, in accordance with Standard Paragraph E at the end of this notice.

3. California Power Exchange Corporation

[Docket No. ER98–4607–001]

Take notice that on January 28, 1999, the California Power Exchange Corporation (PX), tendered for filing tariff sheets memorializing several clarifications or commitments which the Commission authorized in its January 5, 1999 order in Docket No. ER98–4607–000, 86 FERC ¶ 61,001 (1999).

The PX states that it has served copies of its filing on the PX Participants and on the California Public Utilities Commission. The filing also has been posted on the PX website at http://www.calpx.com.

Comment date: February 17, 1999, in accordance with Standard Paragraph E at the end of this notice.

4. The Detroit Edison Company

[Docket No. ER99–990–000]

Take notice that on January 28, 1999, The Detroit Edison Company filed an amendment in the above-referenced proceeding.

Comment date: February 17, 1999, in accordance with Standard Paragraph E at the end of this notice.

5. Nevada Power Company

[Docket No. ER99–1265–000]

Take notice that on January 28, 1999, Arizona Public Service Company (APS), tendered for filing a Certificate of Concurrence that APS assents to and concurs in Amendment No. 5, to the Navajo Project Co-Tenancy Agreement, APS Rate Schedule FERC No. 229, described below, which the Nevada Power Company (Nevada) has filed, and hereby files this certificate of concurrence in lieu of the filing of Rate Schedule No. 229 specified.

This Certificate on Concurrence is for Amendment No. 5 of the Navajo Project Co-Tenancy Agreements Rate Schedule No. 229, for the Updating of Current Ownership, Cost Responsibility and Configuration of Certain Navajo Project Facilities.

Comment date: February 17, 1999, in accordance with Standard Paragraph E at the end of this notice.

6. American Electric Power Service Corporation

[Docket No. ER99–1468–000]

Take notice that on January 27, 1999, the American Electric Power Service Corporation (AEPSC), tendered for filing executed Firm and Non-Firm Point-to-Point Transmission Service Agreements for Merrill Lynch Capital Services, Inc., Oglethorpe Power Corporation, and PP&L EnergyPlus Co., and a Network Integration Transmission Service Agreement for AEPSC-Wholesale Power Merchant Organization. AEPSC also filed a number of Long-Term Firm Point-to-Point Service Specifications. All of these agreements are pursuant to the AEP Companies' Open Access Transmission Service Tariff (OATT). The OATT has been designated as FERC Electric Tariff Original Volume No. 4, effective July 9, 1996.

AEPSC requests waiver of notice to permit the Service Agreements to be made effective for service billed on and after January 1, 1999.

A copy of the filing was served upon the Parties and the state utility regulatory commissions of Indiana, Kentucky, Michigan, Ohio, Tennessee, Virginia and West Virginia.

Comment date: February 16, 1999, in accordance with Standard Paragraph E at the end of this notice.

7. Tampa Electric Company

[Docket No. ER99–1475–000]

Take notice that on January 27, 1999, Tampa Electric Company (Tampa Electric), tendered for filing Notice of Termination of the rate schedule comprising the contract for the purchase and sale of power and energy between Tampa Electric and NP Energy Inc., (NP Energy).

Tampa Electric proposes that the termination be made effective on March 31, 1999.

Copies of the filing have been served on NP Energy and the Florida Public Service Commission.

Comment date: February 16, 1999, in accordance with Standard Paragraph E at the end of this notice.

8. Niagara Mohawk Power Corporation

[Docket No. ER99–1478–000]

Take notice that on January 27, 1999, Niagara Mohawk Power Corporation (Niagara Mohawk), tendered for filing with the Federal Energy Regulatory Commission an executed amended Transmission Service Agreement between Niagara Mohawk and the Power Authority of the State of New York (NYPA) to permit NYPA to deliver power and energy from NYPA's FitzPatrick Plant, Bid Process Suppliers and Substitute Suppliers to the points where Niagara Mohawk's transmission system connects to its retail distribution system East of Niagara Mohawk's constrained Central-East Interface. This Transmission Service Agreement specifies that NYPA has signed on to and has agreed to the terms and conditions of Niagara Mohawk's Open Access Transmission Tariff as filed in Docket No. OA96–194–000.

Niagara Mohawk requests an effective date of January 1, 1999. Niagara Mohawk has requested waiver of the notice requirements for good cause shown.

Niagara Mohawk has served copies of the filing upon New York Public Service Commission and NYPA.

Comment date: February 16, 1999, in accordance with Standard Paragraph E at the end of this notice.

9. Niagara Mohawk Power Corporation

[Docket No. ER99–1479–000]

Take notice that on January 27, 1999, Niagara Mohawk Power Corporation (Niagara Mohawk), tendered for filing with the Federal Energy Regulatory Commission an executed amended Transmission Service Agreement between Niagara Mohawk and the Power Authority of the State of New York (NYPA) to permit NYPA to deliver power and energy from NYPA's FitzPatrick Plant, Bid Process Suppliers and Substitute Suppliers to the points where Niagara Mohawk's transmission system connects to its retail distribution system west of Niagara Mohawk's constrained Central-East Interface. This Transmission Service Agreement specifies that NYPA has signed on to and has agreed to the terms and conditions of Niagara Mohawk's Open Access Transmission Tariff as filed in Docket No. OA96–194–000.

Niagara Mohawk requests an effective date of January 1, 1999. Niagara

Mohawk has requested waiver of the notice requirements for good cause shown.

Niagara Mohawk has served copies of the filing upon New York Public Service Commission and NYPA.

Comment date: February 16, 1999, in accordance with Standard Paragraph E at the end of this notice.

10. Allegheny Power Service Corp., on behalf of Monongahela Power Co., The Potomac Edison Company, and West Penn Power Company (Allegheny Power)

[Docket No. ER99–1480–000]

Take notice that on January 27, 1999, Allegheny Power Service Corporation on behalf of Monongahela Power Company, The Potomac Edison Company and West Penn Power Company (Allegheny Power), tendered for filing Supplement No. 44 to add American Municipal Power-Ohio, Inc., to Allegheny Power's Open Access Transmission Service Tariff which has been accepted for filing by the Federal Energy Regulatory Commission.

The proposed effective date under the Service Agreement is February 1, 1999.

Copies of the filing have been provided to the Public Utilities Commission of Ohio, the Pennsylvania Public Utility Commission, the Maryland Public Service Commission, the Virginia State Corporation Commission, the West Virginia Public Service Commission.

Comment date: February 16, 1999, in accordance with Standard Paragraph E at the end of this notice.

11. Allegheny Power Service Corp., on behalf of Monongahela Power Co., The Potomac Edison Company, and West Penn Power Company (Allegheny Power)

[Docket No. ER99–1481–000]

Take notice that on January 27, 1999, Allegheny Power Service Corporation on behalf of Monongahela Power Company, The Potomac Edison Company and West Penn Power Company (Allegheny Power), tendered for filing Supplement No. 10–2 to add FPL Energy Services, Inc., to Allegheny Power's Open Access Transmission Service Tariff.

The proposed effective date under the agreement is January 1, 1999.

Copies of the filing have been provided to the Public Utilities Commission of Ohio, the Pennsylvania Public Utility Commission, the Maryland Public Service Commission, the Virginia State Corporation Commission, and the West Virginia Public Service Commission.

Comment date: February 16, 1999, in accordance with Standard Paragraph E at the end of this notice.

12. Allegheny Power Service Corp., on behalf of Monongahela Power Co., The Potomac Edison Company, and West Penn Power Company (Allegheny Power)

[Docket No. ER99–1482–000]

Take notice that on January 27, 1999, Allegheny Power on behalf of Monongahela Power Company, The Potomac Edison Company and West Penn Power Company (Allegheny Power), tendered for filing Supplement No. 46, to add LG&E Energy Marketing Inc., NYSEG Solutions Inc., OGE Energy Resources, and Wisconsin Electric Power Company to Allegheny Power Open Access Transmission Service Tariff which has been accepted for filing by the Federal Energy Regulatory Commission in Docket No. ER96–58–000.

The proposed effective date under the Service Agreements is January 26, 1999.

Copies of the filing have been provided to the Public Utilities Commission of Ohio, the Pennsylvania Public Utility Commission, the Maryland Public Service Commission, the Virginia State Corporation Commission, the West Virginia Public Service Commission.

Comment date: February 16, 1999, in accordance with Standard Paragraph E at the end of this notice.

13. Florida Power & Light Company

[Docket No. ER99–1483–000]

Take notice that on January 27, 1999, Florida Power & Light Company (FPL), tendered for filing a Service Agreement with Columbia Energy Power Marketing Corporation for service pursuant to FPL's Market Based Rates Tariff.

FPL requests that the Service Agreement be made effective on January 1, 1999.

Comment date: February 16, 1999, in accordance with Standard Paragraph E at the end of this notice.

14. Virginia Electric and Power Company

[Docket No. ER99–1484–000]

Take notice that on January 27, 1999, Virginia Electric and Power Company (Virginia Power), tendered for filing a Service Agreement between Virginia Power and FPL Energy Power Marketing, Inc. (Customer), under the FERC Electric Tariff (Second Revised Volume No. 4), which was accepted by order of the Commission dated August 13, 1998 in Docket No. ER98–3771–000. Under the tendered Service Agreement, Virginia Power will provide services to the Customer under the rates, terms and conditions of the Tariff.

Virginia Power requests an effective date of January 27, 1999, the date of filing of the Service Agreement.

Copies of the filing were served upon Transmission Customer, the Virginia State Corporation Commission and the North Carolina Utilities Commission.

Comment date: February 16, 1999, in accordance with Standard Paragraph E at the end of this notice.

15. Delmarva Power & Light Company

[Docket No. ER99–1486–000]

Take notice that on January 27, 1999, Delmarva Power & Light Company (Delmarva) tendered for filing an executed umbrella service agreement with Amerada Hess Corporation, under Delmarva's market rate sales tariff.

Comment date: February 16, 1999, in accordance with Standard Paragraph E at the end of this notice.

16. PP&L, Inc.

[Docket No. ER99–1487–000]

Take notice that on January 27, 1999, PP&L, Inc. (PP&L), tendered for filing a Service Agreement dated January 21, 1999, with Tenaska Power Services Co. (Tenaska), under PP&L's Market-Based Rate and Resale of Transmission Rights Tariff, FERC Electric Tariff, Revised Volume No. 5. The Service Agreement adds Tenaska as an eligible customer under the Tariff.

PP&L requests an effective date of January 27, 1999, for the Service Agreement.

PP&L states that copies of this filing have been supplied to Tenaska and to the Pennsylvania Public Utility Commission.

Comment date: February 16, 1999, in accordance with Standard Paragraph E at the end of this notice.

17. Virginia Electric and Power Company

[Docket No. ER99–1488–000]

Take notice that on January 27, 1999, Virginia Electric and Power Company (Virginia Power), tendered for filing a Service Agreement between Oglethorpe Power Corporation (Customer) under the FERC Electric Tariff (Second Revised Volume No. 4), which was accepted by order of the Commission dated August 13, 1998 in Docket No. ER98–3771–000. Under the tendered Service Agreement, Virginia Power will provide services to the Customer under the rates, terms and conditions of the Tariff.

Virginia Power requests an effective date as of January 27, 1999, the date of filing of the Service Agreement.

Copies of the filing were served upon Customer, the Virginia State Corporation Commission and the North Carolina Utilities Commission.

Comment date: February 16, 1999, in accordance with Standard Paragraph E at the end of this notice.

18. Central Vermont Public Service Corporation

[Docket No. ER99–1490–000]

Take notice that on January 27, 1999, Central Vermont Public Service Corporation (Central Vermont), tendered for filing a Service Agreement with Electric Clearinghouse, Inc., under its FERC Electric Tariff No. 8.

Central Vermont requests waiver of the Commission's Regulations to permit the service agreement to become effective on January 1, 1999.

Comment date: February 16, 1999, in accordance with Standard Paragraph E at the end of this notice.

19. New Century Services, Inc.

[Docket No. ER99–1491–000]

Take notice that on January 27, 1999, 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 Firm Point-to-Point Transmission Service between the Companies and Enron Power Marketing, Inc.

The Companies request that the Agreement be made effective on January 26, 1999.

Comment date: February 16, 1999, in accordance with Standard Paragraph E at the end of this notice.

20. The Dayton Power and Light Company

[Docket No. ER99–1497–000]

Take notice that on January 27, 1999, The Dayton Power and Light Company (Dayton) tendered for filing service a agreement establishing with Columbia Energy Power Marketing Corporation as customers under the terms of Dayton's Open Access Transmission Tariff.

Dayton requests an effective date of one day subsequent to this filing for the service agreements. Accordingly, Dayton requests waiver of the Commission's notice requirements.

Copies of this filing were served upon with Columbia Energy Power Marketing Corporation and the Public Utilities Commission of Ohio.

Comment date: February 16, 1999, in accordance with Standard Paragraph E at the end of this notice.

21. Dayton Power and Light Company

[Docket No. ER99–1498–000]

Take notice that on January 27, 1999, Dayton Power and Light Company (Dayton), tendered for filing service agreements establishing American Municipal Power-Ohio, Inc., Columbia Energy Power Marketing Corporation as customers under the terms of Dayton's Open Access Transmission Tariff.

Dayton requests an effective date of one day subsequent to this filing for the service agreements. Accordingly, Dayton requests waiver of the Commission's notice requirements.

Copies of this filing were served upon American Municipal Power-Ohio, Inc., Columbia Energy Power Marketing Corporation and the Public Utilities Commission of Ohio.

Comment date: February 16, 1999, in accordance with Standard Paragraph E at the end of this notice.

22. Energy Atlantic, LLC

[Docket No. ER99–1499–000]

Take notice that on January 27, 1999, Energy Atlantic, LLC tendered for filing service agreements for the sale of power at market-based rates and service agreements for the reassignment of transmission capacity with Griffin Energy Marketing, LLC, Holyoke Gas and Electric Department, Bangor Hydro-Electric Company, and Rainbow Energy Marketing Corporation.

Comment date: February 16, 1999, in accordance with Standard Paragraph E at the end of this notice.

23. Central Power and Light Company West Texas Utilities Company Public Service Company of Oklahoma Southwestern Electric Power Company

[Docket No. ER99–1500–000]

Take notice that on January 27, 1999, Central Power and Light Company, West Texas Utilities Company, Public Service Company of Oklahoma and Southwestern Electric Power Company (collectively, the CSW Operating Companies), tendered for filing service agreements under which the CSW Operating Companies will provide transmission service to Ameren Services Company (Ameren), Entergy Power Marketing Corporation (Entergy) and Tex-La Electric Cooperative of Texas, Inc. (Tex-La) in accordance with the CSW Operating Companies' open access transmission service tariff. The CSW Operating Companies also tenders for filing notices of cancellation of the firm point-to-point transmission service agreements.

The CSW Operating Companies state that a copy of the filing has been served on Ameren, Entergy and Tex-La.

Comment date: February 16, 1999, in accordance with Standard Paragraph E at the end of this notice.

24. Virginia Electric and Power Co.

[Docket No. ER99–1501–000]

Take notice that on January 27, 1999, Virginia Electric and Power Company (Virginia Power), tendered for filing a Service Agreement between FPL Energy Services, Inc. (Customer), under the FERC Electric Tariff (Second Revised Volume No. 4), which was accepted by order of the Commission dated August 13, 1998 in Docket No. ER98–3771–000. Under the tendered Service Agreement, Virginia Power will provide services to the Customer under the rates, terms and conditions of the Tariff.

Virginia Power requests an effective date as of January 27, 1999, the date of filing of the Service Agreement.

Copies of the filing were served upon Customer, the Virginia State Corporation Commission and the North Carolina Utilities Commission.

Comment date: February 16, 1999, in accordance with Standard Paragraph E at the end of this notice.

25. Mid-Continent Area Power Pool

[Docket No. ER99–1525–000]

Take notice that on January 28, 1999, the Mid-Continent Area Power Pool (MAPP), on behalf of its Members that are subject to Commission jurisdiction as public utilities under Section 201(e) of the Federal Power Act, filed ''Schedule R: Redispatch Service.'' Schedule R provides for redispatch of MAPP Member generating units on a regional basis as an alternative to curtailing approved firm transmission service on MAPP Member systems during emergency conditions.

Comment date: February 17, 1999, in accordance with Standard Paragraph E at the end of this notice.

26. PJM Interconnection, L.L.C.

[Docket No. ER99–1526–000]

Take notice that on January 28, 1999, PJM Interconnection, L.L.C. (PJM), tendered for filing two executed service agreements for point-to-point transmission service under the PJM Open Access Transmission Tariff.

Copies of this filing were served upon the parties to the service agreements.

Comment date: February 17, 1999, in accordance with Standard Paragraph E at the end of this notice.

84. Central Maine Power Company

[Docket No. ER99–1527–000]

Take notice that on January 28, 1999, Central Maine Power Company (CMP), tendered for filing a service agreement for Long-Term Firm Point-to-Point

Transmission Service entered into with Miller Hydro Group. Service will be provided pursuant to CMP's Open Access Transmission Tariff, designated rate schedule CMP—FERC Electric Tariff, Original Volume No. 3, as supplemented.

CMP requests that the Commission accept this Service Agreement for filing and requests waiver of the Commission's notice requirements to permit service under the agreement to become effective as of January 1, 2001.

Comment date: February 17, 1999, in accordance with Standard Paragraph E at the end of this notice.

28. Maine Electric Power Company

[Docket No. ER99–1528–000]

Take notice that on January 28, 1999, Maine Electric Power Company (MEPCO), tendered for filing Notice of Termination of the Service Agreement with Houlton Water Company (Rate Schedule FERC No. 17).

Comment date: February 17, 1999, in accordance with Standard Paragraph E at the end of this notice.

29. Wisconsin Electric Power Company

[Docket No. ER99–1529–000]

Take notice that on January 28, 1999, Wisconsin Electric Power Company (Wisconsin Electric) tendered for filing notice that effective April 1, 1999, Service Agreement No. 65, under Wisconsin Electric Power Company's Coordination Sales Tariff, FERC Electric Tariff Original Volume No. 2, is to be canceled as requested by the customer, Virginia Electric and Power Company.

Copies of the filing have been served on Virginia Electric and Power Company, the Michigan Public Service Commission, and the Public Service Commission of Wisconsin.

Comment date: February 17, 1999, in accordance with Standard Paragraph E at the end of this notice.

30. Peco Energy Company

[Docket No. ER99–1530–000]

Take notice that on January 28, 1999, PECO Energy Company (PECO), tendered for filing a Service Agreement dated January 19, 1999 with PP&L EnergyPlus Co. (PPLEP), under PECO's FERC Electric Tariff Original Volume No. 1 (Tariff). The Service Agreement adds PPLEP as a customer under the Tariff.

PECO requests an effective date of January 19, 1999, for the Service Agreement.

PECO states that copies of this filing have been supplied to PPLEP and to the Pennsylvania Public Utility Commission.

Comment date: February 17, 1999, in accordance with Standard Paragraph E at the end of this notice.

31. Alliant Services Company

[Docket No. ER99–1533–000]

Take notice that on January 28, 1999, Alliant Services Company tendered for filing four executed Form of Service Agreements for Long-Term Firm Point-to-Point Transmission Service between Alliant and Wisconsin Power and Light Company (an Alliant Utility) under the rates, terms and conditions of Alliant's transmission tariff.

Alliant Services Company requests an effective date of January 1, 1999, and accordingly, seeks waiver of the Commission's notice requirements.

A copy of this filing has been served upon the Illinois Commerce Commission, the Minnesota Public Utilities Commission, the Iowa Department of Commerce, and the Public Service Commission of Wisconsin.

Comment date: February 17, 1999, in accordance with Standard Paragraph E at the end of this notice.

32. Niagara Mohawk Power Corporation

[Docket No. ER99–1585–000]

Take notice that on January 28, 1999, Niagara Mohawk Power Corporation (Niagara Mohawk), tendered for filing with the Federal Energy Regulatory Commission an executed Transmission Service Agreement between Niagara Mohawk and Montaup Electric Company. This Transmission Service Agreement specifies that Montaup Electric Company has signed on to and has agreed to the terms and conditions of Niagara Mohawk's Open Access Transmission Tariff as filed in Docket No. OA96–194–000. This Tariff, filed with FERC on July 9, 1996, will allow Niagara Mohawk and Montaup Electric Company to enter into separately scheduled transactions under which Niagara Mohawk will provide transmission service for Montaup Electric Company as the parties may mutually agree.

Niagara Mohawk requests an effective date of January 22, 1999. Niagara Mohawk has requested waiver of the notice requirements for good cause shown.

Niagara Mohawk has served copies of the filing upon the New York State Public Service Commission and Montaup Electric Company.

Comment date: February 16, 1999, in accordance with Standard Paragraph E at the end of this notice.

33. Central Vermont Public Service Corporation

[Docket No. ER99–1586–000]

Take notice that on January 28, 1999, Central Vermont Public Service Corporation (Central Vermont), tendered for filing a Service Agreement with Hudson Light and Power Department under its FERC Electric Tariff No. 8.

Central Vermont requests waiver of the Commission's Regulations to permit the service agreement to become effective on January 1, 1999.

Comment date: February 17, 1999, 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. 99–3051 Filed 2–8–99; 8:45 am]

BILLING CODE 6717–01–P

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

[Project No. 4052–008]

Mr. John Koyle; Notice of Availability of Final Environmental Assessment

February 3, 1999.

In accordance with the National Environmental Policy Act of 1969 and the Federal Energy Regulatory Commission's (Commission's) regulations, 18 CFR part 380 (Order 486, 52 FR 47897), the Commission's Office of Hydropower Licensing has reviewed an application to modify the minimum flow required by article 2 of the exemption for the Koyle Ranch Power Project, No. 4052–008. Article 2 requires the exemptee to release a minimum flow of 5 cubic feet per second (cfs) from June 16 through March 31, and 80 cfs

from April 1 through June 15. The exemptee proposes a year round release of five cfs. The Koyle Ranch Power Project is located on the Big Wood River, near Gooding, Idaho. A Final Environmental Assessment (FEA) was prepared for the proposed modification in flow. The FEA finds that approving the exemptee's proposal would not constitute a major federal action significantly affecting the quality of the human environment.

The FEA was written by staff in the Office of Hydropower Licensing, Federal Energy Regulatory Commission. Copies of the FEA can be viewed in the Public Reference Room, Room 2–A, of the Commission's offices at 888 First Street, N.E., Washington, D.C. 20426. The EA can also be viewed on the web at www.frerc.fed.us. Please call (202) 208–2222 for assistance.

Lindwood A. Watson, Jr.,

Acting Secretary.

[FR Doc. 99–3052 Filed 2–8–99; 8:45 am]

BILLING CODE 6717–01–M

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

[Docket Nos. CP98–761–000 and CP99–140–000]

Viking Gas Transmission Company; Notice of Availability of the Environmental Assessment for the Proposed 1999 Expansion Project

February 3, 1999.

The staff of the Federal Energy Regulatory Commission (FERC or Commission) has prepared an environmental assessment (EA) on the natural gas pipeline facilities proposed by Viking Gas Transmission Company (Viking) in the above-referenced docket. The application and other supplemental filings in this docket are available for viewing on the FERC Internet website (www.ferc.fed.us). Click on the ''RIMS'' link, select ''Docket #'' from the RIMS Menu, and follow the instructions.

Similarly, the ''CIPS'' link on the FERC Internet website provides access to the texts of formal documents issued by the Commission, such as orders, notices, and rulemakings. From the FERC Internet website, click on the ''CIPS'' link, select ''Docket #'' from the CIPS menu, and follow the instructions.

The EA was prepared to satisfy the requirements of the National Environmental Policy Act. The staff concludes that approval of the proposed project, with appropriate mitigating measures, would not constitute a major Federal action significantly affecting the quality of the human environment.

The purpose of the proposed facilities is to provide additional firm transportation service of approximately 28 million cubic feet per day (MMcfd) of natural gas during the winter months and approximately 22 MMcfd of natural gas during the summer months along Viking's existing route between the Canada-United States border near Emerson, Manitoba and North Branch, Minnesota. The proposed facilities would also provide reliability and system flexibility benefits to Viking's existing customers.

The EA assesses the potential environmental effects of the construction and operation of the following proposed natural gas transmission facilities:

- The construction of five pipeline loops [1] of 24-inch-diameter pipeline totaling 45.0 miles;
- The construction of eight crossover valves and other minor aboveground facilities to connect the loops to Viking's existing pipelines;
- The construction of one new meter station; and
- The removal of the existing valve.

The EA has been placed in the public files of the FERC. A limited number of copies of the EA are available for distribution and public inspection at: Federal Energy Regulatory Commission, Public Reference and Files Maintenance Branch, 888 First Street, NE., Room 2A, Washington, DC 20426, (202) 208–1371.

Copies of the EA have been mailed to Federal, state and local agencies, public interest groups, interested individuals, newspapers, and parties to this proceeding.

Any person wishing to comment on the EA may do so. To ensure consideration prior to a Commission decision on the proposal, it is important that we receive your comments before the date specified below. Please carefully follow these instructions to ensure that your comments are received in time and properly recorded.

- Send two copies of your comments to: David P. Boergers, Secretary, Federal Energy Regulatory Commission, 888 First Street, NE., Room 1A, Washington, DC 20426;
- Label one copy of the comments for the attention of the Environmental Review and Compliance Branch, PR11.1;
- Reference Docket Nos. CP98–761–000 and CP99–140–000; and
- Mail your comments so that they will be received in Washington, DC on or before March 4, 1999.

Comments will be considered by the Commission but will not serve to make the commentor a party to the proceeding. Any person seeking to become a party to the proceeding must file a motion to intervene pursuant to Rule 214 of the Commission's Rules of Practice and Procedures (18 CFR 385.214).

The date for filing timely motions to intervene in this proceeding has passed. Therefore, parties now seeking to file late interventions must show good cause, as required by section 385.214(b)(3), why this time limitation should be waived. Environmental issues have been viewed as good cause for late intervention. You do not need intervenor status to have your environmental comments considered. Additional information about the proposed project is available from Mr. Paul McKee of the Commission's Office of External Affairs at (202) 208–1088 or on the FERC website (www.ferc.fed.us) using the ''RIMS'' link to information in this docket number. For assistance with access to RIMS, the RIMS helpline can be reached at (202) 208–2222. Access to the texts of formal documents issued by the Commission with regard to this docket, such as orders and notices, is also available on the FERC website using the ''CIPS'' link. For assistance with access to CIPS, the CIPS helpline can be reached at (202) 208–2474.

Linwood A. Watson, Jr.,

Acting Secretary.

[FR Doc. 99–3063 Filed 2–8–99; 8:45 am]

BILLING CODE 6717–01–M

[1] A pipeline loop is a segment of pipeline installed parallel to an existing pipeline and connected to it at both ends in order to increase the volume of gas that can be transported through the pipeline system.

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

[Project No. 2017–011]

Southern California Edison, Inc., Notice of Intent to Prepare an Environmental Impact Statement

February 3, 1999.

The Federal Energy Regulatory Commission (Commission) received an application for a new license for the continued operation and maintenance of the existing Big Creek No. 4 Hydropower Project (BC#4) on February 26, 1997. BC#4 is located on the San Joaquin River, in Fresno, Madera, and Tulare Counties, California. The project would have an installed capacity of 98.8 megawatts.

Following the public scoping process, the Commission staff determined that

licensing of BC#4 could constitute a major federal action significantly affecting the quality of the human environment. Therefore, the staff intends to prepare an Environmental Impact Statement (EIS) for BC#4 in accordance with the National Environmental Policy Act (NEPA).

The staff's EIS will objectively consider both site-specific and cumulative environmental impacts of the project and reasonable alternatives, and will include economic and engineering analyses.

A draft EIS (DEIS) will be issued and circulated for review by all interested parties. All comments filed on the DEIS will be analyzed by the staff and considered in the final EIS (FEIS). The staff's conclusions and recommendations will then be presented for the consideration of the Commission in reaching its final licensing decision.

This notice informs all interested individuals, organizations, and agencies with environmental expertise and concerns, that: (1) the Commission staff has decided to prepare an EIS; (2) the scoping meetings held December 15 and 16, 1997, at the offices of the Sierra National Forest in North Fork and Clovis, California, and comments filed with the Commission by February 20, 1997—still apply; and (3) additional comments for BC#4 that may result from the change from an EA to an EIS may be filed with the Secretary, Federal Energy Regulatory Commission, 888 First Street, N.E., Washington, D.C. 20426, within 30 days from the date of this notice.

All written correspondence should clearly show the following caption of the first page: Big Creek No. 4 Hydropower Project, (FERC Project No. 2017–011)

Intervenors—those on the Commission's service list for this proceeding (parties)—are reminded of the Commission's Rules of Practice and Procedure, requiring parties filing documents with the Commission, to serve a copy of the document on each person whose name appears on the official service list.[1] Further, if a party or intervenor files comments or documents with the Commission relating to the merits of an issue that may affect the responsibilities of a particular resource agency, they must also serve a copy of the document on that resource agency.

Any questions regarding this notice may be directed to John Ramer, Environmental Coordinator, at (202) 219–2833 or John.Ramer@FERC.Fed.US.

Linwood A. Watson, Jr.,

Acting Secretary.

[FR Doc. 99–3069 Filed 2–8–99; 8:45 am]

BILLING CODE 6717–01–M

[1] The official service list can be obtained by calling the Office of the Secretary, Dockets Branch, at (202) 208–2020.

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

Notice of Applications Tendered for Filing With the Commission and Soliciting Additional Study Requests

February 3, 1999.

Take notice that the following hydroelectric applications have been filed with the Commission and are available for public inspection:

a. *Type of applications:* Two New Major Licenses and Three Subsequent Licenses.

b. *Project Nos.:* 2897–003, 2931–002, 2932–003, 2941–002, and 2942–005.

c. *Date filed:* January 22, 1998.

d. *Applicant:* S.D. Warren Company.

e. *Name of Projects:* Saccarappa Project, Gambo Project, Mallison Falls Project, Little Falls Project, and Dundee Project.

f. *Location:* On the Presumpscot River, near the towns of Windham, Gorham, and Westbrook, in Cumberland County, Maine. These projects do not utilize any federal lands.

g. *Filed Pursuant to:* Federal Power Act (16 U.S.C. §§ 791(a)–825(r)).

h. *Applicant Contact:* Tom Howard, S.D. Warren Company, 89 Cumberland Street/P.O. Box 5000, Westbrook, ME 04098–1597, (207) 856–4286.

i. *FERC Contact:* Any questions on this notice should be addressed to Bob Easton, E-mail address robert.easton@ferc.fed.us or telephone at (202) 219–2782.

j. *Deadline for filing additional study requests:* March 23, 1999.

All documents (original and eight copies) should be filed with: David P. Boergers, Secretary, Federal Energy Regulatory Commission, 888 First Street, NE., Washington, DC 20426.

The Commission's Rules of Practice and Procedure require all intervenors filing documents with the Commission to serve a copy of that document on each person whose name appears on the official service list for the project. Further, if an intervenor files comments or documents with the Commission relating to the merits of an issue that may affect the responsibilities of a particular resource agency, they must also serve a copy of the document on that resource agency.

k. *Status of environmental analysis:* These applications are not ready for environmental analysis at this time.

l. *Brief Description of the Projects:*

Saccarappa: The project consists of the following existing facilities: (1) a 322-foot-long diversion dam consisting of two concrete overflow structures separated by an island; (2) two bypassed reaches measuring 475 and 390 feet long; (3) a 380-foot-long and 36-foot-wide intake canal; (4) a 49-foot-wide by 71-foot-long masonry powerhouse; (5) three turbine generator units, each with a rated capacity of 450 kilowatts (KW) for a total project installed capacity of 1,350 KW; (6) a 345-foot-long tailrace formed by a 33-foot-high guard wall; (7) a 1-mile-long 2.3 KV transmission line/generator lead; and (8) other appurtenances.

Gambo: The project consists of the following existing facilities: (1) A 250-foot-long, 24-foot-high concrete overflow section and 50-foot-long intake structure; (2) a 737-foot-long and 15-foot-deep concrete lined intake canal; (3) a 47-foot-wide by 78-foot-long reinforced concrete and brick powerhouse; (4) two turbine generator units, each with a rated capacity of 950 KW for a total project installed capacity of 1,900 KW; (5) a 300-foot-long bypassed reach; (6) an 8-mile-long 11 KV transmission line; and (7) other appurtenances.

Mallison Falls: The project consists of the following existing facilities: (1) a 358-foot-long and 14-foot-high reinforced concrete, masonry, and cut granite diversion dam; (2) a 70-foot-long headgate structure; (3) a 675-foot-long, 41-foot-wide, and 6-foot-deep bedrock lined intake canal; (4) a 33-foot-wide by 51-foot-long reinforced concrete and masonry powerhouse; (5) two turbine generator units, each with a rated capacity of 400 KW for a total project installed capacity of 800 KW; (6) a 675-foot-long bypassed reach; (7) an 11 KV transmission line tied into the Gambo Project transmission line; and (8) other appurtenances.

Little Falls: The project consists of the following existing facilities: (1) a 330-foot-long and 14-foot-high reinforced concrete and masonry dam incorporating a 70-foot-long intake structure; (2) a 25-foot-wide by 95-foot-long masonry powerhouse which is integral to the dam; (3) four turbine generator units, each with a rated capacity of 250 KW for a total project installed capacity of 1,000 KW; (4) a 300-foot-long bypassed reach; (5) an 11 KV transmission line tied into the Gambo Project transmission line; and (6) other appurtenances.

Dundee: The project consists of the following existing facilities: (1) a 1,492-foot-long dam, consisting of a 150-foot-long, 42-foot-high concrete spillway section flanked by two 50-foot-high earthen embankments, a 90-foot-long and 50-foot-high non-overflow section, and a 27-foot-long gate section; (2) a 44-foot-wide by 74-foot-long reinforced concrete powerhouse which is integral to the spillway section of the dam; (4) three turbine generator units, each with a rated capacity of 800 KW for a total project installed capacity of 2,400 KW; (5) a 1,075-foot-long bypassed reach; (6) a 1,075-foot-long, 30-foot-wide, and 11-foot-deep tailrace; (3) two 10-mile long 11 KV transmission lines; and (7) other appurtenances.

m. *Locations of the application:* A copy of the application is available for inspection and reproduction at the Commission's Public Reference Room, located at 888 First Street, NE., Room 2A, Washington, DC 20426, or by calling (202) 208–1371. The application may be viewed on the web at www.ferc.fed.us. Call (202) 208–2222 for assistance. A copy is also available for inspection and reproduction at the address in item h above.

n. With this notice, we are initiating consultation with the State Historic Preservation Officer as required by § 106, National Historic Preservation Act, and the regulations of the Advisory Council on Historic Preservation, 36 CFR at 800.4.

Linwood A. Watson, Jr.,

Acting Secretary.

[FR Doc. 99–3070 Filed 2–8–99; 8:45 am]

BILLING CODE 6717–01–M

DEPARTMENT OF ENERGY

Southeastern Power Administration

Proposed Rate Extension, Public Forum, and Opportunities for Public Review and Comment for Cumberland System of Projects

AGENCY: Southeastern Power Administration, DOE.

ACTION: Notice of proposed rates.

SUMMARY: Southeastern Power Administration (Southeastern) proposes to replace Rate Schedules SJ–1, CBR–1–C, CSI–1–C, CK–1–C, CC–1–D, CM–1–C, CEK–1–C, and CTV–1–C applicable to the sale of power from the Cumberland System of Projects and seeks approval of Rate Schedules SJ–1–A, CBR–1–D, CSI–1–D, CK–1–D, CC–1–E, CM–1–D, CEK–1–D, and CTV–1–D. The new rate schedules are to be effective for a 5-year period, July 1, 1999, through July 30, 2004. Additionally, opportunities will be available for interested persons to review the present rates, the proposed rates and supporting studies, to participate in a forum and to submit written comments. Southeastern will evaluate all comments received in this process.

DATES: Written comments are due on or before May 10, 1999. A public information and comment forum will be held in Nashville, Tennessee on March 16, 1999. Persons desiring to speak at a forum should notify Southeastern at least three days before the forum is scheduled, so that a list of forum participants can be prepared. Others may speak if time permits.

ADDRESSES: Five copies of written comments should be submitted to: Administrator, Southeastern Power Administration, Department of Energy, Samuel Elbert Building, 2 South Public Square, Elberton, Georgia, 30635. The public information and comment forum will begin at 10:00 A. M. (local Nashville time) on March 16, 1999 at the Clubhouse Inn/Conference Center, 920 Broadway, Nashville, Tennessee, 37203, Phone (615) 244–0150.

FOR FURTHER INFORMATION CONTACT: Leon Jourolmon, Assistant Administrator, Finance and Marketing, Southeastern Power Administration, Department of Energy, Samuel Elbert Building, 2 South Public Square, Elberton, Georgia, 30635, (706) 213–3800.

SUPPLEMENTARY INFORMATION: The Federal Energy Regulatory Commission (FERC) by orders issued December 14, 1994, in Docket No. EF94–3021–000, and August 11, 1997, in Docket No. EF97–3021–000, confirmed and approved Wholesale Power Rate Schedules SJ–1, CBR–1–C, CSI–1–C, CK–1–C, CC–1–D, CM–1–C, CEK–1–C, and CTV–1–C applicable to Cumberland System power for a period ending June 30, 1999.

Discussion: Existing rate schedules are predicated upon a June 1994 repayment study and other supporting data contained in FERC Docket No. EF94–3021–000 and upon an October 1997 repayment study and other supporting data contained in FERC Docket No. EF97–3021–000. The current repayment study dated January 1999 shows that existing rates are not adequate to recover all costs required by present repayment criteria.

A revised repayment study with a revenue increase of $2,272,000 over the current repayment study demonstrates that rates would be adequate to meet repayment criteria. The additional revenue requirement amounts to a 6 per cent increase in revenues and is due to anticipated increased transmission costs Southeastern pays to Tennessee Valley Authority. The study includes retirement and pension benefit costs not previously recovered. It is proposed that the revised rate schedules contain the following unit rates:

CUMBERLAND SYSTEM RATES

TVA Rate Schedule:	
Capacity	$1.434 per kw/month
Additional Energy	8.631 mills per kwh
Outside Preference Customers Rate Schedule (Excluding Customers served through Carolina Power & Light Company):	
Capacity	$2.900 per kw/month
Additional Energy	8.631 mills per kwh
Customers Served through Carolina Power & Light Company, Western Division:	
Capacity	$3.301 per kw/month
Transmission	$1.2828 per kw/month
Monongahela Power Company Energy	The lower of 34.2 mills or Monongahela Power Company's avoided cost.

The referenced repayment studies are available for examination at the Samuel Elbert Building, 2 South Public Square, Elberton, Georgia 30635. Proposed Rate Schedules SJ–1–A, CBR–1–D, CSI–1–D, CK–1–D, CC–1–E, CM–1–D, CEK–1–D, and CTV–1–D are also available.

Dated: January 29, 1999.

Charles A. Borchardt,

Administrator.

[FR Doc. 99–3113 Filed 2–8–99; 8:45 am]

BILLING CODE 6450–01–P

DEPARTMENT OF ENERGY

Southwestern Power Administration

Integrated System Rate Schedules

AGENCY: Southwestern Power Administration, DOE.

ACTION: Notice of rate order.

SUMMARY: The Deputy Secretary acting under Amendment No. 3 to Delegation Order No. 0204–108, effective November 10, 1993, has approved and placed into effect on an interim basis Rate Order No. SWPA–39 which provides the following Integrated System Rate Schedules:

Rate Schedule P–98B, Wholesale Rates for Hydro Peaking Power

Rate Schedule NFTS–98B, Wholesale Rates for Non-Federal Transmission Service

FOR FURTHER INFORMATION CONTACT: Forrest E. Reeves, Assistant Administrator, Office of Corporate Operations, Southwestern Power Administration, Department of Energy, PO Box 1619, Tulsa, Oklahoma 74101–1619.

SUPPLEMENTARY INFORMATION: The FY 1998 Power Repayment Study indicated that rates prescribed by Rate Schedules P–98A, Wholesale Rates for Hydro Peaking Power, and NFTS–98, Wholesale Rates for Non-Federal Transmission Service, are sufficient to meet repayment criteria and do not require any adjustment. However, certain aspects of the terms and conditions set forth in the rate schedules need to be revised for clarification and to accommodate market conditions experienced this past year. The names of the rate schedules have been changed from P–98A and NFTS–98 to P–98B and NFTS–98B to reflect the fact that revisions have been made. Southwestern has followed Title 10, part 903, subpart A of the Code of Federal Regulations, ''Procedures for Public Participation in Power and Transmission Rate Adjustments,'' in connection with the minor rate schedule revisions being proposed. The public was advised by notice published in the **Federal Register** (63 FR 63469), November 13, 1998, of proposed rate schedule changes and of the opportunity to provide written comments for a period of 30 days ending December 14, 1998. Accordingly, several informal meetings were held with customers and interested parties to discuss the proposed changes. One formal written comment was received which supports the proposed rate schedule changes.

Rate Schedule P–98B applies to wholesale customers purchasing hydro peaking power and peaking energy from the Integrated System. This rate schedule is designed for the sale of Federal power and energy. Provisions in the rate schedule were revised to reflect minor corrections and modifications for the purpose of clarification and to address changes in specified terms and conditions of the rate schedule that were found to be insufficient to provide the desired results in light of recent market experiences. No rates for the sale of Federal power and energy were changed.

The section discussing and listing the Power Customer-specific credit, which ended June 30, 1998, has been removed since it is no longer applicable. The existing rate schedule (P–98A) determined the rate for Real Power Losses based upon the cost of energy for Southwestern's marketing area during the previous Fiscal Year, as set forth in the most recently available Energy Information Administration (EIA) Publication. The EIA has recently ceased to compile this information, making it necessary for Southwestern to develop an alternative source upon which to base its rate for Real Power Losses. The basis for determining the rate to charge for Real Power Losses was therefore modified to use the average actual costs incurred by Southwestern for the purchase of energy to replace Real Power Losses during the most recent twelve-month period, as reflected in Southwestern's financial records. The rate for Real Power Losses will be posted on Southwestern's OASIS. Southwestern proposes to initially implement this rate effective January 1, 1999, and thereafter the rate will be reviewed and adjusted to become effective at the beginning of each Fiscal Year (October 1). The Energy Imbalance Service description has been modified to clarify that the Energy Imbalance Service bandwidth specified in Southwestern's Open Access Transmission Tariff does not apply to the deliveries of Hydro Peaking Power and associated energy. However, Power Customers who consume a capacity of Hydro Peaking Power greater than their Peak Contract Demand may be subject to a Capacity Overrun Penalty. As a result of this past summer's recent price escalation for power and the potential unauthorized use of Southwestern's system, Southwestern has revised the Capacity Overrun Penalty provision. It was determined that this penalty would need to be increased to provide a greater incentive to not overrun Southwestern's Integrated System capacity. The Capacity Overrun Penalty provision has been revised to assess a $0.10 per kilowatt penalty during the months of March, April, May, October, November, and December for each hour during which Hydro Peaking Power was provided at a rate greater than that to which the Power Customer is entitled. A penalty of $0.30 per kilowatt will likewise be assessed during the months of January, February, June, July, August, and September.

Rate Schedule NFTS–98B applies to wholesale customers purchasing Non-Federal Point-to-Point and Network Transmission Service. Both the Real Power Losses and the Capacity Overrun Penalty sections have been revised in the same manner as in Rate Schedule P–98B, noted above. However, there is no change in the Energy Imbalance bandwidth under this rate schedule.

Following review of Southwestern's proposal within the Department of Energy, I approved Rate Order No. SWPA–39 on an interim basis through September 30, 2001, or until confirmed and approved on a final basis by the Federal Energy Regulatory Commission.

Dated: January 27, 1999.

Ernest J. Moniz,

Acting Deputy Secretary.

Order Confirming, Approving and Placing Revised Power Rate Schedules in Effect on an Interim Basis

[Rate Order No. SWPA–39]

January 1, 1999.

Pursuant to sections 302(a) and 301(b) of the Department of Energy Organization Act, Public Law 95–91, the functions of the Secretary of the Interior and the Federal Power Commission under Section 5 of the Flood Control Act of 1944, 16 U.S.C. 825s, for the Southwestern Power Administration (Southwestern) were transferred to and vested in the Secretary of Energy. By Delegation Order No. 0204–108, effective December 14, 1983, 48 FR 55664, the Secretary of Energy delegated to the Deputy Secretary of Energy on a non-exclusive basis the authority to confirm, approve and place into effect on an interim basis power and

transmission rates, and delegated to the Federal Energy Regulatory Commission (FERC) on an exclusive basis the authority to confirm, approve and place in effect on a final basis, or to disapprove power and transmission rates. Amendment No. 1 to Delegation Order No. 0204–108, effective May 30, 1986, 51 FR 19744, revised the delegation of authority to confirm, approve and place into effect on an interim basis power and transmission rates to the Under Secretary of Energy rather than the Deputy Secretary of Energy. This delegation was reassigned to the Deputy Secretary of Energy by Department of Energy (DOE) Notice 1110.29, dated October 27, 1988, and clarified by Secretary of Energy Notice SEN–10–89, dated August 3, 1989, and subsequent revisions. By Amendment No. 2 to Delegation Order No. 0204–108, effective August 23, 1991, 56 FR 41835, the Secretary of the Department of Energy revised Delegation Order No. 0204–108 to delegate to the Assistant Secretary, Conservation and Renewable Energy, the authority which was previously delegated to the Deputy Secretary in that Delegation Order. By Amendment No. 3 to Delegation Order No. 0204–108, effective November 10, 1993, 58 FR 59717, the Secretary of Energy revised the delegation of authority to confirm, approve and place into effect on an interim basis power and transmission rates by delegating that authority to the Deputy Secretary of Energy. This rate order is issued by the Deputy Secretary pursuant to said Amendment to Delegation Order No. 0204–108. It is also made pursuant to the authorities as implemented in 10 CFR 903.

Background

In November 1997, Southwestern Power Administration (Southwestern) completed its review of the adequacy of the current rate schedules for the Integrated System and finalized its FY 1997 Power Repayment Studies (PRSs). The studies indicated that the proposed rates as shown in Rate Schedules P–98A and NFTS–98 would meet cost recovery criteria for the Integrated System projects. Federal Energy Regulatory Commission (FERC) confirmation and approval of the following Integrated System.

(System) rate schedules was provided in FERC Docket No. EF98–4011–000 issued April 29, 1998, for the period January 1, 1998, through September 30, 2001:

Rate Schedule P–98A, Wholesale Rates for Hydro Peaking Power

Rate Schedule NFTS–98, Wholesale Rates for Point-to-Point and Network Transmission Service

Rate Schedule EE–98, Wholesale Rate for Excess Energy

Based on operations under the approved Rate Schedules, the Administrator, Southwestern, has determined that minor revisions to the terms and conditions within existing rate schedules P–98A and NFTS–98 are required. Since the proposed changes to the rate schedules are associated with the terms and conditions of service, the net results of the 1997 Integrated System Power Repayment Studies, which was the basis for the existing rate schedules, will not be altered. The designations of the aforementioned rate schedules have been revised from P–98A and NFTS–98 to P–98B and NFTS–98B to reflect the fact that revisions have been made.

Title 10, Part 903 Subpart A, of the Code of Federal Regulations, ''Procedures for Public Participation in Power and Transmission Rate Adjustments and Extensions'' (Part 903) have been followed in connection with the proposed Rate Schedules P–98B and NFTS–98B. An opportunity for customers and other interested members of the public to review and comment on the proposed Rate Schedules P–98B and NFTS–98B was announced by notice published in the **Federal Register** November 13, 1998 (63 FR 63469), with written comments due by December 14, 1998. In addition, Southwestern held informal meetings with customers to discuss proposed changes and to provide opportunity for input in the development of these changes. There was one written comment received which supports the proposed changes.

Discussion

Rate Schedule P–98B applies to wholesale customers purchasing hydro peaking power and peaking energy from the Integrated System. This rate schedule is designed for the sale of Federal power and energy. Provisions in the rate schedule were revised to reflect minor corrections and modifications for the purpose of clarification and to address changes in specified terms and conditions of the rate schedule that were found to be insufficient to provide the desired results in light of recent market experiences. No rates for the sale of Federal power and energy were changed.

The section, Energy Credit, addressing and listing the Power Customer-specific credits, which ended June 30, 1998, has been removed since it is no longer applicable. Further changes were made to the terms and conditions of Real Power Losses, Energy Imbalance Service, and the Capacity Overrun Penalty and are addressed in detail below.

The existing rate schedule (P–98A) determined the rate for Real Power Losses based upon the cost of energy for Southwestern's marketing area during the previous Fiscal Year, as set forth in the most recently available Energy Information Administration (EIA) Publication. The EIA has recently ceased to compile this information, making it necessary for Southwestern to develop an alternative source upon which to base its rate for Real Power Losses. The basis for determining the rate to charge for Real Power Losses was therefore modified to use the average actual costs incurred by Southwestern for the purchase of energy to replace Real Power Losses during the most recent twelve-month period, as reflected in Southwestern's financial records. The rate for Real Power Losses will be posted on Southwestern's OASIS. Southwestern proposes to initially implement this rate January 1, 1999, and thereafter the rate will be reviewed and adjusted to become effective at the beginning of each Fiscal Year (October 1).

The Energy Imbalance Service description has been modified to clarify that the Energy Imbalance Service bandwidth specified in Southwestern's Open Access Transmission Tariff does not apply to the deliveries of Hydro Peaking Power and associated energy. However, Power Customers who consume a capacity of Hydro Peaking Power greater than their Peak Contract Demand may be subject to a Capacity Overrun Penalty.

The Capacity Overrun provision set forth in the existing rate schedule assesses a penalty of $0.05 per kilowatthour for any energy which flows outside the authorized bandwidth from a range of 1 to 2,000 kilowatts and a penalty of $0.10 per kilowatthour for any energy which flows outside the authorized bandwidth from 2,001 kilowatts or greater. As a result of this past summer's recent price escalation for power and the potential unauthorized use of Southwestern's system, Southwestern has revised the Capacity Overrun Penalty provision. It was determined that this penalty would need to be increased to provide a greater incentive to not overrun Southwestern's system capacity. The Capacity Overrun Penalty provision has been revised to assess a $0.10 per kilowatt penalty during the months of March, April, May, October, November, and December for each hour during which Hydro Peaking Power was provided at a rate greater than that to which the Power

Customer is entitled. A penalty of $0.30 per kilowatt will likewise be assessed during the months of January, February, June, July, August, and September.

Rate Schedule NFTS–98B applies to wholesale customers purchasing Non-Federal Point-to-Point and Network Transmission Service. Both the Real Power Losses and the Capacity Overrun Penalty sections have been revised in the same manner as in Rate Schedule P–98B, noted above. However, there is no change in the Energy Imbalance bandwidth under this rate schedule.

Comments and Responses

Southwestern has received one formal written comment from customers which supports the Rate Schedule changes.

Other Issues

There were no other issues raised during the informal meetings or during the formal public participation period.

Availability of Information

Information regarding this rate proposal including studies, comments and other supporting material, is available for public review and comment in the offices of Southwestern Power Administration, One West Third Street, Tulsa, OK 74101.

Administrator's Certification

The revised rate schedules will repay all costs of the Integrated System including amortization of the power investment consistent with the provisions of Department of Energy Order No. RA 6120.2. In accordance with section 1 of Delegation Order No. 0204–108, as amended November 10, 1993, 58 FR 59717, and Section 5 of the Flood Control Act of 1944, the Administrator has determined that the proposed System Rate Schedules are consistent with applicable law and the lowest possible rates consistent with sound business principles.

Environment

No additional evaluation of the environmental impact of the proposed rate schedule changes was conducted since no change has been made to the currently-approved System rates which were determined to fall within the class of actions that are categorically excluded from the requirements of preparing either an Environmental Impact Statement or an Environmental Assessment.

Order

In view of the foregoing and pursuant to the authority delegated to me by the Secretary of Energy, I hereby confirm, approve and place in effect on an interim basis, effective January 1, 1999, the Southwestern Integrated System Rate Schedules P–98B and NFTS–98B which shall remain in effect on an interim basis through September 30, 2001, or until the FERC confirms and approves the rates on a final basis.

Dated: January 27, 1999.

Ernest J. Moniz,

Acting Deputy Secretary.

[FR Doc. 99–3115 Filed 2–8–99; 8:45 am]

BILLING CODE 6450–01–P

DEPARTMENT OF ENERGY

Western Area Power Administration

[Rate Order No. WAPA–76]

Pacific Northwest-Pacific Southwest Intertie Project—Point-To-Point Transmission Service Rates for the 230/345-kV Transmission System—Rate Order No. WAPA–76

AGENCY: Western Area Power Administration, DOE.

ACTION: Notice of rate order.

SUMMARY: Notice is given of the confirmation and approval by the Acting Deputy Secretary of the Department of Energy (DOE) of Rate Order No. WAPA–76 and Rate Schedule INT–FT3 placing provisional rates for the 230/345-kV Pacific Northwest-Pacific Southwest Intertie Project (AC Intertie) firm point-to-point transmission service into effect on an interim basis. The provisional rates will remain in effect on an interim basis until the Federal Energy Regulatory Commission (FERC) confirms, approves, and places them into effect on a final basis or until they are replaced by other rates. The provisional rates will provide sufficient revenue to pay all annual costs, including interest expense, and repayment of required investment within the allowable period.

DATES: The provisional rates will be placed into effect on an interim basis on January 1, 1999, and will be in effect until FERC confirms, approves, and places the provisional rates in effect on a final basis for a 5-year period ending December 31, 2003, or until superseded.

FOR FURTHER INFORMATION CONTACT: Mr. Maher A. Nasir, Rates Team Lead, Desert Southwest Customer Service Region, Western Area Power Administration, P.O. Box 6457, Phoenix, AZ 85005–6457, telephone (602) 352–2768.

SUPPLEMENTARY INFORMATION: The Deputy Secretary of Energy approved the existing Rate Schedule INT–FT2 for AC Intertie firm transmission service on January 31, 1996 (Rate Order No. WAPA–71, 61 FR 4650, February 7, 1996); and FERC confirmed and approved the rate schedule on July 24, 1996, under FERC Docket No. EF96–5191–000 (76 FERC ¶ 62,061). The existing Rate Schedule INT–FT2 became effective on February 1, 1996, for the period ending September 30, 2002. Rate Schedule INT–FT2 provides separate rates for firm transmission service on the AC Intertie 230/345-kV transmission system and AC Intertie 500-kV transmission system. This Rate Order (WAPA–76) seeks to put into place Rate Schedule INT–FT3 that will supersede Rate Schedule INT–FT2 as it relates to 230/345-kV firm transmission service only. Under Rate Schedule INT–FT3, the firm point-to-point transmission service rate on the AC Intertie 230/345-kV transmission system on January 1, 1999, is $12.00/kW/year or $1.00/kW/month and includes the cost for the ancillary service of scheduling, system control and dispatch service. The remaining ancillary services, which comply with FERC Order Nos. 888 and 888–A, will be provided through Western Area Power Administration's (Western) Open Access Transmission Service Tariff, published on January 6, 1998 (63 FR 521). The provisional rate of $12.00/kW/year represents an increase of approximately 82 percent over the existing rate for firm transmission service on the AC Intertie 230/345-kV transmission system.

By Amendment No. 3 to Delegation Order No. 0204–108, published November 10, 1993 (58 FR 59716), the Secretary of Energy delegated: (1) The authority to develop long-term power and transmission rates on a nonexclusive basis to the Administrator of Western; (2) the authority to confirm, approve, and place such rates into effect on an interim basis to the Deputy Secretary of Energy; and (3) the authority to confirm, approve, and place into effect on a final basis, to remand, or disapprove such rates to FERC.

Rate Order No. WAPA–76 was prepared pursuant to Delegation Order No. 0204–108, existing DOE procedures for public participation in power rate adjustments in 10 CFR Part 903, and procedures for approving Power Marketing Administration rates by the FERC in 18 CFR Part 300. Rate Order No. WAPA–76, confirming, approving, and placing the proposed AC Intertie 230/345-kV transmission system firm point-to-point transmission service rate into effect on an interim basis, is issued, and the new Rate Schedule INT–FT3 will be submitted promptly to FERC for confirmation and approval on a final basis.

Dated: January 28, 1999.

Ernest J. Moniz,

Acting Deputy Secretary.

Order Confirming, Approving, and Placing the Pacific Northwest-Pacific Southwest Intertie Firm Transmission Service Rates Into Effect on an Interim Basis

January 1, 1999.

These rates are developed pursuant to the Department of Energy Organization Act (42 U.S.C. 7101 *et seq.*), through which the power marketing functions of the Secretary of the Interior and the Bureau of Reclamation under the Reclamation Act of 1902 (43 U.S.C. 371 *et seq.*), as amended and supplemented by subsequent enactments, particularly section 9c of the Reclamation Project Act of 1939 (43 U.S.C. 485h(c)), and other acts specifically applicable to the project involved, were transferred to and vested in the Secretary of Energy (Secretary).

By Amendment No. 3 to Delegation Order No. 0204–108, published November 10, 1993 (58 FR 59716), the Secretary delegated: (1) the authority to develop long-term power and transmission rates on a non-exclusive basis to the Administrator of Western Area Power Administration (Western); (2) the authority to confirm, approve, and place such rates into effect on an interim basis to the Deputy Secretary of Energy; and (3) the authority to confirm, approve, and place into effect on a final basis, to remand, or to disapprove such rates to the Federal Energy Regulatory Commission (FERC). Existing DOE procedures for public participation in power rate adjustments are found at 10 CFR Part 903. Procedures for approving Power Marketing Administration rates by FERC are found at 18 CFR Part 300.

Acronyms and Definitions

As used in this rate order, the following acronyms and definitions apply:

AC: Alternating Current.
AC Intertie: Pacific Northwest-Pacific Southwest Intertie Project.
Administrator: The Administrator of Western Area Power Administration (Western).
BPA: Bonneville Power Administration.
Existing PRS: The PRS used in this rate order, which was used to test the adequacy of the existing rate.
DC: Direct Current.
DOE: Department of Energy.
DOE Act: Department of Energy Organization Act, August 4, 1977 (42 U.S.C. 7101 *et seq.*).
DOE Order RA 6120.2: An order dealing with power marketing administration financial reporting and rate-making procedures.
DSW: Desert Southwest Customer Service Region.
FERC: Federal Energy Regulatory Commission.
FRN: **Federal Register** notice.
FY: Fiscal Year.
kV: Kilovolt.
kW: Kilowatt.
$/kW/year: Annual charge for capacity usage—($ per kilowatt per year).
kWh: Kilowatthour.
LCRBDF: Lower Colorado River Basin Development Fund established under Section 403 of the Colorado River Basin Project Act of 1968 (82 Stat. 885).
MAP: Mead-Adelanto Project. A 500-kV transmission system joint participation construction project with termination points in southern Nevada and southern California.
MPP: Mead-Phoenix Project. A 500-kV transmission system joint participation construction project with termination points in Phoenix, Arizona and southern Nevada.
mills/kWh: Mills per kilowatthour.
Multi-Project Costs: These are costs for facilities being charged to one project that benefit other projects.
MW: Megawatt.
O&M: Operations and Maintenance.
PRS: Power Repayment Study.
Proposed Rate: A rate revision that the Administrator of Western recommends to the Deputy Secretary of Energy for approval.
Provisional Rate: A rate which has been confirmed, approved, and placed into effect on an interim basis by the Deputy Secretary.
Ratesetting PRS: The PRS that demonstrates that potential revenue levels will satisfy the cost.
Reclamation: Bureau of Reclamation.
Replacement: A unit of property constructed or acquired as a substitute for an existing unit of property for the purpose of maintaining the power features of a project.
Retirement Benefits: Civil Service Retirement Costs and Post Retirement Health Benefits.
Secretary: Secretary of Energy.
Western: Western Area Power Administration.

Effective Date

The new rate will become effective on an interim basis on the first day of the first full billing period beginning on or after January 1, 1999, and will be in effect pending FERC's approval of it or a substitute rate on a final basis for the 5-year period ending December 31, 2003, or until superseded. Western is implementing a rate for firm point-to-point transmission service on the AC Intertie 230/345-kV transmission system only.

Public Notice and Comment

The Procedures for Public Participation in Power and Transmission Rate Adjustments and Extensions, 10 CFR Part 903, have been followed by Western in the development of the firm point-to-point transmission service rate. The provisional firm point-to-point transmission service rate for the AC Intertie 230/345–kV transmission system represents a rate increase of 82 percent over the existing rate. This rate is classified as a major rate adjustment as defined at 10 CFR Part 903.2(e) and 903.2(f)(1). The distinction between a minor and a major rate adjustment is used only to determine the public procedures for the rate adjustment. The following summarizes the steps Western took to ensure involvement of interested parties in the rate process:

1. The first informal public information meeting was held on April 28, 1997, at the Desert Southwest Customer Service Region (DSW) office located in Phoenix, Arizona. Approximately 13 customers of the AC Intertie were present. Western explained the need for the proposed rate adjustment and answered questions from those attending.

2. Western held its second informal public information meeting on June 25, 1997, at the DSW office. Approximately 11 customers of the AC Intertie were present. Western staff provided and discussed responses to data requested at the first informal public meeting.

3. Western held its third informal public information meeting on July 24, 1997, at the DSW office. Approximately 20 customers of the AC Intertie were present. Western staff provided and discussed responses to data requested at the second informal public meeting.

4. Western provided responses to the questions and comments raised at the third informal customer information meeting by letter dated January 12, 1998.

5. On April 3, 1998, Western announced in **Federal Register** notice (FRN) 63 FR 16497 the start of the public process for the approval of the proposed AC Intertie 230/345-kV transmission system firm point-to-point transmission service rate. The FRN identified the end of the consultation and comment period as July 2, 1998.

6. On May 4, 1998, beginning at 10 a.m., a public information forum was held at Western's DSW office. At the start of the forum, a handout containing

information regarding the updated rate was provided. Western publicly presented the Proposed Rate for the AC Intertie 230/345–kV transmission system, provided a detailed explanation of the changes to the Proposed Rate, and answered questions from the public. On May 20, 1998, a letter, responding to questions not answered at the public information forum, was mailed to the AC Intertie customers.

7. On June 1, 1998, beginning at 10 a.m., a public comment forum was held at Western's DSW office. Western gave the public an opportunity to comment for the record, verbally and in written form. Eight representatives made oral comments.

8. Twenty-four comment letters were received during the consultation and comment period. The consultation and comment period ended July 2, 1998. All formally submitted comments have been considered in the preparation of this rate order.

Project Description

The AC Intertie was authorized by section 8 of the Pacific Northwest Power Marketing Act of August 31, 1964. Originally, the AC Intertie was to be a combined Alternating Current (AC) and Direct Current (DC) system which was to connect the Pacific Northwest with the southwest regions of the United States. As authorized, the overall project was to be a cooperative construction venture between Federal and non-Federal entities. In May 1969, the Department of the Interior indefinitely postponed construction because of several delays in congressional funding, revising the DC line's estimated in-service date to the point that some of the potential users withdrew their interest. Consequently, the facilities constructed provide only AC transmission service.

Western's portion of the AC Intertie consists of two parts, a northern portion and a southern portion. The northern portion is administered by Western's Sierra Nevada Customer Service Region and is incorporated, for repayment, with the Central Valley Project. The northern portion consists of a 94-mile (151 km), 500-kV line from Malin Substation (Oregon) to Round Mountain to Cottonwood Substation (California). By agreement, the Central Valley Project has transmission rights for 400 MW of northern Intertie capacity.

The southern portion is administered by Western's DSW office and is treated as a separate project for repayment and operational purposes. It consists of a 238-mile (383 km) 345-kV line from Mead Substation (Nevada) to Liberty Substation (Arizona), a 19-mile, (31 km) 230-kV line from Liberty to Westwing Substation (Arizona), a 22-mile (35 km), 230-kV line from Westwing to Pinnacle Peak Substation (Arizona), and two new segments which came on-line in April 1996: the 260-mile (419 km) Mead-Phoenix 500-kV AC Transmission Line between Marketplace Substation (Nevada) and Perkins Substation (Arizona) and the 202-mile (325 km) Mead-Adelanto 500-kV AC Transmission Line between Marketplace Substation and the existing Adelanto Switching Substation in southern California.

Existing and Provisional Rates

AC Intertie Project Firm Point-to-Point Transmission Service

The following table displays the existing rates and the Provisional Rates for the AC Intertie 230/345-kV transmission system:

EXISTING POINT-TO-POINT TRANSMISSION SERVICE RATE

[AC intertie 230/345-kV transmission system rate schedule firm point-to-point transmission rate ($ per kW/year)]

Effective period	Existing (effective 10/01/96 to 09/30/02)	Provisional	Percent change from existing rate
01/01/99 to 12/31/03	$6.58/kW/Year	$12.00/kW/Year	82.0

Certification of Rate

Western's Administrator has certified that the AC Intertie 230/345-kV transmission system firm point-to-point transmission service rate placed into effect on an interim basis herein is the lowest possible rate consistent with sound business principles. The Provisional Rate has been developed in accordance with administrative policies and applicable laws.

Discussion

AC Intertie Transmission Service

The existing AC Intertie transmission service rate schedule was placed into effect on February 1, 1996, under Rate Order WAPA–71 (61 FR 4850) until September 30, 2002, and was approved on a final basis by FERC on July 24, 1996. Under Rate Order WAPA–71, three types of transmission service rates were approved and they are: (1) a rate for firm transmission service on the AC Intertie 230/345-kV transmission system; (2) a rate for firm transmission service on the AC Intertie 500-kV transmission system; and (3) a rate for non-firm transmission service on both the 230/345-kV and the 500-kV transmission systems. Western proposes, through Rate Order WAPA–76, to supersede only the rate for firm transmission service on the AC Intertie 230/345-kV transmission system placed in effect under Rate Order WAPA–71.

Basis for Rate Development

Two major issues have prompted the transmission rate adjustment. First, the Provisional Rate accounts for recovery of abandoned project costs with interest. These costs were incurred primarily between 1964 and 1969 during the planning and early construction phases of the Celilo-Mead-Los Angeles 750-kV DC Transmission Line. In May 1969, the Department of the Interior indefinitely postponed construction because of several delays in congressional funding, revising the DC line's estimated in-service date to the point that some of the potential users withdrew their interest.

The second issue is that costs and revenues relating to the new AC Intertie 500-kV transmission system are now being accounted for in the Power Repayment Study (PRS). It is estimated that it will take approximately 10 years for the AC Intertie 500-kV transmission system to be subscribed to a level sufficient to meet its own revenue repayment requirements. The Provisional Rate for firm transmission service on the AC Intertie 230/345-kV transmission system takes into account the phasing-in of the AC Intertie 500-kV transmission system revenues starting with a revenue contribution of $1,500,000 in Fiscal Year (FY) FY 1999, and increasing annually by $1,410,000 through FY 2008.

Power Repayment Study

As a result of phasing in the AC Intertie 500-kV transmission system revenues, and in order to maintain a marketable rate of $12/kW/year, annual deficits are incurred through FY 2005. These deficits allow for the very

acceptable industry practice of marketing, over time, a major capitol improvement such as the AC Intertie 500-kV transmission system. The annual deficits incurred are all repaid by FY 2017.

Statement of Revenue and Related Expenses

The following table provides a summary of revenues and expenses for the 5-year rate period:

AC INTERTIE RATE PERIOD REVENUES AND EXPENSES

[$1,000]

	Provisional rate PRS FY 1999–2003	Existing rate PRS FY 1999–2003	Difference
Total Revenues	91,067	43,435	47,632
Revenue Distribution:			
O&M	20,690	13,226	7,464
Abandoned Plant	1,837	0	1,837
Interest	91,428	22,474	68,954
Other	4,056	1,848	2,208
Investment Repayment	0	5,887	(5,887)
Capitalized Expenses	(26,943)	0	(26,943)

The following table provides a summary of the average annual revenues and expenses for the 5-year rate period:

AC INTERTIE COMPARISON OF PERIOD AVERAGE ANNUAL REVENUES AND EXPENSES FOR FY 1999–2003

[$1,000]

	Provisional rate average annual	Existing rate average annual	Difference
Total Revenues	18,213	8,687	9,526
Revenue Distribution:			
O&M	4,138	2,645	1,493
Abandoned Plant	367	0	367
Interest	18,286	4,495	13,791
Other	811	370	441
Investment Repayment	0	1,177	(1,177)
Capitalized Expenses	(5,389)	0	(5,389)

The following table provides a summary of revenues and expenses for the 50-year study period:

AC INTERTIE COST EVALUATION RATE PERIOD REVENUES AND EXPENSES

[$1,000]

	Provisional rate PRS FY 1999–2049	Existing rate PRS FY 1999–2049	Difference
Total Revenues	1,369,275	441,987	927,288
Revenue Distribution:			
O&M	222,164	132,885	89,279
Abandoned Plant	9,921	0	9,921
Interest	497,108	81,851	415,257
Other	23,191	12,468	10,723
Investment Repayment	269,849	116,159	153,690
Capitalized Expenses	22,550	0	22,550
LCRBDF Transfer	324,492	98,543	225,949

The following table provides a summary of the average annual revenues and expenses for the 50-year study period:

AC INTERTIE COMPARISON OF COST EVALUATION RATE PERIOD AVERAGE ANNUAL REVENUES AND EXPENSES FOR FY 1999–2049

[$1,000]

	Provisional rate average annual	Existing rate average annual	Difference
Total Revenues	27,386	8,840	18,546
Revenue Distribution:			

AC INTERTIE COMPARISON OF COST EVALUATION RATE PERIOD AVERAGE ANNUAL REVENUES AND EXPENSES FOR FY 1999–2049—Continued

[$1,000]

	Provisional rate average annual	Existing rate average annual	Difference
O&M	4,443	2,658	1,785
Abandoned Plant	198	0	198
Interest	9,407	1,637	7,770
Other	464	249	215
Investment Repayment	4,230	2,323	1,907
Capitalized Expenses	451	0	451
LCRBDF Transfer	8,192	1,971	6,221

Comments

During the public consultation and comment period, Western received 24 written comments on the rate adjustment. In addition, eight customer representatives orally commented during the June 1, 1998, public comment forum. All comments received by the end of the public consultation and comment period, July 2, 1998, were reviewed and considered in the preparation of this rate order.

Written comments were received from the following sources:

Aguila Irrigation District (Arizona)
Arizona Power Authority (Arizona)
Arizona Public Service Company (Arizona)
BDJ Farms, LLC (Arizona)
Central Arizona Project (Arizona)
Charles A. Ditsch, Attorney at Law (Arizona)
City of Safford (Arizona)
Colorado River Commission of Nevada (Nevada)
Colorado River Energy Distributors Association (Arizona)
Electrical District No. 3 (Arizona)
Electrical District No. 5 (Arizona)
Electric Resource Strategies (Arizona)
Gladden Farms II (Arizona)
Harquahala Valley Power District (Arizona)
James N. Warkomski, P.E., R.L.S. (Arizona)
John DelMar, Electrical District No. 8 Member (Arizona)
McMullen Valley Water Conservation and Drainage District (Arizona)
Meyer, Hendricks, Bivens & Moyes, P.A. (Arizona)
Nevada Power Company (Nevada)
Robert S. Lynch, Attorney at Law (Arizona)
Salt River Project (Arizona)
Thatcher (Arizona)
Tonopah Irrigation District (Arizona)

The following is a summary of the comments received by the end of the consultation and comment period and Western's responses to those comments. The comments are paraphrased for brevity and responses are presented below. Specific comments are used for clarification where necessary.

Comment: Several commentors protested the inclusion of the abandoned project costs relating to the Celilo-Mead-Los Angeles 750-kV DC transmission line in the rate order stating that doing so would be inequitable and inconsistent with the financial reporting policies, procedures, and methodology established under DOE Order RA 6120.2. The commentors also referenced a longstanding rate making principle that customers should only be required to pay for facilities that are ''prudent'' investments and which are ''used and useful'' in providing electric service.

Response: Western held the abandoned project costs from 1969 until 1993 in a deferred asset account. In 1993, these costs were booked in Western's financial statements as an expense against Operation and Maintenance. Western has withheld the inclusion of these costs from the PRS in any of the previous rate orders while it determined the appropriate course of action. Western's auditors issued findings in 1994 and 1995 that the proper treatment of abandoned project costs is the full cost recovery through project rates of the costs plus any accrued interest. In 1996, Western's Administrator committed to comply with the auditor recommendation before a Congressional subcommittee hearing.

Comment: Several commentors questioned Western's legal authority to collect the abandoned project costs relating to the Celilo-Mead-Los Angeles 750-kV DC transmission line.

Response: Fundamental principles of Reclamation Law require the recovery of the Government's construction investment, with interest (Reclamation Project Act of 1939, Section 9(c); 53 Stat. 1187, 1194). Western is not aware of any authority exempting the abandoned project costs from this requirement.

Comment: Several commentors questioned the difference in Western's proposed treatment of the abandoned project costs relating to the Celilo-Mead-Los Angeles 750-kV DC transmission line from the position stated by the Bonneville Power Administration (BPA) with regard to costs incurred under the Teton Dam Project. In 1976, the Teton Dam Project failed, and a decision was subsequently made by the Bureau of Reclamation (Reclamation) not to recommence construction. To date, the costs associated with the Teton Dam Project have not been included in BPA's customer rates for repayment.

Response: The debt incurred by Western relating to the Celilo-Mead-Los Angeles 750-kV DC transmission line was funded through government appropriations. The Reclamation Project Act of 1939 requires repayment of appropriations. Through this rate order, these costs will be repaid through the project rates. The costs associated with the Teton Dam Project remain a part of BPA's appropriated debt balance. The debt balance can be reduced through repayment or through Congressional action to de-authorize the project and declare the costs as non-reimbursable. To Western's knowledge, BPA is currently not pursuing either of the two options available for reducing appropriated debt. Western, however, recognizes the AC Intertie customers' intention of seeking, through Congressional action, to declare the abandoned project costs related to the Celilo-Mead-Los Angeles 750-kV DC transmission line as non-reimbursable. In order to avoid the costly process associated with reversing the costs should the customers' efforts be successful, Western is willing to allow the deposit of customer monies associated with these disputed abandoned project costs in an escrow account, for a 2-year period, thereby allowing sufficient time for the customers' efforts to be concluded.

Comment: A commentor questioned the amount of funds appropriated for the Celilo-Mead-Los Angeles 750-kV DC transmission line.

Response: The specific amount of funds appropriated to Reclamation for the construction of the Celilo-Mead-Los Angeles 750-kV DC transmission line is not readily available. However, appropriations funded construction activities from 1964 through 1969 were recorded as capitalized costs in Reclamation's AC Intertie financial statements. These capitalized costs, plus accrued interest, make up the abandoned project costs.

Comment: A commentor protested the inclusion of costs associated with the AC Intertie 500-kV transmission system into the proposed rates.

Response: Western has maintained maximum flexibility for the AC Intertie Project by maintaining independent transmission service rates for the 230/345-kV transmission system and the 500-kV transmission system. However, DSW is responsible for demonstrating repayment for those AC Intertie facilities constructed with appropriated funds allocated to DSW. The firm point-to-point transmission service rate being proposed under this rate order will satisfy the repayment criteria that Power Marketing Administrations are subject to while maintaining the flexibility of a possible reduction to the 230/345-kV transmission system rate in future years should revenues from the AC Intertie 500-kV transmission system materialize as projected.

Comment: A commentor questioned the existence of any specific Act authorizing Western to construct the AC Intertie 500-kV transmission system.

Response: Construction of the Intertie was initially authorized by the Pacific Northwest Preference Act of 1964 (P.L. 88–552; 78 Stat. 756). Subsequently, the Energy and Water Development Appropriation Act of 1985, Public Law No. 98–360, 98 Stat. 403, 416, authorized Western's participation in the construction of the AC Intertie 500-kV transmission system.

Comment: A commentor stated that the construction and inclusion in the proposed rate of the AC Intertie 500-kV Intertie transmission system violates Western's goals with regards to limiting increases in annual operating expenses in order to maintain competitive rates.

Response: Western's goal of limiting increases in annual operating expenses, exclusive of debt service, in order to maintain competitive rates in the markets served by Western was first published in September 1994 and was not in existence when construction began on the AC Intertie 500-kV transmission system. Nevertheless, the overwhelming majority of costs relating to the AC Intertie 500-kV transmission system is for debt service and not annual operating expenses. Furthermore, the proposed firm point-to-point transmission service rate of $12/kW/year remains less than Western's Parker-Davis Project transmission service rate of $12.99/kW/year and also less than the firm point-to-point transmission rates offered by the other utilities that operate in the same regional markets served by DSW.

Comment: A commentor stated that the construction and inclusion in the proposed rate of the AC Intertie 500-kV transmission system violates Western's operating rules with regards to subjecting new facilities for construction to at least one of three criteria: (1) increased revenues from the new facilities must exceed the annual cost over the cost evaluation period; (2) customers must benefit sufficiently to support the new facilities in spite of a possible rate increase; or (3) the new facilities must be funded by others.

Response: Western's operating rules for construction of new facilities were first published in September 1994 and were not in existence when construction began on the AC Intertie 500-kV transmission system. However, Western had conducted studies and surveys prior to the construction of the AC Intertie 500-kV transmission system that supported Western's participation in the Mead-Phoenix Project (MPP) and Mead-Adelanto Project (MAP). Studies conducted in 1989 indicated that given Western's generation capability and load patterns, Western's transmission system existing at the time of the studies did not have the capacity to effectively market Federal power resources. Western's decision to participate in the MPP and MAP was substantiated by an independently-produced resources and transmission study conducted in 1990. The MPP and MAP were joint participation construction projects with 11 other entities. The entities are as follows: Arizona Public Service Company; City of Anaheim; City of Azusa; City of Banning; City of Burbank; City of Colton; City of Glendale; City of Pasadena; City of Riverside; City of Vernon; Los Angeles Department of Water and Power; Public Power Agency of Modesto, Santa Clara, and Redding; and Salt River Project.

This vast number of participants only underscores the perceived need by the participants at the time of construction. Furthermore, Western conducted a number of surveys between November 1990, and January 1996, all of which resulted in substantial interest by prospective customers for transmission capacity. In February 1996, Western began contract negotiations with prospective customers. During negotiations, it became apparent that various external industry issues were emerging and that these issues were having an impact on the negotiations. The prospective customers decided to delay contracting for long-term firm transmission capacity over the AC Intertie 500-kV transmission system. FERC Order No. 888 became effective July 9, 1996. FERC Order No. 888 is designed to promote competition through open access and has brought many new players to the wholesale bulk power business. As a result, utilities are striving to improve their short-term competitive position, and prospective customers are staying away from committing to long-term transmission contracts.

Comment: A commentor referenced 10 CFR. 903.21(g) in conjunction with a statement concerning the AC Intertie 500-kV transmission facilities, that ''Western is not legally permitted to construct speculative transmission facilities on the backs of the preference customers it has a statutory obligation to serve at the lowest possible rates consistent with sound business principles.''

Response: The reference to 10 CFR 903.21(g) is erroneous because no such section exists. Moreover, as explained previously, Western's participation in the construction of the AC Intertie 500-kV transmission system was specifically authorized by Public Law No. 98–360. In response to the criticism that the construction of the AC Intertie 500-kV transmission system was a speculative enterprise, it should be noted once again that the MPP and MAP were joint participation construction projects with 11 other entities. The entities are as follows: Arizona Public Service Company; City of Anaheim; City of Azusa; City of Banning; City of Burbank; City of Colton; City of Glendale; City of Pasadena; City of Riverside; City of Vernon; Los Angeles Department of Water and Power; Public Power Agency of Modesto, Santa Clara, and Redding; and Salt River Project. Due to changes in the electric industry as a whole, utilities are having to defend stranded investments that the electric utility industry has undertaken. At the present time, many of the participants are trying to effectively market their entitlement of the MPP and MAP. Stranded investments, due to industry restructuring in California alone, are projected to be more than $4 billion. At the time Western and other utilities made the decision to participate in the

MPP and MAP, the decision was sound. As late as February 1996, utilities were requesting 649 MW of capacity on the AC Intertie 500-kV transmission system.

Comment: Several commentors protested the inclusion of the unfunded portion of the Civil Service Retirement Costs and Post-Retirement Health and Life Insurance Benefits (Retirement Benefits) in the rate order and in some cases stated that Western did not possess the legal authority to either collect the funds, to divert the funds to the Office of Personnel Management prior to their deposit in the Reclamation Fund, or to withdraw the funds from the Reclamation Fund for these same purposes.

Response: Under a legal opinion provided by the General Counsel of the DOE by memorandum dated July 1, 1998, the Power Marketing Administrations have the authority to collect through the rates the full costs of the Retirements Benefits. Based on the FY 1998 data expected to be booked to the AC Intertie, this amounts to $120,359 for FY 1999, representing less than one percent of the AC Intertie revenue requirements for FY 1999. At this time, Western's only intention is to deposit the funds into the Reclamation Fund.

Comment: A commentor requested that the construction work planned for replacing the 345–kV series capacitor banks at Mead and Liberty Substations be reevaluated and that the projected cost be removed from the rate order.

Response: Western agrees with the commentor's request to reevaluate the necessity of replacing the series capacitor banks and has removed the projected costs from the rate order.

Comment: A commentor requested an explanation as to why Multi-Project Costs are no longer being booked in the PRS.

Response: Western had intended to separate the investment costs that are the basis for the Multi-Project Cost calculation and allocate them to their respective projects for repayment. Western has reevaluated the benefit of such action and will continue to book the Multi-Project Costs in the PRS consistent with previously established procedures.

Regulatory Flexibility Analysis

The Regulatory Flexibility Act of 1980 (5 U.S.C. 601, *et seq.*) requires Federal agencies to perform a regulatory flexibility analysis if a final rule is likely to have a significant economic impact on a substantial number of small entities and there is a legal requirement to issue a general notice of proposed rulemaking. Western has determined that this action does not require a regulatory flexibility analysis since it is a rulemaking of particular applicability involving rates or services applicable to public property.

Small Business Regulatory Enforcement Fairness Act

Western has determined that this rule is exempt from Congressional notification requirements under 5 U.S.C. 801 because the action is a rulemaking of a particular applicability relating to rates or services and involves matters of procedure.

Environmental Compliance

In compliance with the National Environmental Policy Act of 1969, 42 U.S.C. 4321 *et seq.;* Council on Environmental Quality Regulations, 40 CFR Parts 1500–1508; and DOE NEPA Regulations, 10 CFR Part 1021, Western has determined that this action is categorically excluded from the preparation of an environmental assessment or an environmental impact statement.

Determination Under Executive Order 12866

Western has an exemption from centralized regulatory review under Executive Order 12866; accordingly, no clearance of this notice by the Office of Management and Budget is required.

Availability of Information

Information regarding this rate adjustment, including project repayment studies, comments, letters, memorandums, and other supporting material made or kept by Western for the purpose of developing the Provisional Rates, is available for public review in the Desert Southwest Regional Office, Western Area Power Administration, Office of the Power Marketing Manager, 615 South 43rd Avenue, Phoenix, Arizona.

Submission to the Federal Energy Regulatory Commission

The rates herein confirmed, approved, and placed into effect on an interim basis, together with supporting documents, will be submitted to FERC for confirmation and approval on a final basis.

Order

In view of the foregoing and pursuant to the authority delegated to me by the Secretary of Energy, I confirm and approve on an interim basis, effective January 1, 1999, Rate Schedule INT–FT3 for the Pacific Northwest-Pacific Southwest Intertie Project 230/345-kV transmission system of the Western Area Power Administration. The rate schedule shall remain in effect on an interim basis, pending FERC confirmation and approval of it or a substitute rate on a final basis through December 31, 2003.

Dated: January 28, 1999.

Ernest J. Moniz,

Acting Deputy Secretary.

Schedule of Rate(s) for Long-Term and Short-Term 230/345-kV Firm Point-to-Point Transmission Service

Rate Schedule INT–FT3 (Supersedes Schedule INT–FT2) for 230/345–kV Firm Transmission.

Effective: The first day of the first full billing period beginning on or after January 1, 1999, and will remain in effect through December 31, 2003, or until superseded, whichever occurs first.

Available: Within the marketing area served by the Pacific Northwest-Pacific Southwest Intertie Project (AC Intertie) 230/345-kV transmission system.

Applicable: To firm transmission service customers where capacity and energy are supplied to the AC Intertie 230/345-kV transmission system at points of interconnection with other systems and transmitted and delivered, less losses, to points of delivery on the AC Intertie 230/345-kV transmission system pursuant to the applicable firm point-to-point transmission service agreement and the rates referred to below.

Character and Conditions of Service: Alternating current at 60 Hertz, three-phase, delivered and metered at the voltages and points of delivery established by contract over the AC Intertie 230/345-kV transmission lines.

Long-Term Rate on the AC Intertie 230/345-kV Transmission System: For transmission service of longer than one year, the rate to be in effect January 1, 1999, through December 31, 2003, is $12.00 per kilowatt per year for each kilowatt delivered at the point of delivery, as established by contract, payable monthly at the rate of $1.00 per kilowatt per month.

Short-Term Rates on the AC Intertie 230/345-kV Transmission System: For transmission service up to one year, the maximum rate to be in effect from January 1, 1999, through December 31, 2003, is as follows:

Yearly: $12.00/kW
Monthly: $1.00/kW
Weekly: $.23/kW
Daily: $.03/kW
Hourly: $.00137/kWh

Discounts may be offered from time-to-time in accordance with Western's open access transmission service tariff.

Billing: The rates listed above will be applied to the amount of capacity reserved, payable whether utilized or not.

For Losses: Capacity and energy losses incurred in connection with the transmission and delivery of capacity and energy under this rate schedule shall be supplied by the customer in accordance with the transmission service agreement.

[FR Doc. 99–3114 Filed 2–8–99; 8:45 am]

BILLING CODE 6450–01–P

ENVIRONMENTAL PROTECTION AGENCY

[PF–856; FRL–6058–3]

Notice of Filing of Pesticide Petitions

AGENCY: Environmental Protection Agency (EPA).

ACTION: Notice.

SUMMARY: This notice announces the initial filing of pesticide petitions proposing the establishment of regulations for residues of certain pesticide chemicals in or on various food commodities.

DATES: Comments, identified by the docket control number PF–856, must be received on or before March 11, 1999.

ADDRESSES: By mail submit written comments to: Public Information and Records Integrity Branch, Information Resources and Services Division (7502C), Office of Pesticides Programs, Environmental Protection Agency, 401 M St., SW., Washington, DC 20460. In person bring comments to: Rm. 119, CM #2, 1921 Jefferson Davis Highway, Arlington, VA.

Comments and data may also be submitted electronically to: opp-docket@epamail.epa.gov. Follow the instructions under ''SUPPLEMENTARY INFORMATION.'' No confidential business information should be submitted through e-mail.

Information submitted as a comment concerning this document may be claimed confidential by marking any part or all of that information as ''Confidential Business Information'' (CBI). CBI should not be submitted through e-mail. Information marked as CBI will not be disclosed except in accordance with procedures set forth in 40 CFR part 2. A copy of the comment that does not contain CBI must be submitted for inclusion in the public record. Information not marked confidential may be disclosed publicly by EPA without prior notice. All written comments will be available for public inspection in Rm. 1132 at the address given above, from 8:30 a.m. to 4 p.m., Monday through Friday, excluding legal holidays.

FOR FURTHER INFORMATION CONTACT: The product manager listed in the table below:

Product Manager	Office location/telephone number	Address
Joanne I. Miller (PM 23)	Rm. 237, CM #2, 703–305–6224, e-mail:miller.joanne@epamail.epa.gov.	1921 Jefferson Davis Hwy, Arlington, VA
Sidney Jackson (PM 23)	Rm. 233, CM #2, 703–305–7610, e-mail: jackson.sidney@epamail.epa.gov.	Do.

SUPPLEMENTARY INFORMATION: EPA has received pesticide petitions as follows proposing the establishment and/or amendment of regulations for residues of certain pesticide chemicals in or on various food commodities under section 408 of the Federal Food, Drug, and Comestic Act (FFDCA), 21 U.S.C. 346a. EPA has determined that these petitions contain data or information regarding the elements set forth in section 408(d)(2); however, EPA has not fully evaluated the sufficiency of the submitted data at this time or whether the data supports granting of the petition. Additional data may be needed before EPA rules on the petition.

The official record for this notice of filing, as well as the public version, has been established for this notice of filing under docket control number [PF–856] (including comments and data submitted electronically as described below). A public version of this record, including printed, paper versions of electronic comments, which does not include any information claimed as CBI, is available for inspection from 8:30 a.m. to 4 p.m., Monday through Friday, excluding legal holidays. The official record is located at the address in ''ADDRESSES'' at the beginning of this document.

Electronic comments can be sent directly to EPA at:

opp-docket@epamail.epa.gov

Electronic comments must be submitted as an ASCII file avoiding the use of special characters and any form of encryption. Comments and data will also be accepted on disks in Wordperfect 5.1 file format or ASCII file format. All comments and data in electronic form must be identified by the docket number (insert docket number) and appropriate petition number. Electronic comments on notice may be filed online at many Federal Depository Libraries.

List of Subjects

Environmental protection, Agricultural commodities, Food additives, Feed additives, Pesticides and pests, Reporting and recordkeeping requirements.

Dated: January 29, 1999.

James Jones,

Director, Registration Division, Office of Pesticide Programs.

Summaries of Petitions

Petitioner summaries of the pesticide petitions are printed below as required by section 408(d)(3) of the FFDCA. The summaries of the petitions were prepared by the petitioners and represent the views of the petitioners. EPA is publishing the petition summaries verbatim without editing them in any way. The petition summary announces the availability of a description of the analytical methods available to EPA for the detection and measurement of the pesticide chemical residues or an explanation of why no such method is needed.

1. Dow AgroSciences LLC

PP 8F 3600

EPA has received a pesticide petition (8F 3600) from Dow AgroSciences LLC, 9330 Zionsville Road, Indianapolis, IN 46268, proposing pursuant to section 408(d) of the Federal Food, Drug, and Cosmetic Act (FFDCA), 21 U.S.C. 346a(d), to amend 40 CFR part 180 by establishing a tolerance for residues of the herbicide clopyralid in or on the raw agricultural commodity sugar beet, roots at 2.0 parts per million (ppm) and sugar beet, tops at 3.0 ppm and on the processed agricultural commodity (PAC) sugar beet, molasses at 16.0 ppm. at sugar beet, roots at 2.0 ppm and sugar beet, tops at 3.0 ppm and on the processed agricultural commodity (PAC) sugar beet, molasses at 16.0 ppm. EPA has determined that the petition contains data or information regarding the elements set forth in section 408(d)(2) of the FFDCA; however, EPA has not fully evaluated the sufficiency

of the submitted data at this time or whether the data supports granting of the petition. Additional data may be needed before EPA rules on the petition.

A. Residue Chemistry

1. *Plant metabolism*. The metabolism in plants is adequately understood. No metabolites of significance were detected in plant metabolism studies.

2. *Analytical method*. There is a practical analytical method for detecting and measuring levels of clopyralid in or on food with a limit of quantitation (LOQ) of 0.05 ppm that allows monitoring of food with residues at or above the levels set in these tolerances. EPA has provided information on this method to FDA. The method is available to anyone who is interested in pesticide residue enforcement.

3. *Magnitude of residues*. Tolerances for residues of the herbicide clopyralid in or on the following raw agricultural commodities, sugar beet roots and tops and the processed agricultural commodity molasses, were established on August 12, 1988 (53 FR 33488, 33489) at 0.5, 0.5, and 7.0 ppm, respectively, based upon residue data generated by Craven Laboratories. The validity of these data were in question and Dow AgroSciences repeated the residue studies. The last of the required residue data using a 105 day pre-harvest interval (PHI) were submitted to the Agency in June 1994. This pesticide petition proposes increased tolerances based upon data using a 45 day PHI. Residues of clopyralid were determined in roots and tops from several varieties of sugar beets, which were harvested from plots treated at the currently labeled season-maximum rate of 0.25 lb ae/acre in one application. Field test plots were located at thirteen sites representing the major U.S. production areas. Highest residues at the 45 day PHI for roots averaged 0.91 µg/g with the highest individual value of 1.47 µg/g, and for tops averaged 1.52 µg/g with the highest individual value of 2.48 µg/g. Based on the data, it is expected that residues of clopyralid in or on sugar beets as a raw agricultural commodity will not exceed proposed revised tolerances of 2 µg/g in roots and 3 µg/g in tops when the PHI is 45 days or longer. With a concentration factor of 8, the proposed tolerance for sugar beet molasses is 16 µg/g. The proposed revised tolerances would adequately cover these anticipated residues.

B. Toxicological Profile

1. *Acute toxicity*. Clopyralid has low acute toxicity. The rat oral LD_{50} is 5,000 milligram/kilograms (mg/kg) or greater for males, and females. The rabbit dermal LD_{50} is greater than 2,000 mg/kg and the rat inhalation LC_{50} is greater than 1.0 mg/L air (the highest attainable concentration). In addition, clopyralid is not a skin sensitizer in guinea pigs and is not a dermal irritant. Technical clopyralid is an ocular irritant but ocular exposure to the technical material would not normally be expected to occur to infants or children or the general public. End use formulations of clopyralid have similar low acute toxicity profiles and most have low ocular toxicity as well. Therefore, based on the available acute toxicity data, clopyralid does not pose any acute dietary risks.

2. *Genotoxicty*. Clopyralid is not genotoxic. The following studies have been conducted and all were negative for genotoxic responses. Ames bacterial mutagenicity assay (with and without exogenous metabolic activation); Host-Mediated assay *In vivo* cytogenetic test, rat; *In vivo* cytogenetic test, mouse; *In vivo* dominant lethal test, rat; *In vitro* unscheduled DNA synthesis assay in primary rat hepatocyte cultures; *In vitro* mammalian cell gene mutations assay in Chinese hamster ovary cell cultures (with and without exogenous metabolic activation).

3. *Reproductive and developmental toxicity*. Developmental toxicity was studied using rats and rabbits. The developmental study in rats resulted in a developmental no-observed adverse effect level (NOAEL) of > 250 milligram/kilograms/day (mg/kg/day) (a maternally toxic dose) and a maternal toxicity NOAEL of 75 mg/kg/day. A 1974 study in rabbits revealed no evidence of developmental or maternal toxicity at 250 mg/kg/day; thus the developmental and maternal NOAEL was > 250 mg/kg/day. A more recent study in rabbits (1990) resulted in developmental and maternal NOAELs of 110 mg/kg/day based on maternal toxicity at 250 mg/kg/day. Based on all of the data for clopyralid, there is no evidence of developmental toxicity at dose levels that do not result in maternal toxicity. In a 2-generation reproduction study in rats, pups from the high dose group which were fed diets containing clopyralid had a slight reduction in body weight during lactation and an increase in liver weights in F1a and F1b weanlings. The NOAEL for parental systemic toxicity was 500 mg/kg/day. There was no effect on reproductive parameters at > 1,500 mg/kg/day nor was there an adverse effect on the morphology, growth or viability of the offspring; thus, the reproductive NOAEL is > 1,500 mg/kg/day.

4. *Subchronic toxicity*. The following studies have been conducted using clopyralid. In a rat 90 day feeding study, Fischer 344 rats were fed diets containing clopyralid at doses of 5, 15, 50 or 150 mg/kg/day with no adverse effects attributed to treatment. In a second study, Fischer 344 rats were fed diets containing clopyralid at doses of 300, 1,500 and 2,500 mg/kg/day. Effects at the highest doses were decreased food consumption accompanied by decreased body weights and weight gains in both males and females. Slightly increased mean relative liver and kidney weights were noted in males of all doses, and in females at the top 2 doses. Because there were no other effects, the kidney and liver weight effects were judged as being adaptive rather than directly toxic. The no-observed adverse effect level (NOAEL) was 1,500 mg/kg/day for males and females. The NOAEL was 300 mg/kg/day for females. In a mouse 90 day feeding study, B6C3F1 mice were fed diets containing clopyralid at doses of 200, 750, 2,000 or 5,000 mg/kg/day. A slight decrease in body weight occurred at the top dose in both sexes. The liver was identified as the target organ based on slight increases in liver weights and minimal microscopic alterations at the higher dose levels. The liver changes were considered to be reversible and adaptive. The NOAEL for males was 2,000 mg/kg/day, and for females was 750 mg/kg/day. In a 180 day feeding study, beagle dogs were fed diets containing clopyralid at doses of 15, 50 or 150 mg/kg/day; there were no adverse effects. In a second dietary study, dogs also were fed diets containing clopyralid at doses of 15, 50 or 150 mg/kg/day; the only effect was an increase in the mean relative liver weight in females at the 150 mg/kg/day. In a 21 day dermal study, clopyralid was applied by repeated dermal application to New Zealand White rabbits at dose levels up to 1,000 mg/kg/day. Treatment produced no systemic effects.

5. *Chronic toxicity*. In a chronic toxicity and oncogenicity study, Sprague-Dawley rats were fed diets containing clopyralid at doses of 5, 15, 50 or 150 mg/kg/day. The only effect was a trend toward a decreased body weight of female rats receiving the 150 mg/kg/day dose with a NOAEL of 50 mg/kg/day. In a second study clopyralid was fed to Fischer 344 rats in the diet at doses of 15, 150 or 1,500 mg/kg/day. The effects were confined almost entirely to the 1,500 mg/kg/day dose groups and included slightly decreased food consumption and body weights, slightly increased liver and kidney

weights and macroscopic and microscopic changes in the stomach. No tumorigenic response was present. The NOAEL for this study was 150 mg/kg/day. B6C3F1 mice were maintained for 2 years on diets formulated to provide targeted dose levels of 10, 500 or 2,000 mg/kg/day. The only evidence of toxicity was body weight depression in males dosed at 2,000 mg/kg/day. There was no evidence of tumorigenic response at any dose level. Based on the chronic toxicity data, EPA has established the RfD for clopyralid at 0.5 mg/kg/day. The RfD for clopyralid is based on a 2 year chronic oncogenicity study in rats with a no-observed-effect level (NOAEL) of 50 mg/kg/day and an uncertainty (or safety) factor of 100. Thus, it would not be necessary to require the application of an additional uncertainty factor above the 100-fold factor already applied to the NOAEL. Using its Guidelines for Carcinogen Risk Assessment published September 24, 1986 (51 FR 33992), clopyralid would be classified as Group E for carcinogenicity (no evidence of carcinogenicity) based on the results of the carcinogenicity studies. There was no evidence of carcinogenicity in 2 year feeding studies in mice and rats at the dosage levels tested. The doses tested are adequate for identifying a cancer risk. Thus, a cancer risk assessment would not be appropriate.

6. *Animal metabolism*. Disposition and metabolism of clopyralid were tested in male and female rats at a dose of 5 mg/kg (oral). The majority of a radioactive dose was excreted in 24 hours of all dose groups. Fecal elimination was minor. Detectable levels of residual radioactivity were observed in the carcass and stomach at 72 hours post-dose. HPLC and TLC analysis of urine and fecal extracts showed no apparent metabolism of clopyralid.

7. *Metabolite toxicology*. There are no clopyralid metabolites of toxicological significance.

8. *Endocrine disruption*. There is no evidence to suggest that clopyralid is neurotoxic.

C. Aggregate Exposure

1. *Dietary exposure*. For purposes of assessing the potential dietary exposure under these tolerances, exposure is estimated based on the theoretical maximum residue contribution (TMRC) from the existing and this proposed amended tolerance for clopyralid on food crops. The TMRC is obtained by multiplying the tolerance level residues by the consumption data which estimates the amount of those food products eaten by various population subgroups. Exposure of humans to residues could also result if such residues are transferred to meat, milk, poultry or eggs. The following assumptions were used in conducting this exposure assessment. 100% of the crops were treated, the raw agricultural commodities (RAC) residues would be at the level of the tolerance, certain processed food residues would be at anticipated (average) levels based on processing studies and all current and pending tolerances were included. This results in an over estimate of human exposure and a conservative assessment of risk. Based on a NOAEL of 50 mg/kg/day in a 2 year chronic feeding/oncogenicity study in the rat and a hundredfold safety factor, the RfD would be 0.5 mg/kg/day. Consequently, these tolerances have a TMRC of 0.010277 mg/kg/day and would utilize approximately 2.1% of the RfD for the general U.S. population.

i. *Food*. The Toxicology database indicates there is no concern regarding acute and chronic dietary risk since the available data do not indicate any evidence of significant toxicity from exposure by the oral route.

ii. *Drinking water*. Another potential source of dietary exposure to residues of pesticides are residues in drinking water. There is no established maximum concentration level (MCL) for residues of clopyralid in drinking water. Although there has been limited detections at parts per billion (ppb) levels in some of the specially designed studies under highly vulnerable test conditions, no ongoing monitoring studies (U.S. Geological Survey, Selected Water Resources Abstracts; Pesticides in Ground WaterDatabase - A Compilation of Monitoring Studies: 1971-1991 National Summary; U.S. Department of Agriculture, AGRICOLA database; and, U.S. Department of Commerce, National Technical Information Service) have reported residues of clopyralid in ground or surface waters.

Based on the physical and chemical characteristics of clopyralid, such as water solubility and its stability under hydrolysis and photolysis, it has potential for downward movement through the soil profile. However, the behavior of the compound under field conditions demonstrates fairly rapid degradation and limited downward movement. Degradation based on 20 field dissipation sites indicated an average half-life of 25 days. Degradation is driven primarily by microbial processes. Downward movement through the soil profile was generally confined to the upper 18 inches of the soil profile. Validated computer modeling also predicted the maximum depth of residues to be 18-inches, with no detections predicted at 6 months after application.

Because the laboratory derived physical/chemical properties of clopyralid indicate a potential for downward movement, lysimeter studies were conducted. In a U.S. study, undisturbed soil columns (lysimeters), 8 inches in diameter, and 3 feet deep, were treated with 950 g ae/ha (about 5 x labeled use rates) in actual field conditions. Residues of clopyralid in soil as well as soil-solution (leachate) were collected in the closed system. The average depth of movement for the majority of clopyralid (center of mass) was 11 inches, and no detectable residues were observed in the leachate. In a European study, lysimeters 1-3 ft. diameter, and 3 ft. deep, were treated with 120 and 240 g ae/ha in actual field conditions. The average center of mass was 12 inches. No detectable residues were observed in the lysimeters. The amount of ^{14}C in leachate accumulated over 2 years in the degraded loess and silty sand lysimeters, was only 0.6% and 0.3% of applied, respectively. The leachate concentrations of ^{14}C-labeled clopyralid in degraded loess and silty sand throughout the first 10-16 months of the study ranged from 0.002-0.14 µg/l ppb and 0.003-0.02 ppb, respectively. A second European lysimeter study with silty sand lysimeters treated with 120 g ae/ha revealed a 2 year cumulative clopyralid leachate of only 0.1% of applied (0.04 ppb). These studies demonstrate that in lysimeter test systems, under field environmental conditions, clopyralid rapidly dissipates through mineralization to carbon dioxide. Also the very low levels observed in leachate demonstrate that there is very little potential for clopyralid to leach through soil and contaminate ground water.

In summary, these data on potential water exposure indicate insignificant additional dietary intake of clopyralid and any exposure is more than compensated for in the conservative dietary risk evaluation. Therefore, it is concluded that there is a reasonable certainty of no harm even at potential upper limit exposures to clopyralid from drinking water.

2. *Non-dietary exposure*. There is a non-dietary use registered under the Federal Insecticide, Fungicide and Rodenticide Act. The use is for weed control in residential turf and ornamentals. Potential exposures for children from non-occupational uses is therefore limited to turf and ornamental re-entry and this exposure is low.

3. *Short-term or intermediate-term*. The data for clopyralid does not indicate any evidence of significant toxicity by the dermal and inhalation routes. Consequently, there is no concern for short-term or intermediate-term residential risk. Therefore, a short-term or intermediate-term residential risk assessment would not be required.

4. *Chronic*. As part of a hazard assessment process an endpoint of concern is determined for the chronic occupational or residential risk assessment. However, as indicated, the exposures that would result from the use of clopyralid are of an intermittent nature. The frequency and duration of these exposures do not exhibit a chronic exposure pattern. The exposure does not occur often enough to be considered a chronic exposure; i.e., a continuous exposure that occurs for at least several months. Therefore, it would not be appropriate to aggregate exposure from the residential use with exposure from food and drinking water.

5. *Acute*. No concern would exist for an acute dietary assessment for clopyralid because the available data indicates no evidence of significant toxicity from a 1 day or single event exposure by the oral route. Therefore, an acute dietary risk assessment would not be required.

D. Cumulative Effects

The potential for cumulative effects of clopyralid and other substances that have a common mechanism of toxicity was considered. The mammalian toxicity of clopyralid is well defined. However, no reliable information exists to indicate that toxic effects produced by clopyralid would be cumulative with those of any other chemical compound. Additionally, clopyralid does not appear to produce a toxic metabolite produced by other substances. Therefore, consideration of a common mechanism of toxicity with other compounds is not appropriate at this time. Thus, only the potential exposures to clopyralid were considered in the aggregate exposure assessment.

E. Safety Determination

1. *U.S. population*. Based on a NOAEL of 50.80 milligram/kilogram/body weight/day (mg/kg/bwt/day) from a 2 year rat feeding study with a decreased mean bwt gain effect, and using an uncertainty factor of 100 to account for the interspecies extrapolation and intraspecies variability, a RfD of 0.5 mg/kg/bwt/day was used for this assessment of chronic risk. As indicated, there is no endpoint of concern identified with acute and short- or intermediate-term exposures. Based on the known toxicity and exposure data, the proposed and existing tolerances would utilize approximately 2.1% of the RfD for the U.S. population. And, as indicated previously, whatever upper limit might be used for drinking water exposure, the exposure estimate for clopyralid would not exceed the RfD. Generally, exposures below 100% of the RfD are of no concern because the RfD represents the level at or below which daily aggregate dietary exposure over a lifetime will not pose appreciable risk to human health. Thus, there is a reasonable certainty that no harm will result from aggregate exposure to clopyralid residues.

2. *Infants and children*. In assessing the potential for additional sensitivity of infants and children to residues of clopyralid, data from developmental toxicity studies in the rat and rabbit and a 2-generation reproduction study in the rat were considered. The developmental toxicity studies are designed to evaluate adverse effects on the developing organism during prenatal development resulting from pesticide exposure to one or both parents. Reproduction studies provide (i) information relating to effects from exposure to the pesticide on the reproductive capability of mating animals and (ii) data on systemic toxicity.

Developmental toxicity was studied using rats and rabbits. The developmental study in rats resulted in a developmental NOAEL of > 250 mg/kg/day (a maternally toxic dose), and a maternal toxicity NOAEL of 75 mg/kg/day. A 1974 study in rabbits revealed no evidence of developmental or maternal toxicity at 250 mg/kg/day; thus the developmental andmaternal NOAEL was > 250 mg/kg/day. A more recent study in rabbits (1990) resulted in developmental and maternal NOAEL's of 110 mg/kg/day based on severe maternal toxicity at 250 mg/kg/day. Based on all of the data for clopyralid, there is no evidence of developmental toxicity at dose levels that do not result in maternal toxicity.

In a 2-generation reproduction study in rats, pups from the high dose group which were fed diets containing clopyralid had a slight reduction in bwt during lactation and an increase in liver weights in F1a and F1b weanlings. The NOAEL for parental systemic toxicity was 500 mg/kg/day. There was no effect on reproductive parameters at > 1,500 mg/kg/day nor was there an adverse effect on the morphology, growth or viability of the offspring; thus, the reproductive NOAEL is > 1,500 mg/kg/day.

FFDCA section 408 provides that EPA may apply an additional safety factor for infants and children in the case of threshold effects to account for pre- and post-natal toxicity and the completeness of the database. Based on the current toxicological data requirements, the database relative to pre- and post-natal effects for children is complete. These data suggest minimal concern for developmental or reproductive toxicity and do not indicate any increased pre- or post-natal sensitivity. Therefore, an additional uncertainty factor is not necessary to protect the safety of infants and children and that the RfD at 0.5 mg/kg/day is appropriate for assessing aggregate risk to infants and children.

The percent of the RfD that will be utilized by the aggregate exposure from all tolerances to clopyralid will be much less than 10% for non-nursing infants and for children (1-6 years of age). Therefore, based on the completeness and reliability of the toxicity data and the conservative exposure assessment, it is concluded that there is a reasonable certainty that no harm will result to infants and children from aggregate exposure to clopyralid residues.

F. International Tolerances

There are no Codex maximum residue levels established for clopyralid.

2. IR4 Project

PP 8E4983, 8E5019, 8E5020,8E5021, and 8E5024

EPA has received pesticide petitions (PP 8E4983, 8E5018, 8E5019, 8E5020, 8E5021, and 8E5024) from the Interregional Research Project Number 4 (IR-4), proposing pursuant to section 408(d) of the Federal Food, Drug, and Cosmetic Act, 21 U.S.C. 346a(d), to amend 40 CFR part 180 by establishing tolerances for residues of the insecticide, tebufenozide (benzoic acid, 3,5-dimethyl-, 1-(1,1-dimethylethyl)-2-(4-ethylbenzoyl)hydrazide) in or on the raw agricultural commodities.

1. *PP 8E4983* proposed the establishment of a tolerance for blueberries at 2.0 parts per million (ppm), and PP 8E5018 proposed a tolerance for caneberries at 1.0 ppm. Subsequently, IR-4 amended these tolerance proposals to include a single tolerance at 3.0 ppm for berries (Crop Group 13) that will include both blueberries, and caneberries under PP 8E4983.

2. *PP 8E5024* proposes the establishment of tolerances for canola seed at 1.75 ppm, and canola oil at 3.75 ppm.

3. *PP 8E5019* proposes the establishment of a tolerance for cranberries at 1.0 ppm.

4. *PP 8E5021* proposes the establishment of a tolerance for mint at 10.0 ppm.

5, *PP 8E5020* proposes the establishment of tolerances for turnips tops at 9.0 ppm, and turnip roots at 0.25 ppm.

EPA has determined that the petitions contain data or information regarding the elements set forth in section 408(d)(2) of the FFDCA; however, EPA has not fully evaluated the sufficiency of the submitted data at this time or whether the data support granting of the petitions. Additional data may be needed before EPA rules on the petitions.

A. Residue Chemistry

1. *Plant metabolism*. The metabolism of tebufenozide in plants (grapes, apples, rice, and sugar beets) is adequately understood for the purpose of these tolerances. The metabolism of tebufenozide in all crops was similar and involves oxidation of the alkyl substituents of the aromatic rings primarily at the benzylic positions. The extent of metabolism and degree of oxidation are a function of time from application to harvest. In all crops, parent compound comprised the majority of the total dosage. None of the metabolites were in excess of 10% of the total dosage.

2. *Analytical method*. High performance liquid chromatographic (HPLC) analytical methods using ultraviolet(UV) detection have been validated for blueberries, raspberries, canola seed and oil, cranberries, mint foliage and oil, and turnip roots and tops. The methods involve extraction by blending with solvents, purification of the extracts by liquid-liquid partitions and final purification of the residues using solid phase extraction column chromatography. The limits of quantitation (LOQ) is 0.005 ppm for blueberries, 0.01 ppm for canola seed and meal, mint foliage, raspberries, and turnip roots and tops, 0.02 ppm for mint oil, 0.03 ppm for canola soapstock and oil, and 0.05 ppm for cranberries.

3. *Magnitude of residues*. Field residue trials were conducted with a 70 wettable power (WP) formulation in geographically representative regions of the U.S. A total of 8 field residue trials were conducted in blueberries. The average blueberry residue value from all trials was 0.81 ppm.

A total of 7 field residue trials were conducted in canola. The average canola seed residue value from all trials was 0.84 ppm. Two processing studies were conducted. Average residues in meal, soapstock and oil were 0.11 ppm, 0.83 ppm, and 1.75 ppm, respectively. Residues did not concentrate in soapstock (Concentration Factor (CF) is less than 1), and a tolerance in soapstock is not needed. For oil, the average CF is 2.26, and the proposed tolerance is 3.75 ppm (2.26 times 1.58 ppm).

A total of 6 field residue trials were conducted in cranberries. The average cranberry residue value from all trials was 0.30 ppm.

A total of 5 field residue trials were conducted in mint. The average mint foliage residue value from all trials was 7.11 ppm. Mint oil was prepared from foliage from two residue trials. The average oil residue was 0.23 ppm. Since residues do not concentrate in oil, a tolerance is not needed.

A total of 5 field residue trials were conducted in raspberries. The average raspberry residue value from all trials was 0.62 ppm.

A total of 6 field residue trials were conducted in turnips. The average residue value from all trials was 0.10 ppm for roots, and 2.27 ppm for tops.

B. Toxicological Profile

1. *Acute toxicity*. Results of a battery of toxicological studies show tebufenozide has low acute toxicity. Tebufenozide Technical was practically non-toxic by ingestion of a single oral dose in rats, and mice (LD_{50} > 5,000 milligram/kilograms (mg/kg)) and was practically non-toxic by dermal application LD_{50} > 5,000 mg/kg. Tebufenozide Technical was not significantly toxic to rats after a 4 hour inhalation exposure with an LC_{50} value of 4.5 mg/L (highest attainable concentration), is not considered to be a primary eye irritant or a skin irritant, and is not a dermal sensitizer. An acute neurotoxicity study in rats did not produce any neurotoxic or neuropathologic effects.

2. *Genotoxicty*. Tebufenozide technical was negative (non-mutagenic) in an Ames assay with and without hepatic enzyme activation and in a reverse mutation assay with *E. coli*. Tebufenozide technical was negative in a hypoxanthine guanine phophoribosyl transferase (HGPRT) gene mutation assay using Chinese hamster ovary (CHO) cells in culture when tested with and without hepatic enzyme activation. In isolated rat hepatocytes, tebufenozide technical did not induce unscheduled DNA synthesis (UDS) or repair when tested up to the maximum soluble concentration in culture medium. Tebufenozide did not produce chromosome effects *in vivo* using rat bone marrow cells or *in vitro* using Chinese hamster ovary cells (CHO). On the basis of the results from this battery of tests, it is concluded that tebufenozide is not mutagenic or genotoxic.

3. *Reproductive and developmental toxicity*. See discussion of studies under section E.2. Infant and Children.

4. *Subchronic toxicity*— i. The no-observed adverse effect level (NOAEL) in a 90 day rat feeding study was 200 ppm (13 mg/kg/day for males, 16 mg/kg/day for females). The lowest-observed adverse effect level (LOAEL) was 2,000 ppm (133 mg/kg/day for males, 155 mg/kg/day for females). Decreased body weight in males, and females was observed at the LOAEL of 2,000 ppm. As part of this study, the potential for tebufenozide to produce subchronic neurotoxicity was investigated. Tebufenozide did not produce neurotoxic or neuropathologic effects when administered in the diets of rats for 3 months at concentrations up to and including the limit dose of 20,000 ppm (NOAEL = 1,330 mg/kg/day for males, and 1,650 mg/kg/day for females).

ii. In a 90 day feeding study with mice, the NOAEL was 20 ppm (3.4 and 4.0 mg/kg/day for males and females, respectively). The LOAEL was 200 ppm (35.3 and 44.7 mg/kg/day for males and females, respectively). Decreases in body weight gain were noted in male mice at the LOAEL of 200 ppm.

iii. A 90 day dog feeding study gave a NOAEL of 50 ppm (2.1 mg/kg/day for males and females). The LOAEL was 500 ppm (20.1 and 21.4 mg/kg/day for males and females, respectively). At the LOAEL, females exhibited a decrease in rate of weight gain and males presented an increased reticulocyte.

iv. A 10 week study was conducted in the dog to examine the reversibility of the effects on hematological parameters that were observed in other dietary studies with the dog. Tebufenozide was administered for 6 weeks in the diet to 4 male dogs at concentrations of either 0 or 1,500 ppm. After the 6 weeks, the dogs receiving treated feed were switched to the control diet for 4 weeks. Hematological parameters were measured in both groups prior to treatment, at the end of the 6 weeks treatment, after 2 weeks of recovery on the control diet and after 4 weeks of recovery on the control diet. All hematological parameters in the treated/recovery group were returned to control levels indicating that the effects of tebufenozide on the hemopoietic system are reversible in the dog.

v. In a 28 day dermal toxicity study in the rat, the NOAEL was 1,000 mg/kg/day highest dose tested (HDT). Tebufenozide did not produce toxicity in the rat when administered dermally

for 4 weeks at doses up to and including the limit dose of 1,000 mg/kg/day.

5. *Chronic toxicity*— i. A 1 year feeding study in dogs resulted in decreased red blood cells, hematocrit, and hemoglobin and increased Heinz bodies, reticulocytes, and platelets at the LOAEL of 8.7 mg/kg/day. The NOAEL in this study was 1.8 mg/kg/day.

ii. An 18 month mouse carcinogenicity study showed no signs of carcinogenicity at dosage levels up to and including 1,000 ppm, the HDT.

iii. In a combined rat chronic/oncogenicity study, the NOAEL for chronic toxicity was 100 ppm (4.8 and 6.1 mg/kg/day for males and females, respectively), and the LOAEL was 1,000 ppm (48 and 61 mg/kg/day for males and females, respectively). No carcinogenicity was observed at the dosage levels up to 2,000 ppm (97 mg/kg/day and 125 mg/kg/day for males and females, respectively).

6. *Animal metabolism*. The adsorption, distribution, excretion and metabolism of tebufenozide in rats was investigated. Tebufenozide is partially absorbed, is rapidly excreted and does not accumulate in tissues. Although tebufenozide is mainly excreted unchanged, a number of polar metabolites were identified. These metabolites are products of oxidation of the benzylic ethyl or methyl side chains of the molecule. These metabolites were detected in plant and other animal (rat, goat, and hen) metabolism studies.

7. *Metabolite toxicology*. Common metabolic pathways for tebufenozide have been identified in both plants (grape, apple, rice, and sugar beet), and animals (rat, goat, and hen). The metabolic pathway common to both plants and animals involves oxidation of the alkyl substituents (ethyl and methyl groups) of thearomatic rings primarily at the benzylic positions. Extensive degradation and elimination of polar metabolites occurs in animals such that residues are unlikely to accumulate in humans or animals exposed to these residues through the diet.

C. Aggregate Exposure

1. *Dietary exposure*—i. *Food*. Tolerances have been established (40 CFR 180.482) for the residues of tebufenozide, in or on a variety of raw agricultural commodities. A permanent tolerance has been established for the residues of tebufenozide in/on walnuts at 0.1 ppm, and pecans at 0.05 ppm. Permanent tolerances at 0.5 ppm and 1.0 ppm have been established for imported wine grapes, and apples, respectively. Other proposed tolerances are pending. Risk assessments were conducted by Rohm and Haas to assess dietary exposures and risks from tebufenozide as follows:

ii. *Acute exposure and risk*. No acute endpoint was identified for tebufenozide and no acute risk assessment is required.

iii. *Chronic exposure and risk*. For chronic dietary risk assessment, it is assumed that 100% of all crops which are consumed will contain residues of tebufenozide at the tolerance levels. The Reference Dose (RfD) used for the chronic dietary analysis is 0.018 mg/kg/day. Potential chronic exposures were estimated using NOVIGEN'S Dietary Exposure Evaluation Model (DDEM Version 5.03b) which uses USDA food consumption data from the 1989-1992 survey. The existing and proposed tebufenozide tolerances result in a theoretical maximum residue contribution (TMRC) that is equivalent to 34.5% of the RfD for the U.S. population, 61.4% of the RfD for infants, 70.4% of the RfD for non-nursing infants (> 1 year old), and 79.8% of the RfD for chlidren 1 to 6 years old. The chronic dietary risks from these uses do not exceed EPA's level of concern.

iv. *Drinking water*. Submitted environmental fate studies suggest that tebufenozide is moderately persistent to persistent and mobile, and could potentially leach to groundwater and runoff to surface water under certain environmental conditions. However, in terrestrial field dissipation studies, residues of tebufenozide and its soil metabolites showed no downward mobility and remained associated with the upper layers of soil. Foliar interception (up to 60% of the total dosage applied) by target crops reduces the ground level residues of tebufenozide. There is no established Maximum Concentration Level (MCL) for residues of tebufenozide in drinking water. No drinking water health advisory levels have been established for tebufenozide. There is no entry for tebufenozide in the ''Pesticides in Groundwater Database'' (EPA 734-12-92-001, September 1992).

v. *Chronic exposure and risk*. There are insufficient water-related exposure data to complete a comprehensive drinking water assessment for tebufenozide at this time. However, in order to mitigate the potential for tebufenozide to leach into groundwater or runoff to surface water, precautionary language has been incorporated into the product label. Considering the precautionary language on the label and based on the Registrant's knowledge of environmental occurrence of the chemicals, significant exposure from residues of tebufenozide in drinking water is not anticipated.

2. *Non-dietary exposure*. Tebufenozide is not currently registered for any indoor or outdoor residential uses; therefore, no non-dietary residential exposure is anticipated.

D. Cumulative Effects

The potential for cumulative effects of tebufenozide with other substances that have a common mechanism of toxicity was considered. Tebufenozide belongs to the class of insecticide chemicals known as diacylhydrazines. The only other diacylhydrazine currently registered for non-food crop uses is halofenozide. Tebufenozide and halofenozide both produce a mild, reversible anemia following subchronic/chronic exposure at high doses; however, halofenozide also exhibits other patterns of toxicity (liver toxicity following subchronic exposure and developmental/systemic toxicity following acute exposure) which tebufenozide does not. Given the different spectrum of toxicity produced by tebufenozide, Rohm Haus concludes that there is no reliable data at the molecular/mechanistic level which would indicate that toxic effects produced by tebufenozide would be cumulative with those of halofenozide (or any other chemical compound).

Based on the overall pattern of toxicity produced by tebufenozide in mammalian and insect systems, the compound's toxicity appears to be distinct from that of other chemicals, including organochlorines, organophosphates, carbamates, pyrethroids, benzoylureas, and other diacylhydrazines. Thus, according to Rohm Haus, there is no evidence to date to suggest that cumulative effects of tebufenozide and other chemicals should be considered.

E. Safety Determination

1. *U.S. population*— i. *Acute exposure and risk*. Since no acute endpoint was identified for tebufenozide, no acute risk assessment is required.

ii. *Chronic exposure and risk*. Using the conservative exposure assumptions described above and taking into account the completeness and reliability of the toxicity data, the percentage of the RfD that will be utilized by dietary (food only) exposure to residues of tebufenozide from existing, pending and proposed tolerances is 34.5% for the U.S. population. Aggregate exposure (food and water) are not expected to exceed 100%. EPA generally has no concern for exposures below 100% of

the RfD because the RfD represents the level at or below which daily aggregate dietary exposure over a lifetime will not pose appreciable risks to human health. Rohm and Haas concludes that there is a reasonable certainty that no harm will result from aggregate exposure to tebufenozide residues to the U.S. population.

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

ii. *Developmental toxicity studies*— a. *Rats*. In a developmental toxicity study in rats, the maternal (systemic) NOAEL was 250 mg/kg/day. The LOAEL was 1,000 mg/kg/day based on decrease body weight and food consumption. The developmental (pup) NOAEL as > 1,000 mg/kg/day HDT.

b. *Rabbits*. In a developmental toxicity study in rabbits, the maternal and developmental NOAELs were > 1,000 mg/kg/day HDT.

iii. *Reproductive toxicity study rats*. In a multigeneration reproductive toxicity study in rats, the parental (systemic) NOAEL was 0.85 mg/kg/day. Spleenic pigmentation changes and extramedullary hematopoiesis occurred at the LOAEL of 12.1 mg/kg/day. In addition to these effects, decreased body weight gain and food consumption occurred at 171.1 mg/kg/day. The reproductive (pup) NOAEL was 12.1 mg/kg/day. The reproductive LOAEL of 171.1 mg/kg/day was based on a slight increase in the number of pregnant females that did not deliver or had difficulty and had to be sacrificed. Additionally at the LOAEL, in F1 dams, the length of gestation increased and implantation sites decreased significantly. In a second study, reproductive effects were not observed at 2,000 ppm (the NOAEL equal to 149-195 mg/kg/day) and the NOAEL for systemic toxicity was determined to be 25 ppm (1.9-2.3 mg/kg/day).

iv. *Pre- and post-natal sensitivity*— a. *Pre-natal sensitivity*. The developmental NOAELs of > 1,000 mg/kg/day HDT from the developmental toxicity studies in rats and rabbits demonstrate that there is no developmental (prenatal) toxicity present for tebufenozide.

Additionally, these developmental NOAELs are greater than 500-fold higher than the NOAEL of 1.8 mg/kg/day from the 1 year feeding study in dogs which was the basis of the RfD.

b. *Post-natal sensitivity*. In the reproductive toxicity study in rats, the reproductive NOAEL (12.1 mg/kg/day from the first study; 149-195 mg/kg/day from the second study) is between 14-fold higher than the parental NOAEL (0.85 mg/kg/day) in the first study and 83-fold higher than the parental NOAEL (1.8-2.3 mg/kg/day) in the second study. These data indicate that post-natal toxicity in the reproductive studies occurs only in the presence of significant parental toxicity. These developmental and reproductive studies indicate that tebufenozide does not have additional post-natal sensitivity for infants and children in comparison to other exposed groups. Because these reproductive effects occurred in the presence of parental (systemic) toxicity and were not replicated at the same doses in a second study, these data do not indicate an increased pre-natalor post-natal sensitivity to children and infants (that infants and children might be more sensitive than adults) to tebufenozide exposure.

c. *Acute exposure and risk*. Since no acute endpoint was identified for tebufenozide, no acute risk assessment is required.

d. *Chronic exposure and risk*. With the existing, pending and proposed tolerances for tebufenozide, the percentage of the RfD that will be utilized by dietary (food only) exposure to residues of tebufenozide range from 39.9% for nursing infants less than 1 year old to 79.8.% for children 1 to 6 years old. Aggregate exposure (food and water) are not expected to exceed 100%. Rohm and Haas concludes that there is a reasonable certainty that no harm will result from aggregate exposure to tebufenozide residues to non-nursing infants.

F. International Tolerances

There are currently no CODEX, Canadian or Mexican maximum residue levels (MRLs) established for tebufenozide in blueberries, caneberries, canola, cranberries, mint or turnips so no harmonization issues are required for this action.

[FR Doc. 99–3146 Filed 2–8–99; 8:45 am]

BILLING CODE 6560–50–F

FEDERAL COMMUNICATIONS COMMISSION

Notice of Public Information Collection(s) Being Reviewed by the Federal Communications Commission

February 3, 1999.

SUMMARY: The Federal Communications Commission, as part of its continuing effort to reduce paperwork burden invites the general public and other Federal agencies to take this opportunity to comment on the following information collection(s), as required by the Paperwork Reduction Act of 1995, Public Law 104–13. An agency may not conduct or sponsor a collection of information unless it displays a currently valid control number. No person shall be subject to any penalty for failing to comply with a collection of information subject to the Paperwork Reduction Act (PRA) that does not display a valid control number. Comments are requested concerning (a) whether the proposed collection of information is necessary for the proper performance of the functions of the Commission, including whether the information shall have practical utility; (b) the accuracy of the Commission's burden estimate; (c) ways to enhance the quality, utility, and clarity of the information collected; and (d) ways to minimize the burden of the collection of information on the respondents, including the use of automated collection techniques or other forms of information technology.

DATES: Written comments should be submitted on or before April 12, 1999. If you anticipate that you will be submitting comments, but find it difficult to do so within the period of time allowed by this notice, you should advise the contact listed below as soon as possible.

ADDRESSES: Direct all comments to Judy Boley, Federal Communications Commission, Room 1–C804, 445 12th Street, SW, DC 20554 or via the Internet to jboley@fcc.gov.

FOR FURTHER INFORMATION CONTACT: For additional information or copies of the information collection(s), contact Judy Boley at 202–418–0214 or via the Internet at jboley@fcc.gov.

SUPPLEMENTARY INFORMATION:

OMB Control No.: 3060–0812.

Title: Assessment and Collection of Regulatory Fees.

Form No.: N/A.

Type of Review: Extension of currently approved collection.

Respondents: Individuals or households, business or other for-profit, not-for-profit institutions.

Number of Respondents: 635,738.

Estimated Time Per Response: 0.5 hours.

Frequency of Response: On occasion reporting requirement and recordkeeping requirement.

Total Annual Burden: 317,869.

Total Annual Cost: N/A.

Needs and Uses: The Federal Communications Commission, in accordance with the Communications Act of 1934, is required to assess and collect regulatory fees from its licensees and regulatees in order to recover its costs incurred in conducting enforcement, policy, and rulemaking, international and user information activities.

The purpose for the instant requirements are to: (1) facilitate the statutory provision that non-profit entities be exempt from payment of regulatory fees, and (2) facilitate the FCC's ability to audit regulatory fee payment compliance in the Commercial Mobile Radio Services (CMRS) industry.

In order to develop a Schedule of Regulatory Fees, the FCC must as accurately as possible estimate the number of payment units and distribute the costs. These estimates must be adjusted to account for any licensees or regulatees that are exempt from payment of regulatory fees. Therefore, the FCC is requiring all licensees and regulatees that claim exemption as a non-profit entity to provide one time documentation sufficient to establish their non-profit status. Further, the FCC is requesting that it be similarly notified if for any reason that status changes. This documentation will likely take the form of an Internal Revenue Service (IRS) Determination Letter, a state charter indicating non-profit status, proof of church affiliation, et al.

In order to facilitate audits of regulatory fee payment compliance in the CMRS industry, the FCC must require these licensees to submit, upon request, business data they relied upon to calculate the amount of the aggregate regulatory fees owed.

Federal Communications Commission.

Magalie Roman Salas,

Secretary.

[FR Doc. 99–3028 Filed 2–8–99; 8:45 am]

BILLING CODE 6712–01–P

FEDERAL COMMUNICATIONS COMMISSION

Notice of Public Information Collection(s) Submitted to OMB for Review and Approval

January 25, 1999.

SUMMARY: The Federal Communications Commission, as part of its continuing effort to reduce paperwork burden invites the general public and other Federal agencies to take this opportunity to comment on the following information collection, as required by the Paperwork Reduction Act of 1995, Public Law 104–13. An agency may not conduct or sponsor a collection of information unless it displays a currently valid control number. No person shall be subject to any penalty for failing to comply with a collection of information subject to the Paperwork Reduction Act (PRA) that does not display a valid control number. Comments are requested concerning (a) whether the proposed collection of information is necessary for the proper performance of the functions of the Commission, including whether the information shall have practical utility; (b) the accuracy of the Commission's burden estimate; (c) ways to enhance the quality, utility, and clarity of the information collected; and (d) ways to minimize the burden of the collection of information on the respondents, including the use of automated collection techniques or other forms of information technology.

DATES: Written comments should be submitted on or before March 11, 1999. If you anticipate that you will be submitting comments, but find it difficult to do so within the period of time allowed by this notice, you should advise the contact listed below as soon as possible.

ADDRESSES: Direct all comments to Les Smith, Federal Communications Commissions, 445 12th Street, S.W., Washington, DC 20554 or via the Internet to lesmith@fcc.gov.

FOR FURTHER INFORMATION CONTACT: For additional information or copies of the information collections contact Les Smith at (202) 418–0217 or via the Internet at lesmith@fcc.gov.

SUPPLEMENTARY INFORMATION:

OMB Control Number: 3060–XXXX.

Title: Section 95.833, Construction Requirements.

Form Number: N/A.

Type of Review: New collection.

Respondents: Businesses or other for-profit entities; Individuals or households.

Number of Respondents: 900.

Estimated Time per Response: 1 hour.

Frequency of Response: Recordkeeping; On occasion reporting requirements within 5 and 10 years of license grant; Third party disclosure.

Total Annual Burden: 900 hours.

Total Annual Costs: $0.

Needs and Uses: The requirement contained in Section 95.833 is necessary for 218–219 MHz service system licensees to file a report within five and ten years of license grant to demonstrate that they provide substantial service to its service areas. This collection, which is currently in the rules, has been waived by an Order released on January 14, 1998, (DA 98–59), for all licensees pending resolution of the construction requirement by the current Notice of Proposed Rulemaking, WT Docket No. 98–169, FCC 98–228. No collection has been made. The NPRM proposes to reduce the regulatory burden on licensees by extending the filing of a report from three years to five years. The information is used by the Commission staff to assess compliance with 218–219 MHz Service construction requirements, and to provide adequate spectrum for the service. This will facilitate spectrum efficiency and competition by the 218–219 MHz Service licensees in the wireless marketplace. Without this information, the FCC would not be able to carry out its statutory responsibilities.

Federal Communications Commission.

Magalie Roman Salas,

Secretary.

[FR Doc. 99–3025 Filed 2–8–99; 8:45 am]

BILLING CODE 6712–01–P

FEDERAL COMMUNICATIONS COMMISSION

Public Safety National Coordination Committee

AGENCY: Federal Communications Commission.

ACTION: Notice of advisory committee establishment.

SUMMARY: The Public Safety and Private Private Wireless Division released this Public Notice advising of the establishment by the Federal Communications Commission (''Commission''), pursuant to the provisions of the Federal Advisory Committee Act, of a Public Safety National Coordination Committee (''NCC'') to advise the Commission on a variety of issues relating to the use of 24 MHz of spectrum in the 764–776/794–806 MHz frequency bands (collectively, the 700 MHz band) that has been reallocated for public safety use. The Public Notice invites interested persons

to become members and to participate in the NCC's processes, with members serving either as representatives of organizations or as experts in an individual capacity.

DATES: Persons interested in becoming a member of the NCC must apply by telephone, by facsimile, or by electronic mail on or before February 26, 1999.

ADDRESSES: Joy Alford, Policy and Rules Branch, Public Safety and Private Wireless Division, Wireless Telecommunications Bureau, Federal Communications Commission, Telephone No. (202) 418–0680, Facsimile No. (202) 418–2643, or e-mail: jalford@fcc.gov.

FOR FURTHER INFORMATION CONTACT: D'wana R. Terry, FCC (202–418–0680), Designated Federal Official of the Public Safety National Coordination Committee.

SUPPLEMENTARY INFORMATION: Following is the complete text of the Public Notice: The FCC has established a Public Safety National Coordination Committee. In a Report and Order adopted in December 1997, the Commission reallocated 24 MHz of spectrum to public safety as part of digital television transition (700 MHz public safety spectrum) in an effort to meet the Nation's critical need for state-of-the-art communications systems and reliable interoperability between local, state and federal public safety authorities. *See* Reallocation of Television Channels 60–69, the 746–806 MHz Band, ET Docket No. 97–157, *Report and Order,* 12 FCC Rcd 22,953 (1997). In August 1998, the Commission adopted a Report and Order and Further Notice of Proposed Rulemaking creating service and licensing rules for the 700 MHz public safety spectrum. *See* The Development of Operational, Technical and Spectrum Requirements For Meeting Federal, State and Local Public Safety Agency Communications Requirements Through the Year 2010 and Establishment of Rules and Requirements For Priority Access Service, WT Docket No. 96–86, *First Report and Order and Third Notice of Proposed Rulemaking,* FCC 98–191 (1998) (*First Report and Order*). In the *First Report and Order,* the Commission established the service rules for the 24 MHz of spectrum in the 764–776/794–806 MHz frequency bands (collectively, the 700 MHz band) that the Commission had earlier reallocated to public safety services. As part of this action, the Commission called for the creation of the NCC, to be established pursuant to the provisions of the Federal Advisory Committee Act, to advise the Commission on a variety of issues relating to the use of this spectrum. The major responsibilities of the NCC will be to:

(1) Formulate and submit for Commission review and approval an operational plan to achieve national interoperability that includes a shared or priority system among users of the interoperability spectrum (i.e., spectrum in the 700 MHz band specifically designated for interoperability use as well as spectrum in other frequency bands so designated) for both day-to-day and emergency operations and, in this connection, recommendations regarding Federal Government users' access to the interoperability spectrum;

(2) Recommend technical standards to achieve full interoperability and network integration, including digital modulation, trunking, and receiver standards, network redundancy/reliability and whatever other technical capabilities are found necessary to provide local, state and federal governments with an interoperable network to meet public safety needs into the next century;

(3) Recommend to the Commission whether the Commission should take action to require trunking on all or a portion of the nationwide interoperability spectrum is needed;

(4) Formulate and submit for Commission review and approval a set of recommendations for the use of interoperability spectrum, including recommendations for Federal Government users' access, that will allow public safety licensees to make use of such spectrum until final rules are developed;

(5) Provide policy recommendations on an advisory basis to the regional planning committees in order to ensure the development of coordinated regional plans; and

(6) Provide recommendations on other technology, telecommunications and public policy matters that relate to the expedited planning and deployment of a nationwide interoperable and reliable public safety and emergency responsiveness network.

The establishment of the committee is in the public interest.

In accordance with the Federal Advisory Committee Act, Public Law 92–463, as amended, this notice advises interested persons of the establishment of the National Coordination Committee and solicits membership for the NCC.

The Public Safety National Coordination Committee will have an open membership. All interested parties are invited to become members and to participate in the Committee's processes. We are soliciting membership from local, state and federal public safety agencies, including those individuals responsible for emergency responsiveness, planning, resource management and policy development. In addition, we are soliciting membership from all elements of the manufacturing, technology, public policy, network reliability/design and service provider communities, including representatives with expertise in the planning and design of telecommunications networks that meet public safety and emergency responsiveness needs. We believe that the broad range of representation from the various sectors from which we are soliciting NCC membership will ensure balanced participation.

Members will serve either as representatives of organizations or as experts in an individual capacity. Further, members of the NCC not employed by the Federal Government will serve without compensation from the Federal Government. We nonetheless note that reimbursement may be available on a case-by-case basis upon a demonstration of need. If you are interested in becoming a member of the NCC, please contact Joy Alford of the Policy and Rules Branch, Public Safety and Private Wireless Division, Wireless Telecommunications Bureau of the FCC on or before February 26, 1999, by calling (202) 418–0680, faxing (202) 418–2643, or replying by e-mail to jalford@fcc.gov. Please provide your name, the organization you represent, your mailing address, your phone number and fax number.

For Further Information Contact: D'wana R. Terry, FCC (202–418–0680), Designated Federal Officer of the Public Safety National Coordination Committee.

Federal Communications Commission.

D'wana R. Terry,

Chief, Public Safety and Private Wireless Division, Wireless Telecommunications Bureau.

[FR Doc. 99–3024 Filed 2–8–99; 8:45 am]

BILLING CODE 6712–01–P

FEDERAL COMMUNICATIONS COMMISSION

[DA 99–231]

Emergency Alert System National Advisory Committee

AGENCY: Federal Communications Commission.

ACTION: Notice of Advisory Committee meeting.

SUMMARY: On January 28, 1999, the Commission released a public notice announcing the February 26, 1999,

meeting and agenda of the Emergency Alert System National Advisory Committee (NAC). The meeting will serve to advise the Commission on Emergency Alert System issues.

DATES: February 26, 1999, 9:00 a.m.–Noon.

ADDRESSES: Federal Communications (new headquarters), 445 12th Street, SW, Commission Meeting Room, Washington, DC 20554.

FOR FURTHER INFORMATION CONTACT: Emergency Alert System Staff, Stop Code 1500B1, Federal Communications Commission, 1919 M Street, NW, Washington, DC 20554 (phone: 202–418–1220) (fax: 202–418–2817).

SUPPLEMENTARY INFORMATION: In 1994, the Federal Communications Commission (FCC) established the Emergency Alert System (EAS) to replace the Emergency Broadcast System (EBS). EAS uses various communications technologies, such as broadcast stations and cable systems, to alert the public regarding national, state and local emergencies. At the same time, the FCC added a new Part 11 to its rules containing EAS regulations. 47 CFR Part 11. The National Advisory Committee (NAC) was established to assist the FCC administer EAS. Its second meeting will be held on February 26, 1999, in Washington, DC and the general topic will be emergency communication matters relating to EAS.

Summary of Proposed Agenda

—Orientation
—Remarks by Chairman, Defense Commissioner and Compliance and Information Bureau Chief
—Presentations by the National Weather Service and Federal Emergency Management Agency
—EAS updates on state and local EAS plans/Activations
—Reports from EAS working groups
—Future EAS requirements and NAC recommendations to FCC
—Other Business
—Adjournment

Administrative Matters

Attendance at the NAC meeting is open to the interested public, but limited to space availability. Members of the general public may file a written statement with the FCC at the above contact address before or after the meeting. Members of the public wishing to make an oral statement during the meeting must consult with the NAC at the above FCC contact address prior to the meeting. Minutes of the meeting will be available after the meeting at the above contact address.

Federal Communications Commission.

Magalie Roman Salas,

Secretary.

[FR Doc. 99–3027 Filed 2–8–99; 8:45 am]

BILLING CODE 6712–01–P

FEDERAL COMMUNICATIONS COMMISSION

[Report No. 2313]

Petitions for Reconsideration and Application for Review of Action in Rulemaking Proceedings

February 3, 1999.

Petitions for Reconsideration and Application for Review have been filed in the Commission's rulemaking proceedings listed in this Public Notice and published pursuant to 47 CFR Section 1.429(e). The full text of these documents are available for viewing and copying in Room 239, 1919 M Street, NW, Washington, DC or may be purchased from the Commission's copy contractor, ITS, Inc. (202) 857–3800. Oppositions to these petitions must be filed by February 24, 1999. See Section 1.4(b)(1) of the Commission's rules (47 CFR 1.4(b)(1)). Replies to an opposition must be filed within 10 days after the time for filing oppositions has expired.

Subject: Biennial Regulatory Review-Amendment of Parts 0, 1, 13, 22, 25, 26, 27, 80, 87, 90, 95, 97, and 101 of the Commission's Rules to Facilitate the Development and Use of the Universal Licensing System in the Wireless Telecommunications Services (WT Docket 98–20).

Amendment of the Amateur Service Rules to Authorize Visiting Foreign Amateur Operators to Operate Stations in the United States (WT Docket No. 96–188, RM–8677).

Number of Petitions Filed: 8.

Federal Communications Commission.

Magalie Roman Salas,

Secretary.

[FR Doc. 99–3026 Filed 2–8–99; 8:45 am]

BILLING CODE 6712–01–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 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, DC 20573.

Surair Cargo, Inc., 3900 NW 79th Avenue, Suite 490, Miami, FL 33166, Officers: Luz Marina Borrero, President, Paul Suskey, Vice President

Procargo Express Inc., 145–30 156th Street, Rm. #206, Jamaica NY 11434, Officer: Doo Sik Song, President

Jacob Fleishman Transportation, Inc., 1177 NW 81 Street, Miami, FL 33150, Officers: Roy Fleishman, President, Robert Fleishman, Vice President

Dated: February 3, 1999.

Bryant L. VanBrakle,

Secretary.

[FR Doc. 99–3074 Filed 2–8–99; 8:45 am]

BILLING CODE 6730–01–M

FEDERAL RESERVE SYSTEM

Change in Bank Control Notices; Acquisitions of Shares of Banks or Bank Holding Companies

The notificants listed below have applied under the Change in Bank Control Act (12 U.S.C. 1817(j)) and § 225.41 of the Board's Regulation Y (12 CFR 225.41) to acquire a bank or bank holding company. The factors that are considered in acting on the notices are set forth in paragraph 7 of the Act (12 U.S.C. 1817(j)(7)).

The notices are available for immediate inspection at the Federal Reserve Bank indicated. The notices also will be available for inspection at the offices of the Board of Governors. Interested persons may express their views in writing to the Reserve Bank indicated for that notice or to the offices of the Board of Governors. Comments must be received not later than February 23, 1999.

A. Federal Reserve Bank of Chicago (Philip Jackson, Applications Officer) 230 South LaSalle Street, Chicago, Illinois 60690-1413:

1. James Stanley Haahr, Haahr Limited Liability Company, the Gretchen O. Haahr Revocable Trust, James Tyler Haahr, Michelle Haahr, the J. Tyler Haahr and Michelle Haahr Trust, Stanley H. Haahr, the Stanley H. Haahr Trust and Beryl M. Haahr, all of Storm Lake, Iowa; Ellen Elizabeth Moore and Troy Moore, III, of Clive, Iowa; Karen L. Bump, Karen L. Bump as Custodian for J. Mason Bump and Jeffrey N. Bump, all of Panora, Iowa; Bump Brothers Partnership, Stuart, Iowa; Ronald J. Walters and Barbara V. Walters both of Denison, Iowa; Lizabeth

Manning, Spearfish, South Dakota; Marylu Ledebuhr and Roger Ledebuhr, both of Eden Prairie, Minnesota; to acquire additional voting shares of First Midwest Financial, Inc., Storm Lake, Iowa, and thereby indirectly acquire voting shares of Security State Bank, Stuart, Iowa, and First Federal Savings Bank of the Midwest, Storm Lake, Iowa.

B. Federal Reserve Bank of Minneapolis (JoAnne F. Lewellen, Assistant Vice President) 90 Hennepin Avenue, P.O. Box 291, Minneapolis, Minnesota 55480-0291:

1. Paul Stephen Lindholm, Clarkfield, Minnesota; to acquire voting shares of Clarkfield Holding Company, Clarkfield, Minnesota, and thereby indirectly acquire voting shares of Farmers and Merchants State Bank of Clarkfield, Inc., Clarkfield, Minnesota.

2. Sevrin G. Steen Trust, Sevrin G. Steen trustee, Clinton, Minnesota; to acquire voting shares of Clinton Bancshares, Inc., Clinton, Minnesota, and thereby indirectly acquire voting shares of Clinton State Bank, Clinton, Minnesota.

Board of Governors of the Federal Reserve System, February 3, 1999.

Robert deV. Frierson,

Associate Secretary of the Board.

[FR Doc. 99–3012 Filed 2–8–99; 8:45 am]

BILLING CODE 6210–01–F

FEDERAL RESERVE SYSTEM

Formations of, Acquisitions by, and Mergers of Bank Holding Companies

The companies listed in this notice have applied to the Board for approval, pursuant to the Bank Holding Company Act of 1956 (12 U.S.C. 1841 *et seq.*) (BHC Act), Regulation Y (12 CFR Part 225), and all other applicable statutes and regulations to become a bank holding company and/or to acquire the assets or the ownership of, control of, or the power to vote shares of a bank or bank holding company and all of the banks and nonbanking companies owned by the bank holding company, including the companies listed below.

The applications listed below, as well as other related filings required by the Board, are available for immediate inspection at the Federal Reserve Bank indicated. The application also will be available for inspection at the offices of the Board of Governors. Interested persons may express their views in writing on the standards enumerated in the BHC Act (12 U.S.C. 1842(c)). If the proposal also involves the acquisition of a nonbanking company, the review also includes whether the acquisition of the nonbanking company complies with the standards in section 4 of the BHC Act. Unless otherwise noted, nonbanking activities will be conducted throughout the United States.

Unless otherwise noted, comments regarding each of these applications must be received at the Reserve Bank indicated or the offices of the Board of Governors not later than March 5, 1999.

A. Federal Reserve Bank of Boston (Richard Walker, Community Affairs Officer) 600 Atlantic Avenue, Boston, Massachusetts 02106-2204:

1. Chittenden Corporation, Burlington, Vermont; to merge with Vermont Financial Services Corp., Brattleboro, Vermont, and thereby indirectly acquire Vermont National Bank, Brattleboro, Vermont, and United Bank, Greenfield, Massachusetts.

B. Federal Reserve Bank of New York (Betsy Buttrill White, Senior Vice President) 33 Liberty Street, New York, New York 10045-0001:

1. The Fuji Bank, Limited, Tokyo, Japan; to acquire more than 50 percent of the voting shares of Yasuda Trust and Banking Company, Ltd., Tokyo, Japan.

C. Federal Reserve Bank of Cleveland (Paul Kaboth, Banking Supervisor) 1455 East Sixth Street, Cleveland, Ohio 44101-2566:

1. First National Bancorp, Hamilton, Ohio; to merge with Sand Ridge Financial Corporation, Highland, Indiana, and thereby indirectly acquire Sand Ridge Bank, Highland, Indiana.

D. Federal Reserve Bank of Chicago (Philip Jackson, Applications Officer) 230 South LaSalle Street, Chicago, Illinois 60690-1413:

1. ANB Corporation, Muncie, Indiana; to acquire 100 percent of the voting shares of Farmers State Bancorp, Union City, Ohio, and thereby indirectly acquire Farmers State Bank of Union City, Union City, Ohio.

E. Federal Reserve Bank of St. Louis (Randall C. Sumner, Vice President) 411 Locust Street, St. Louis, Missouri 63102-2034:

1. Clark County Bancshares, Inc., Wyaconda, Missouri; to acquire 30.25 percent of the voting shares of Memphis Bancshares, Inc., Memphis, Missouri (in organization), and thereby indirectly acquire Community Bank of Memphis, Memphis, Missouri (in organization).

Comments regarding this application must be received not later than March 1, 1999.

F. Federal Reserve Bank of Minneapolis (JoAnne F. Lewellen, Assistant Vice President) 90 Hennepin Avenue, P.O. Box 291, Minneapolis, Minnesota 55480-0291:

1. BW Bancorp, Woodbury, Minnesota; to become a bank holding company by acquiring 100 percent of the voting shares of Boundary Waters Community Bank, Ely, Minnesota, a *de novo* bank.

G. Federal Reserve Bank of Kansas City (D. Michael Manies, Assistant Vice President) 925 Grand Avenue, Kansas City, Missouri 64198-0001:

1. First National Agency, Inc., Wayne, Nebraska; to acquire 16.13 percent of the voting shares of B.W. Bancorp, Woodbury, Minnesota, and thereby indirectly acquire voting shares of Boundary Waters Community Bank, Ely, Minnesota, a *de novo* bank (in organization).

H. Federal Reserve Bank of Dallas (W. Arthur Tribble, Vice President) 2200 North Pearl Street, Dallas, Texas 75201-2272:

1. Sam Houston Financial Corp., Huntsville, Texas, and Huntsville Holding, Inc., Wilmington, Delaware; to become bank holding companies by acquiring 100 percent of the voting shares of The First State Bank, Kosse, Texas.

Board of Governors of the Federal Reserve System, February 3, 1999.

Robert deV. Frierson,

Associate Secretary of the Board.

[FR Doc. 99–3011 Filed 2–8–99; 8:45 am]

BILLING CODE 6210–01–F

FEDERAL RESERVE SYSTEM

Formations of, Acquisitions by, and Mergers of Bank Holding Companies

The companies listed in this notice have applied to the Board for approval, pursuant to the Bank Holding Company Act of 1956 (12 U.S.C. 1841 *et seq.*) (BHC Act), Regulation Y (12 CFR Part 225), and all other applicable statutes and regulations to become a bank holding company and/or to acquire the assets or the ownership of, control of, or the power to vote shares of a bank or bank holding company and all of the banks and nonbanking companies owned by the bank holding company, including the companies listed below.

The applications listed below, as well as other related filings required by the Board, are available for immediate inspection at the Federal Reserve Bank indicated. The application also will be available for inspection at the offices of the Board of Governors. Interested persons may express their views in writing on the standards enumerated in the BHC Act (12 U.S.C. 1842(c)). If the proposal also involves the acquisition of a nonbanking company, the review also includes whether the acquisition of the nonbanking company complies with the standards in section 4 of the BHC Act. Unless otherwise noted, nonbanking

activities will be conducted throughout the United States.

Unless otherwise noted, comments regarding each of these applications must be received at the Reserve Bank indicated or the offices of the Board of Governors not later than March 5, 1999.

A. Federal Reserve Bank of Minneapolis (JoAnne F. Lewellen, Assistant Vice President) 90 Hennepin Avenue, P.O. Box 291, Minneapolis, Minnesota 55480-0291:

1. WCB Bancshares, Inc., Oakdale, Minnesota; to become a bank holding company by acquiring 100 percent of the voting shares of Washington County Bank, National Association, Oakdale, Minnesota.

B. Federal Reserve Bank of Kansas City (D. Michael Manies, Assistant Vice President) 925 Grand Avenue, Kansas City, Missouri 64198-0001:

1. Davenport Community Bancshares, Inc., Davenport, Nebraska; to become a bank holding company by acquiring 100 percent of the voting shares of Jennings State Bank, Davenport, Nebraska.

Board of Governors of the Federal Reserve System, February 4, 1999.

Robert deV. Frierson,

Associate Secretary of the Board.

[FR Doc. 99–3127 Filed 2–8–99; 8:45 am]

BILLING CODE 6210–01–F

FEDERAL RESERVE SYSTEM

Sunshine Act Meeting

AGENCY HOLDING THE MEETING: Board of Governors of the Federal Reserve System.

TIME AND DATE: 11:30 a.m., Friday, February 12, 1999.

PLACE: Marriner S. Eccles Federal Reserve Board Building, 20th and C Streets, N.W., Washington, D.C. 20551.

STATUS: Closed.

MATTERS TO BE CONSIDERED:

1. Future capital framework.
2. Personnel actions (appointments, promotions, assignments, reassignments, and salary actions) involving individual Federal Reserve System employees.
3. Any matters carried forward from a previously announced meeting.

CONTACT PERSON FOR MORE INFORMATION: Lynn S. Fox, Assistant to the Board; 202–452–3204.

SUPPLEMENTARY INFORMATION: You may call 202–452–3206 beginning at approximately 5 p.m. two business days before the meeting for a recorded announcement of bank and bank holding company applications scheduled for the meeting; or you may contact the Board's Web site at http://www.federalreserve.gov for an electronic announcement that not only lists applications, but also indicates procedural and other information about the meeting.

Dated: February 5, 1999.

Robert deV. Frierson,

Associate Secretary of the Board.

[FR Doc. 99–3204 Filed 2–5–99; 12:05 pm]

BILLING CODE 6210–01–P

FEDERAL RESERVE SYSTEM

Sunshine Act

AGENCY HOLDING THE MEETING: Board of Governors of the Federal Reserve System.

TIME AND DATE: 10:00 a.m., Tuesday, February 16, 1999.

PLACE: Marriner S. Eccles Federal Reserve Board Building, 20th and C Streets, N.W., Washington, D.C. 20551.

STATUS: Closed.

MATTERS TO BE CONSIDERED:

1. Personnel actions (appointments, promotions, assignments, reassignments, and salary actions) involving individual Federal Reserve System employees.
2. Any items carried forward from a previously announced meeting.

CONTACT PERSON FOR MORE INFORMATION: Lynn S. Fox, Assistant to the Board; 202–452–3204.

SUPPLEMENTARY INFORMATION: You may call 202–452–3206 beginning at approximately 5 p.m. two business days before the meeting for a recorded announcement of bank and bank holding company applications scheduled for the meeting; or you may contact the Board's Web site at http://www.federalreserve.gov for an electronic announcement that not only lists applications, but also indicates procedural and other information about the meeting.

Dated: February 5, 1999.

Robert deV. Frierson,

Associate Secretary of the Board.

[FR Doc. 99–3300 Filed 2–5–99; 3:27 pm]

BILLING CODE 6210–01–M

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Office of the Secretary

Notice of a Cooperative Agreement With the Auxiliary to the National Medical Association, Inc.

The Office of Minority Health (OMH), Office of Public Health and Science (OPHS) announces that it will enter into an umbrella cooperative agreement with the Auxiliary to the National Medical Association, Inc. (ANMA), a national organization whose mission is to provide outreach to African-Americans and other minorities to address the health education needs of the African American community. This cooperative agreement is an umbrella cooperative agreement and will establish the broad programmatic framework in which specific projects can be supported by various agencies during the project period.

The purpose of this cooperative agreement is to assist the ANMA in providing outreach to African-Americans and other minorities, through health and educational activities, including partnerships with community-based and health related organizations, and health providers on issues of prevention/intervention, immunization, nutrition, violence and stress related health problems.

The OMH will provide technical assistance and oversight as necessary for the implementation, conduct, and assessment of the project activities. On an as-needed basis, OMH will assist in arranging consultation from other Government agencies and non-governmental agencies.

Authorizing Legislation

This cooperative agreement is authorized under Section 1707(e)(1) of the Public Health Service Act, as amended.

Background

Assistance will be provided only to ANMA. No other applications are being solicited under this announcement. The ANMA is uniquely qualified to accomplish the objectives of this cooperative agreement because it has the following combination of factors:

- Developed an infrastructure to coordinate health related activities within African American and other minority communities;
- Established partnerships with other national organizations and local affiliates to promote healthy lifestyles in minority communities;
- Demonstrated ability to implement national health programs within educational systems and local minority communities;
- Worked with community-based organizations and health care providers to reduce the impact of violence and child abuse;
- Partnered with a network of national and local organizations to promote outreach for organ, tissue and

bone marrow donation within minority communities; and

• Developed and implemented a national educational program which provided students with exposure to information concerning career opportunities in health professions and scientific research.

This cooperative agreement will be awarded for a 12-month budget period within a project period for five years. Depending upon the types of projects and availability of funds, it is anticipated that this cooperative agreement will receive approximately $50,000 to $100,000. Continuation awards within the project period will be made on the basis of satisfactory progress and the availability of funds.

The Catalog of Federal Domestic Assistance Number for this cooperative agreement is 93.004.

Where To Obtain Additional Information

If you are interested in obtaining additional information regarding this project, contact Ms. Cynthia Amis, Office of Minority Health, 5515 Security Lane, Suite 1000, Rockville, Maryland 20852 or telephone (301) 594–0769.

Dated: January 28, 1998.

Clay E. Simpson, Jr.,

Deputy Assistant Secretary for Minority Health.

[FR Doc. 99–3042 Filed 2–8–99; 8:45 am]

BILLING CODE 4160–17–M

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Centers for Disease Control and Prevention

Disease, Disability, and Injury Prevention and Control Special Emphasis Panel (SEP): Comprehensive STD Prevention Systems (CSPS)—Monitoring STD Prevalence and Reproductive Health Services

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 meeting.

Name: Disease, Disability, and Injury Prevention and Control Special Emphasis Panel (SEP): Comprehensive STD Prevention Systems (CSPS)—Monitoring STD Prevalence and Reproductive Health Services, Program Announcement #99000, meeting.

Times and Dates: 9 a.m.–9:30 a.m., March 2, 1999 (Open).

9:30 a.m.–4 p.m., March 2, 1999 (Closed).

Place: National Center for HIV, STD, and TB Prevention, CDC, Corporate Square Office Park, Building 11, Room 2214, Atlanta, Georgia 30329.

Status: Portions of the meeting will be closed to the public in accordance with provisions set forth in section 552b(c)(4) and (6), Title 5 U.S.C., and the Determination of the Associate Director for Management and Operations, CDC, pursuant to Public Law 92–463.

Matters to be Discussed: The meeting will include the review, discussion, and evaluation of applications received in response to Program Announcement #99000.

Contact Person For More Information: John R. Lehnherr, Chief, Prevention Support Office, National Center for HIV, STD, and TB Prevention, CDC, Corporate Square Office Park, 11 Corporate Square Boulevard, M/S E07, Atlanta, Georgia 30329, telephone 404/639–8025.

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: February 2, 1999.

Carolyn J. Russell,

Director, Management Analysis and Services Office, Centers for Disease Control and Prevention CDC.

[FR Doc. 99–3088 Filed 2–8–99; 8:45 am]

BILLING CODE 4163–18–P

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Centers for Disease Control and Prevention

Citizens Advisory Committee on Public Health Service Activities and Research at Department of Energy (DOE) Sites; Fernald Health Effects Subcommittee

In accordance with section 10(a)(2) of the Federal Advisory Committee Act (Pub. L. 92–463), the Agency for Toxic Substances and Disease Registry (ATSDR) and the Centers for Disease Control and Prevention (CDC) announce the following meeting.

Name: Citizens Advisory Committee on Public Health Service Activities and Research at DOE Sites: Fernald Health Effects Subcommittee.

Times and Dates: 1 p.m.–9 p.m., March 3, 1999; 8:30 a.m.–5 p.m., March 4, 1999.

Place: The Plantation, 9660 Dry Fork Road, Harrison, Ohio 45020. Telephone 513/367–5610.

Status: Open to the public, limited only by the space available. The meeting room accommodates approximately 50 people.

Background: Under a Memorandum of Understanding (MOU) signed in December 1990 with DOE and replaced by an MOU signed in 1996, the Department of Health and Human Services (HHS) was given the responsibility and resources for conducting analytic epidemiologic investigations of residents of communities in the vicinity of DOE facilities, workers at DOE facilities, and other persons potentially exposed to radiation or to potential hazards from non-nuclear energy production use. HHS delegated program responsibility to CDC.

In addition, a memo was signed in October 1990 and renewed in November 1992 between ATSDR and DOE. The MOU delineates the responsibilities and procedures for ATSDR's public health activities at DOE sites required under sections 104, 105, 107, and 120 of the Comprehensive Environmental Response, Compensation, and Liability Act (CERCLA or ''Superfund''). These activities include health consultations and public health assessments at DOE sites listed on, or proposed for, the Superfund National Priorities List and at sites that are the subject of petitions from the public; and other health-related activities such as epidemiologic studies, health surveillance, exposure and disease registries, health education, substance-specific applied research, emergency response, and preparation of toxicological profiles.

Purpose: This subcommittee is charged with providing advice and recommendations to the Director, CDC and the Administrator, ATSDR, regarding community, American Indian Tribes, and labor concerns pertaining to CDC's and ATSDR's public health activities and research at this DOE site. The purpose of this meeting is to provide a forum for community, American Indian Tribal, and labor interaction and serve as a vehicle for community concern to be expressed as advice and recommendations to CDC and ATSDR.

Matters to be Discussed: Agenda items include presentations from the National Center for Environmental Health (NCEH), the National Institute for Occupational Safety and Health and ATSDR on updates regarding progress of current studies.

Agenda items are subject to change as priorities dictate.

Contact Persons for More Information: Steven A. Adams, Radiation Studies Branch, Division of Environmental Hazards and Health Effects, NCEH, CDC, 4770 Buford Highway, NE, M/S F–35, Atlanta, Georgia 30341–3724. Telephone 770/488–7040, Fax 770/488–7044.

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: February 2, 1999.

Carolyn J. Russell,

Director, Management Analysis and Services Office, Centers for Disease Control and Prevention (CDC).

[FR Doc. 99–3089 Filed 2–8–99; 8:45 am]

BILLING CODE 4163–18–P

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Centers for Disease Control and Prevention

Citizens Advisory Committee on Public Health Service Activities and Research at Department of Energy (DOE) Sites; Idaho National Engineering and Environmental Laboratory Health Effects Subcommittee

In accordance with section 10(a)(2) of the Federal Advisory Committee Act (Pub. L. 92–463), the Agency for Toxic Substances and Disease Registry (ATSDR) and the Centers for Disease Control and Prevention (CDC) announce the following meeting.

Name: Citizens Advisory Committee on Public Health Service Activities and Research at DOE Sites: Idaho National Engineering and Environmental Laboratory Health Effects Subcommittee.

Times and Dates: 8:30 a.m.—5 p.m., March 17, 1999. 8:30 a.m.—5 p.m., March 18, 1999.

Place: Cavanaugh's on the Falls Hotel, 475 River Parkway, Idaho Falls, Idaho 83402. Telephone, 208/523–8000.

Status: Open to the public, limited only by the space available. The meeting room accommodates approximately 50 people.

Background: Under a Memorandum of Understanding (MOU) signed in December 1990 with DOE and replaced by an MOU signed in 1996, the Department of Health and Human Services (HHS) was given the responsibility and resources for conducting analytic epidemiologic investigations of residents of communities in the vicinity of DOE facilities, workers at DOE facilities, and other persons potentially exposed to radiation or to potential hazards from non-nuclear energy production use. HHS delegated program responsibility to CDC.

In addition, a memo was signed in October 1990 and renewed in November 1992 between ATSDR and DOE. The MOU delineates the responsibilities and procedures for ATSDR's public health activities at DOE sites required under sections 104, 105, 107, and 120 of the Comprehensive Environmental Response, Compensation, and Liability Act (CERCLA or ''Superfund''). These activities include health consultations and public health assessments at DOE sites listed on, or proposed for, the Superfund National Priorities List and at sites that are the subject of petitions from the public; and other health-related activities such as epidemiologic studies, health surveillance, exposure and disease registries, health education, substance-specific applied research, emergency response, and preparation of toxicological profiles.

Purpose: This subcommittee is charged with providing advice and recommendations to the Director, CDC and the Administrator, ATSDR, regarding community, American Indian Tribes, and labor concerns pertaining to CDC's and ATSDR's public health activities and research at this DOE site. The purpose of this meeting is to provide a forum for community, American Indian Tribal, and labor interaction and serve as a vehicle for community concern to be expressed as advice and recommendations to CDC and ATSDR.

Matters to be Discussed: Agenda items include presentations from the National Center for Environmental Health (NCEH), the National Institute for Occupational Safety and Health and ATSDR on updates regarding progress of current studies.

Agenda items are subject to change as priorities dictate.

Contact Persons for More Information: Arthur J. Robinson, Jr., Radiation Studies Branch, Division of Environmental Hazards and Health Effects, NCEH, CDC, 4770 Buford Highway, NE, M/S F–35, Atlanta, Georgia 30341–3724. Telephone 770/488–7040, Fax 770/488–7044.

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: February 2, 1999.

Carolyn J. Russell,

Director, Management Analysis and Services Office, Centers for Disease Control and Prevention (CDC).

[FR Doc. 99–3090 Filed 2–8–99; 8:45 am]

BILLING CODE 4163–18–P

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Food and Drug Administration

[Docket No. 99N–0124]

Agency Information Collection Activities: Proposed Collection; Comment Request; Premarket Notification for a New Dietary Ingredient

AGENCY: Food and Drug Administration, HHS.

ACTION: Notice.

SUMMARY: The Food and Drug Administration (FDA) is announcing an opportunity for public comment on the proposed collection of certain information by the agency. Under the Paperwork Reduction Act of 1995 (the PRA), Federal agencies are required to publish notice in the **Federal Register** concerning each proposed collection of information, including each proposed extension of an existing collection of information, and to allow 60 days for public comment in response to the notice. This notice solicits comments on the procedure by which a manufacturer or distributor of dietary supplements or of a new dietary ingredient is to submit information to FDA on which it has concluded that a dietary supplement containing a new dietary ingredient will reasonably be expected to be safe.

DATES: Submit written comments on the collection of information by April 12, 1999.

ADDRESSES: Submit written comments on the collection of information to the Dockets Management Branch (HFA–305), Food and Drug Administration, 5630 Fishers Lane, rm. 1061, Rockville, MD 20852. All comments should be identified with the docket number found in brackets in the heading of this document.

FOR FURTHER INFORMATION CONTACT: Peggy Schlosburg, Office of Information Resources Management (HFA–250), Food and Drug Administration, 5600 Fishers Lane, Rockville, MD 20857, 301–827–1223.

SUPPLEMENTARY INFORMATION: Under the PRA (44 U.S.C. 3501–3520), Federal agencies must obtain approval from the Office of Management and Budget (OMB) for each collection of information they conduct or sponsor. ''Collection of information'' is defined in 44 U.S.C. 3502(3) and 5 CFR 1320.3(c) and includes agency requests or requirements that members of the public submit reports, keep records, or provide information to a third party. Section 3506(c)(2)(A) of the PRA (44 U.S.C. 3506(c)(2)(A)) requires Federal agencies to provide a 60-day notice in the **Federal Register** concerning each proposed collection of information, including each proposed extension of an existing collection of information, before submitting the collection to OMB for approval. To comply with this requirement, FDA is publishing notice of the proposed collection of information set forth below.

With respect to the following collection of information, FDA invites comments on: (1) Whether the proposed collection of information is necessary for the proper performance of FDA's functions, including whether the information will have practical utility; (2) the accuracy of FDA'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 respondents, including through the use of automated collection techniques, when appropriate, and other forms of information technology.

New Dietary Ingredient Premarket Notification—21 CFR 190.6 (OMB Control Number 0910–0330—Extension)

Description: Section 413(a) of the Federal Food, Drug, and Cosmetic Act (the act) (21 U.S.C. 350b(a)) provides for the notification of the Secretary of Health and Human Services (the Secretary) (and by delegation FDA) at least 75 days before the introduction or delivery for introduction into interstate commerce of a dietary supplement that contains a new dietary ingredient.

The agency established 21 CFR 190.6 as the procedural regulation for this program. This regulation provides details of the administrative procedures associated with the submission and identifies the information that must be included in the submission in order to meet the requirements of section 413(a) of the act and to show the basis on which a manufacturer or distributor of a new dietary ingredient or a dietary supplement containing a new dietary ingredient has concluded that the dietary supplement containing such dietary ingredient will reasonably be expected to be safe.

Description of Respondents: Businesses or other for-profit organizations.

FDA estimates the burden of this collection of information as follows:

TABLE 1.—ESTIMATED ANNUAL REPORTING BURDEN[1]

21 CFR Section	No. of Respondents	Annual Frequency per Response	Total Annual Responses	Hours per Response	Total Hours
190.6	11	1	11	20	220

[1] There are no capital costs or operating and maintenance costs associated with this collection of information.

The agency believes that there will be minimal burden on the industry to generate data to meet the requirements of the premarket notification program because the agency is requesting only that information that the manufacturer or distributor should already have developed to satisfy itself that a dietary supplement containing a new dietary ingredient is in full compliance with the act. However, the agency estimates that extracting and summarizing the relevant information from the company's files, and presenting it in a format that will meet the requirements of section 413 of the act, will require a burden of approximately 20 hours of work per submission. This estimate is based on the average number of premarket notifications received by the agency in the last 3 years.

Dated: February 1, 1999.

William K. Hubbard,

Associate Commissioner for Policy Coordination.

[FR Doc. 99–3014 Filed 2–8–99; 8:45 am]

BILLING CODE 4160–01–F

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Food and Drug Administration

[Docket No. 98N–0394]

Agency Information Collection Activities; Announcement of OMB Approval; Medical Devices; Investigational Device Exemptions

AGENCY: Food and Drug Administration, HHS.

ACTION: Notice.

SUMMARY: The Food and Drug Administration (FDA) is announcing that a collection of information entitled ''Medical Devices; Investigational Device Exemptions'' has been approved by the Office of Management and Budget (OMB) under the Paperwork Reduction Act of 1995.

FOR FURTHER INFORMATION CONTACT: Peggy Schlosburg, Office of Information Resources Management (HFA–250), Food and Drug Administration, 5600 Fishers Lane, Rockville, MD 20857, 301–827–1223.

SUPPLEMENTARY INFORMATION: In the **Federal Register** of November 23, 1998 (63 FR 64617), the agency announced that the proposed information collection had been submitted to OMB for review and clearance under 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 0910–391. The approval expires on January 31, 2002. A copy of the supporting statement for this information collection is available on the Internet at ''http://www.fda.gov/ohrms/dockets''.

Dated: February 2, 1999.

William K. Hubbard,

Associate Commissioner for Policy Coordination.

[FR Doc. 99–3016 Filed 2–8–99; 8:45 am]

BILLING CODE 4160–01–F

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Food and Drug Administration

[Docket No. 98N–0698]

Agency Information Collection Activities; Submission for OMB Review; Comment Request; Survey of Consumer Attitudes Toward Potential Changes in Food Standards of Identity

AGENCY: Food and Drug Administration, HHS.

ACTION: Notice.

SUMMARY: The Food and Drug Administration (FDA) is announcing that the proposed collection of information listed below has been submitted to the Office of Management and Budget (OMB) for review and clearance under the Paperwork Reduction Act of 1995 (the PRA).

DATES: Submit written comments on the collection of information by March 11, 1999.

ADDRESSES: Submit written comments on the collection of information to the Office of Information and Regulatory Affairs, OMB, New Executive Office Bldg., 725 17th St. NW., rm. 10235, Washington, DC 20503, Attn: Desk Officer for FDA.

FOR FURTHER INFORMATION CONTACT: Peggy Schlosburg, Office of Information Resources Management (HFA–250), Food and Drug Administration, 5600 Fishers Lane, Rockville, MD 20857, 301–827–1223.

SUPPLEMENTARY INFORMATION: In compliance with the PRA (44 U.S.C. 3507), FDA has submitted the following proposed collection of information to OMB for review and clearance.

Survey of Consumer Attitudes Toward Potential Changes in Food Standards of Identity

Under section 903(d)(2) of the Federal Food, Drug, and Cosmetic Act (21 U.S.C. 393(d)(2)), FDA is authorized to conduct research relating to foods and to conduct educational and public information programs relating to the safety of the nation's food supply. FDA is planning to conduct a telephone-mail-telephone consumer survey about consumer attitudes towards potential changes in food standards of identity under this authority. A nationally representative sample of 600 adults, who regularly do the food shopping for their households, will be selected at random and asked if they would agree to complete a mail survey. Participation will be voluntary. Detailed information will be obtained about how consumers would be affected by changes to standards and what their preferences are for retaining, revising, or eliminating standards. FDA is reviewing standard of identity regulations for foods in order to determine which elements of those regulations are most important to fulfilling the goals of those regulations. The information to be collected will address consumer attitudes toward potential changes in the standards of identity for particular products. The products will be chosen to represent general categories of products that share theoretically relevant characteristics. The changes will be chosen to represent general types of changes that might be made to standards of identity. Therefore, the information collected on particular changes in the standards of identity for particular products should provide information that can be generalized to other changes and other products. The information collected will be used to shape FDA's policy on revising standards of identity.

In the **Federal Register** of September 3, 1998 (63 FR 47031), the agency requested comments on the proposed collection of information. FDA received five comments. One comment noted that Table 1 in the September 3, 1998, notice appeared to contain a typographical error. According to this comment, the ''0.8'' in the ''Hours per Response'' column for receiving the initial recruiting telephone call should be ''0.08'' if that number is to be consistent with the other numbers in that table. FDA agrees with this comment and has revised the estimate for the initial telephone call accordingly.

Some comments argued the proposed survey is unnecessary because industry groups have already indicated how they believe FDA should revise the standards of identity governing their products. FDA values the input of industry and intends to give full consideration to industry recommendations on revising standards. However, the primary purpose of standards of identity is to assist consumers. Therefore, FDA believes that information on consumer attitudes toward revising standards is also relevant to revising standards.

Some comments suggested that the proposed survey is unnecessary because similar surveys have already been done by industry groups and the results of those surveys have already been shared with FDA. According to these comments, FDA already has sufficient information on consumer attitudes toward revising standards of identity to proceed with the task of reviewing and revising standards. Although the surveys that have been performed by industry groups contain much information that is relevant to revising standards, FDA disagrees that gathering additional information is unnecessary. One of the issues on which FDA believes that additional information is necessary is consumer attitudes toward the tradeoffs involved in revising various types of standards of identity in various ways. FDA believes that this issue has not been adequately addressed in the surveys that have been performed by industry groups.

Many comments suggested that the proposed survey will be too general to have any practical utility for revising standards of identity. According to these comments, survey results on consumer attitudes on changing any given standard will not be relevant to the determining consumer attitudes toward changing any other standard. These comments suggested that the surveys that have been performed by industry groups do not suffer from this drawback because they deal with particular products. FDA acknowledges the difficulties involved in extrapolating the results of consumer attitudes across different standards and products. However, FDA believes that standards and products can be grouped in a meaningful way and that the results of consumer attitudes toward a particular change in the standard governing a particular product will be related to consumer attitudes toward similar changes in the standards governing other products of that type. FDA agrees that it would be more straightforward to do a separate survey on every possible change in every standard. However, FDA has insufficient resources to implement such an approach. As indicated previously, FDA agrees that the surveys performed by industry groups on particular products contain much information that is relevant to revising those standards. However, FDA does not believe that those surveys provide all the information that is relevant to revising those standards.

Other comments suggested that the proposed survey will have no practical utility because consumer attitudes toward the hypothetical changes to standards discussed in the survey will not be relevant to determining consumer attitudes toward the types of changes that FDA would actually make to standards. FDA disagrees with this comment. The types of changes discussed in the proposed survey will reflect the types of changes that FDA might actually make.

Some comments argued that the proposed survey is fundamentally misguided because consumers are not generally familiar with standards of identity and will not be able to respond to questions concerning changes in standards of identity. FDA is aware that most consumers are not already familiar with standards. The survey will be written in such a manner that consumers are provided with the information they need to consider changes to standards.

Finally, some comments noted that interpreting the results of consumer surveys is complicated because those results depend crucially on what questions are asked and on how those questions are asked. These comments noted that industry has considerable experience conducting consumer surveys and recommended that FDA elicit the input of industry experts when designing the survey instrument. FDA is aware of the issues that are involved in interpreting the results of consumer surveys and believes that it has access to sufficient technical expertise to conduct consumer surveys without the assistance of industry experts. In addition, FDA notes that it does not intend to revise standards based only on the results of this particular survey, but intends to also take into account the results of all other relevant surveys, including those sponsored by industry groups, and all other relevant information.

FDA estimates the burden of this collection of information as follows:

TABLE 1.—ESTIMATED ANNUAL REPORTING BURDEN[1]

	No. of Respondents	Annual Frequency per Response	Total Annual Responses	Hours per Response	Total Hours
Receive initial recruiting telephone call	600	1	600	0.08	48
Read instructions and complete mail survey	600	1	600	0.59	354
Complete followup telephone interview	600	1	600	0.08	48
Total					450

[1] There are no capital costs or operating and maintenance costs associated with this collection of information.

The burden estimate is based on two rounds of focus groups conducted to test the survey instrument. The estimates for the length of the initial and followup interviews are based on similar studies that have been conducted.

Dated: January 31, 1999.

William K. Hubbard,

Associate Commissioner for Policy Coordination.

[FR Doc. 99–3015 Filed 2–8–99; 8:45 am]

BILLING CODE 4160–01–F

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Food and Drug Administration

Allergenic Products Advisory Committee; Notice of Meeting

AGENCY: Food and Drug Administration, HHS.

ACTION: Notice.

This notice announces a forthcoming meeting of a public advisory committee of the Food and Drug Administration (FDA). At least one portion of the meeting will be closed to the public.

Name of Committee: Allergenic Products 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 February 22, 1999, 8 a.m. to 5 p.m.

Location: Holiday Inn, Versailles Ballrooms I and II, 8120 Wisconsin Ave., Bethesda, MD.

Contact Person: William Freas or Pearline K. Muckelvene, Center for Biologics Evaluation and Research (HFM–21), Food and Drug Administration, 1401 Rockville Pike, Rockville, MD 20852, 301–827–0314, or FDA Advisory Committee Information Line, 1–800–741–8138 (301–443–0572 in the Washington, DC area), code 12388. Please call the Information Line for up-to-date information on this meeting.

Agenda: The committee will discuss: (1) The current organization and the research programs of the Laboratory of Immunobiochemistry, Division of Allergenic Products and Parasitology, Office of Vaccines Research and Review; (2) regulatory proposals concerning the potency limits for standardized allergen vaccines and the requirements for protein content of these vaccines; (3) modifications of the competitive ELISA assay; (4) proposed package insert for allergen extracts; (5) issues regarding use of pure allergens versus U.S. standards; and (6) an update on the status of class IIIA allergen extracts.

Procedure: On February 22, 1999, from 8 a.m. to 3 p.m., the meeting is open to the public. Interested persons may present data, information, or views, orally or in writing, on issues pending before the committee. Written submissions may be made to the contact person by February 16, 1999. Oral presentations from the public will be scheduled between approximately 1 p.m. and 2 p.m. Time allotted for each presentation may be limited. Those desiring to make formal oral presentations should notify the contact person before February 16, 1999, and submit a brief statement of the general nature of the evidence or arguments they wish to present, the names and addresses of proposed participants, and an indication of the approximate time requested to make their presentation.

Closed Committee Deliberations: On February 22, 1999, from 3 p.m. to 5 p.m., the meeting will be closed to permit discussion and review of trade secret and/or confidential information (5 U.S.C. 552b(c)(4)) regarding applications under FDA review.

FDA regrets that it was unable to publish this notice 15 days prior to the February 22, 1999, Allergenic Products Advisory Committee meeting. Because the agency believes there is some urgency to bring these issues to public discussion and qualified members of the Allergenic Products Advisory Committee were available at this time, the Commissioner concluded that it was in the public interest to hold this meeting even if there was not sufficient time for the customary 15-day public notice.

Notice of this meeting is given under the Federal Advisory Committee Act (5 U.S.C. app. 2).

Dated: February 3, 1999.

Michael A. Friedman,

Deputy Commissioner for Operations.

[FR Doc. 99–3149 Filed 2–5–99; 8:45 am]

BILLING CODE 4160–01–F

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Food and Drug Administration

Anti-Infective Drugs 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: Anti-Infective Drugs 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 March 4, 1999, 8:30 a.m. to 5 p.m.

Location: Holiday Inn, Kennedy Grand Ballroom, 8777 Georgia Ave., Silver Spring, MD.

Contact Person: Rhonda W. Stover, 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 12530. Please call the Information Line for up-to-date information on this meeting.

Agenda: The committee will discuss new drug application 20–930, pexiganan acetate 1 percent topical cream (Magainin Pharmaceuticals) for treatment of infections in diabetic foot ulcers.

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 February 25, 1999. Oral presentations from the public will be scheduled between approximately 11:30 a.m. and 12:30 p.m. Time allotted for each presentation may be limited. Those desiring to make formal oral presentations should notify the contact person before February 25, 1999, 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: February 2, 1999.

Michael A. Friedman,

Deputy Commissioner for Operations.

[FR Doc. 99–3108 Filed 2–8–99; 8:45 am]

BILLING CODE 4160–01–F

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Health Resources and Services Administration

Agency Information Collection Activities: Proposed Collection: Comment Request

In compliance with the requirement for opportunity for public comment on proposed data collection projects (section 3506(c)(2)(A) of Title 44, United States Code, as amended by the Paperwork Reduction Act of 1995, Public Law 104–13), the Health Resources and Services Administration (HRSA) publishes periodic summaries of proposed projects being developed for submission to OMB under the Paperwork Reduction Act of 1995. To request more information on the proposed project or to obtain a copy of the data collection plans and draft instruments, call the HRSA Reports Clearance Officer on (301) 443–1891.

Comments are invited on: (a) Whether the proposed collection of information is necessary for the proper performance of the functions of the agency, including whether the information shall have practical utility; (b) the accuracy of the agency's estimate of the burden of the proposed collection of information; (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 respondents, including through the use of automated collection techniques or other forms of information technology.

Proposed Project: Application for Certification and Recertification as a Federally Qualified Health Center (FQHC) Look Alike, OMB No. 0915–0142—Revision

The Health Resources and Services Administration (HRSA) proposed to revise the application guide used by organizations applying for certification, or recertification as a Federally Qualified Health Center (FQHC) Look-Alike for purposes of cost-based reimbursement under the Medicaid and Medicare programs. The guide will be revised to reflect legislative, policy, and technical changes since May, 1997, the issuance date of the last guidance. Revisions will include reference to the Balanced Budget Act of 1997 which amended the statutory language pertaining to FQHC Look-Alikes to include the requirement that 'an entity may not be owned, controlled, or operated by another entity', and the interpretation and implementation policy documents issued by the HRSA.

Estimates of Burden are as follows:

Form	Number of respondents	Responses per respondent	Hours per respondent	Total hour burden
Application	26	1	100	2,600
Recertification	74	1	20	1,480
Total	100	.....	.....	4,080

Send comments to Susan G. Queen, Ph.D., HRSA Reports Clearance Officer, Room 14–33, Parklawn Building, 5600 Fishers Lane, Rockville, MD 20857. Written comments should be received within 60 days of this notice.

Dated: February 3, 1999.

Jane Harrison,

Director, Division of Policy Review and Coordination.

[FR Doc. 99–3017 Filed 2–8–99; 8:45 am]

BILLING CODE 4160–15–P

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Substance Abuse and Mental Health Services Administration

Agency Information Collection Activities: Submission for OMB Review; Comment Request

Periodically, the Substance Abuse and Mental Health Services Administration (SAMHSA) will publish a list of information collection requests under OMB review, in compliance with the Paperwork Reduction Act (44 U.S.C. Chapter 35). To request a copy of these documents, call the SAMHSA Reports Clearance Officer on (301) 443–7978.

State Treatment and Needs Assessment Program Studies

(OMB No. 0930–0186—Revision)—SAMHSA's Center for Substance Abuse Treatment (CSAT), as part of its State Treatment and Needs Assessment Program (STNAP), awards contracts to States to conduct studies for the purpose of determining the need and demand for substance abuse treatment within each State. In order to receive funds from the Substance Abuse Prevention and Treatment Block Grant, States must submit in their annual block grant applications an assessment of service needs Statewide, at the sub-state level, and for specified population groups (as required by section 1929 of the Public Health Service Act). Most States plan to conduct an adult telephone household survey to collect information on needed treatment for substance abuse/dependence. In addition, many States plan to conduct a variety of more focused studies which will collect data on treatment need in special populations, including

adolescents, pregnant women, American Indians, arrestees and other criminal justice populations.

This submission reflects changes to the previously approved annual burden for survey activities in two States previously funded (changes to their previously approved survey plans) and in the nine States receiving new contracts in FY 1998 that are engaging in primary data collection. The burden will be as presented below:

	Total No. of respondents	No. of responses/respondent	Hours/response	Annualized burden hours
Previous submission	75,521	1	0.54	41,093
Decrease:				
(Adolescent Survey not being done)	−3,000	1	0.55	−1,650
New Activities:				
Household Telephone Surveys	5,567	1	0.55	3,062
Criminal justice populations	1,423	1	.68	970
Medicaid recipients	1,556	1	0.55	856
Other population groups	2,013	1	.74	1,480
Treatment providers	312	1	.72	226
Treatment clients	600	2.7	.51	820
Total	83,992			46,857

Written comments and recommendations concerning the proposed information collection should be sent within 30 days of this notice to: Daniel Chenok, Human Resources and Housing Branch, Office of Management and Budget, New Executive Office Building, Room 10235, Washington, DC 20503.

Dated: February 2, 1999.

Richard Kopanda,

Executive Officer, Substance Abuse and Mental Health Services Administration.

[FR Doc. 99–3087 Filed 2–8–99; 8:45 am]

BILLING CODE 4162–20–P

DEPARTMENT OF HOUSING AND URBAN DEVELOPMENT

[Docket No. FR–4441–N–12]

Submission for OMB Review: Comment Request

AGENCY: Office of the Assistant Secretary for Administration HUD.

ACTION: Notice.

SUMMARY: The proposed information collection requirement described below has been submitted to the Office of Management and Budget (OMB) for review, as required by the Paperwork Reduction Act. The Department is soliciting public comments on the subject proposal.

DATES: Comments due date: March 11, 1999.

ADDRESSES: Interested persons are invited to submit comments regarding this proposal. Comments must be received within thirty (30) days from the date of this Notice. Comments should refer to the proposal by name and/or OMB approval number and should be sent to: Joseph F. Lackey, Jr., OMB Desk Officer, Office of Management and Budget, Room 10235, New Executive Office Building, Washington, DC 20503.

FOR FURTHER INFORMATION CONTACT: Wayne Eddins, Reports Management Officer, Department of Housing and Urban Development, 451 7th Street, Southwest, Washington, DC 20410, telephone (202) 708–1305. This is not a toll-free number. Copies of the proposed forms and other available documents submitted to OMB may be obtained from Mr. Eddins.

SUPPLEMENTARY INFORMATION: The Department has submitted the proposal for the collection of information, as described below, to OMB for review, as required by the Paperwork Reduction Act (44 U.S.C. Chapter 35).

The Notice lists the following information: (1) The title of the information collection proposal; (2) the office of the agency to collect the information; (3) the OMB approval number, if applicable; (4) the description of the need for the information and its proposed use; (5) the agency form number, if applicable; (6) what members of the public will be affected by the proposal; (7) how frequently information submissions will be required; (8) an estimate of the total number of hours needed to prepare the information submission including number of respondents, frequency of response, and hours of response; (9) whether the proposal is new, an extension, reinstatement, or revision of an information collection requirement; and (10) the names and telephone numbers of an agency official familiar with the proposal and of the OMB Desk Officer for the Department.

Authority: Section 3507 of the Paperwork Reduction Act of 1995, 44 U.S.C. 35, as amended.

Dated: February 3, 1999.

David S. Cristy,

Director, IRM Policy and Management Division.

Title of Proposal: Statement of Profit and Loss.

Office: Housing.

OMB Approval Number: 2502–0052.

Description of the Need for the Information and Its Proposed Use: Owners of multifamily projects submit Form HUF–92410 each year as part of their annual financial statements. HUD uses the data on the Profit and Loss Statement to review request for rent increases, etc.

Form Number: HUD–92410.

Respondents: Business or Other For-Profit, Federal Government, Individuals or Households and Not-For-Profit Institutions.

Frequency of Submission: Annually.

Reporting Burden:

Number of respondents	×	Frequency of response	×	Hours per response	=	Burden hours
16,296		1		1		16,296

Total Estimated Burden Hours: 16,296.

Status: Reinstatement without changes.

Contact:

Veronica Lewis, HUD, (202) 708–0624 x2597

Joseph F. Lackey, Jr., OMB, (202) 395–7316

Dated: February 3, 1999.

[FR Doc. 99–3124 Filed 2–8–99; 8:45 am]

BILLING CODE 4210–01–M

DEPARTMENT OF HOUSING AND URBAN DEVELOPMENT

[Docket No. FR–4441–N–13]

Submission for OMB Review: Comment Request

AGENCY: Office of the Assistant Secretary for Administration, HUD.

ACTION: Notice.

SUMMARY: The proposed information collection requirement described below has been submitted to the Office of Management and Budget (OMB) for review, as required by the Paperwork Reduction Act. The Department is soliciting public comments on the subject proposal.

DATES: Comments due date: March 11, 1999.

ADDRESSES: Interested persons are invited to submit comments regarding this proposal. Comments must be received within thirty (30) days from the date of this Notice. Comments should refer to the proposal by name and/or OMB approval number and should be sent to: Joseph F. Lackey, Jr., OMB Desk Officer, Office of Management and Budget, Room 10235, New Executive Office Building, Washington, DC 20503.

FOR FURTHER INFORMATION CONTACT: Wayne Eddins, Reports Management Officer, Department of Housing and Urban Development, 451 7th Street, Southwest, Washington, DC 20410, telephone (202) 708-1305. This is not a toll-free number. Copies of the proposed forms and other available documents submitted to OMB may be obtained from Mr. Eddins.

SUPPLEMENTARY INFORMATION: The Department has submitted the proposal for the collection of information, as described below, to OMB for review, as required by the Paperwork Reduction Act (44 U.S.C. Chapter 35).

The Notice lists the following information: (1) The title of the information collection proposal; (2) the office of the agency to collect the information; (3) the OMB approval number, if applicable; (4) the description of the need for the information and its proposed use; (5) the agency form number, if applicable; (6) what members of the public will be affected by the proposal; (7) how frequently information submissions will be required; (8) an estimate of the total number of hours needed to prepare the information submission including number of respondents, frequency of response, and hours of response; (9) whether the proposal in new, an extension, reinstatement, or revision of an information collection requirement; and (10) the names and telephone numbers of an agency official familar with the proposal and of the OMB Desk Officer for the Department.

Authority: Section 3507 of the Paperwork Reduction Act of 1995, 44 U.S.C. 35, as amended.

Dated: February 3, 1999.

David S. Cristy,

Director, IRM Policy and Management Division.

Title of Proposal: Assessment of the Economic and Social Characteristics of the Low-Income Housing Tax Credit (LIHTC) Residents and Neighborhoods.

Office: Policy Development and Research.

OMB Approval Number: 2528–xxxx.

Description of the Need for the Information and Its Proposed Use: The purpose is to understand LIHTC projects in the context of their neighorhoods and the relationship of tax credit tenants to their neighborhoods.

Form Number: None.

Respondents: Individuals or Households.

Frequency of Submission: One-Time Submission.

Reporting Burden:

Number of respondents	X	Frequency of response	X	Hours per response	=	Burden hours
1,000		1		.50		500

Total Estimated Burden Hours: 500.

Status: New Collection.

Contact:

Priscila Prunella, HUD, (202) 708–3700 X5711

Joseph F. Lackey, Jr., OMB, (202) 395–7316.

Dated: February 3, 1999.

[FR Doc. 99–3125 Filed 2–8–99; 8:45 am]

BILLING CODE 4210–01–M

DEPARTMENT OF HOUSING AND URBAN DEVELOPMENT

[Docket No. FR–4280–N–05]

Notice of Baseline Review of HUD Properties

AGENCY: Office of the Assistant Secretary for Housing-Federal Housing Commissioner, HUD.

ACTION: Notice.

SUMMARY: This notice advises owners, mortgagees and contract administrators of HUD insured and/or assisted housing, as well as members of the public, that HUD's Real Estate Assessment Center intends to conduct, as requested by the Congressional conferees in the FY 1999 HUD Appropriations Act, a physical inspection of substantially all assisted and/or FHA insured properties (''baseline review'') over the next 12 to 18 months. The baseline review will be conducted using HUD's new uniform and computerized physical inspection protocol.

FOR FURTHER INFORMATION CONTACT: For further information contact Frank Malone, Office of Multifamily Housing, Department of Housing and Urban Development, 451 Seventh St, SW, Room 6160, Washington, DC, 20410 (202) 708–3730 or Cassandra Faulconer, the Real Estate Assessment Center, Department of Housing and Urban Development, Real Estate Assessment Center (REAC) 1280 Maryland Avenue, SW, Suite 800, Washington, DC 20024; telephone (202) 708–4932 (this is not a toll-free number). Persons with hearing or speech impairments may access that number via TTY by calling the Federal Information Relay Service at (800) 877–8339.

SUPPLEMENTARY INFORMATION: HUD's newly established Real Estate Assessment Center (REAC) is charged with responsibility for assessing and scoring the condition of certain properties in which HUD has an interest, as well as the performance of entities that manage and/or own those properties. The establishment of REAC marks an important change in HUD's way of doing business, and it is one of the key components of Secretary

Cuomo's HUD 2020 Management Reform Plan. The establishment of REAC has created an effective and comprehensive property assessment system. HUD's Office of Housing and the Office of Public and Indian Housing have previously operated separate real estate assessment operations; yet the administration of both organization's multifamily portfolios is a common function of asset management. Under REAC, the assessment of properties of the Office of Housing and the Office of Public and Indian Housing has been consolidated and the physical evaluation standards and physical inspection procedures have been made uniform.

As noted in the ''Summary'' portion of this notice, the purpose of this notice is to advise owners, mortgagees and contract administrators of HUD insured and/or assisted housing, as well as members of the public, that REAC intends to conduct, as requested by the Congressional conferees in the FY 1999 HUD Appropriations Act, a baseline review of substantially all assisted and/or FHA insured properties over the next 12 to 18 months. The baseline review will be conducted using HUD's new uniform physical inspection computerized protocol.

This notice is not intended to waive or release the obligation of any person or entity to perform a physical inspection of a property or properties to be inspected in the baseline review, which inspection is otherwise required.

Persons or entities required to perform a physical inspection of a property or properties must send their physical inspection reports to REAC at the address shown under the ''For Further Information'' section of this notice.

Dated: January 25, 1999.

William C. Apgar,

Assistant Secretary for Housing-Federal Housing Commissioner.

[FR Doc. 99–3079 Filed 2–8–99; 8:45 am]

BILLING CODE 4210–27–P

DEPARTMENT OF HOUSING AND URBAN DEVELOPMENT

[Docket No. 4456–N–01]

Privacy Act; Proposed Amendment to a System of Records

AGENCY: Office of the Assistant Secretary for Administration, HUD.

ACTION: Notification of a proposed amendment to an existing system of records.

SUMMARY: Pursuant to the provision of the Privacy Act of 1974, as amended (5 U.S.C. 552a), the Assistant Secretary for Public and Indian Housing is amending the system of records titled, ''Tenant Eligibility Verification Files''—HUD/PIH–1, previously published at 60 FR 53633; October 16, 1995. The amended notice cites two additional locations where records are maintained: HUD's Income Verification Centers in Chicago, Illinois and Seattle, Washington. HUD established the Income Verifications Centers in calendar year 1998 to facilitate expanded use of techniques to verify income of tenants who receive rental assistance. In addition, the amended notice expands routine use 10 to include evaluations of: (a) Legal and regulatory compliance with rental assistance program requirements, (b) program policies, and (c) actions taken by entities that administer HUD's rental assistance programs, to resolve income discrepancies identified through computer matching. The Authority for Maintenance of the System section of the system of records notice cites provisions in HUD's 1998 Appropriation Act eliminating sunset provisions in two statutes, and references the Native American Housing Assistance and Self-Determination Act of 1996. The system of records notice below supersedes the system of records notice published at 60 FR 53633; October 16, 1995. The prior published exemptions of HUD/PIH–1 from certain provisions of the Privacy Act of 1974 continue to apply to HUD/PIH–1, as amended.

HUD/PIH–1 contains computer matching and tenant eligibility verification records necessary to support the identification of tenants who have been or may be obtaining excessive rental assistance. The system of records also supports referrals of information concerning those tenants to entities that administer HUD rental assistance programs (i.e., housing agencies, Indian Tribes and Tribally Designated Housing Entities participating in the Section 8 Program, owners of subsidized multifamily projects, and management agents) and to law enforcement agencies for possible administrative or legal actions, as appropriate.

DATES: *Effective Date:* This proposal shall become effective without further notice in 30 calendar days (March 11, 1999) unless comments are received during or before this period which would result in a contrary determination.

Comments Due By: March 11, 1999.

ADDRESSEES: Interested persons are invited to submit comments regarding this notice to the Rules Docket Clerk, Office of General Counsel, Room 10276, Department of Housing and Urban Development, 451 Seventh Street, SW, Washington, DC 20410–0500. Communications should refer to the above docket number and title. An original and four copies of comments should be submitted. Facsimile (FAX) comments are not acceptable. A copy of each communication submitted will be available for public inspection and copying between 7:30 a.m. and 5:30 p.m. weekdays at the above address.

FOR FURTHER INFORMATION CONTACT: Jeanette Smith, Departmental Privacy Act Officer, Telephone Number (202) 708–2374, concerning Privacy Act matters. Regarding records maintained in Washington, DC; Chicago, Illinois; and Seattle, Washington contact the following, respectively: David L. Decker, Director, Computer Matching, Office of the Public and Indian Housing, Telephone Number (202) 708–0099, Turhan Brown, Acting Director, Chicago Income Verification Center, Telephone Number (312) 353–6236; and Gordon Brandhagen, Acting Director, Seattle Income Verification Center, Telephone Number (206) 220–5312. (These are not toll free numbers.) A telecommunications device for hearing- and speech-impaired individuals (TTY) is available at 1–800–877–8339 (Federal Information Relay Service).

SUPPLEMENTARY INFORMATION: A notice of the HUD/SSA/IRS computer matching program concerning earned and unearned income, social security and supplemental security income is published at 63 FR 68129; December 9, 1998.

A report of the Department's intention to establish the system has been submitted to the Office of Management and Budget (OMB), the Senate Committee on Governmental Affairs, and the House Committee on Government Operations pursuant to paragraph 4c of Appendix I to OMB Circular No. A–130, ''Federal Agency Responsibilities for Maintaining Records About Individuals,'' July 25, 1994; 59 FR 37914.

Authority: 5 U.S.C. 552a, 88 Stat. 1896; 342 U.S.C. 3535(d),

Dated: January 28, 1999.

Gloria R. Parker,

Chief Information Officer.

HUD/PIH–1

SYSTEM NAME:

Tenant Eligibility Verification Files.

SYSTEM LOCATIONS:

The files will be maintained at the following locations: (1) U.S. Department of Housing and Urban Development, 451 Seventh Street, SW, Washington,

DC 20410; (2) Chicago Income Verification Center, U.S. Department of Housing & Urban Development, Ralph H. Metcalfe Federal Building, 77 West Jackson Boulevard, Chicago, Illinois 60604; (3) Seattle Income Verification Center, U.S. Department of Housing & Urban Development, Seattle Federal Building, 901 First Avenue, Seattle, Washington 98104.

* * * * *

CATEGORIES OF RECORDS IN THE SYSTEM:

* * * * *

CATEGORIES OF INDIVIDUALS COVERED BY THE SYSTEM:

Tenants receiving rental assistance provided by programs administered by the Department of Housing and Urban Development, or information concerning those tenants obtained from other Federal or state agencies, housing agencies, Indian Tribes and Tribally Designated Housing Entities participating in the Section 8 Program, owners, and management agents.

CATEGORIES OF RECORDS IN THE SYSTEM:

Records consist of: (1) Automated tenant data obtained from HUD/H–11, Tenant Housing Assistance and Contract Verification Data, published at 62 FR 11909; March 13, 1997, (two HUD automated systems—the Multifamily Tenant Certification System and the Tenant Rental Assistance Certification System—are the primary components of HUD/H–11); (2) automated tenant data provided by housing agencies, Indian Tribes and Tribally Designated Housing Entities participating in the Section 8 Program, owners or management agents (generally these records are available in HUD/H–11); (3) information obtained from computer matching with automated earned income data that the Social Security Administration (SSA) provides under 26 U.S.C. 6103(l)(7)(A) from the Earnings Recording and Self-Employment Income System (HHS/SSA/OSR, 09–60–0059) (Earnings Record) and Master Beneficiary Record (HHS/SSA/OSR, 09–60–0090; (4) information obtained from computer matching with automated unearned income data that the Internal Revenue Service (IRS) provides to HUD under 26 U.S.C. 6103(l)(7)(B) from Treasury/IRS 22.061, Wage and Information Returns Processing (IRP) File Treasury/IRS; (5) information obtained from computer matching with automated Title II (social security) and Title XVI (supplemental security income) data that the SSA provides to HUD under a routine use from the Supplemental Security Income Record, HHS/SSA/OSR 90–60–0103; (6) information obtained from computer matching with wage and unemployment compensation data from State wage information collection agencies; (7) information obtained from computer matching with automated data from the Office of Personnel Management's General Personnel Records (OPM/GOVT–1), and the Civil Service Retirement and Insurance Records System (OPM/Central-1) pursuant to a routine use; (8) information obtained from computer matching with automated data from the Department of Defense's Defense Manpower Data Center Data Base (S322.10.DMDC) pursuant to a routine use; (9) information obtained from computer matching with automated records from the SSA's Master Files of Social Security Number Holders, known as the Enumeration Verification System—(HHS/SSA/OSR, 09–60–0058) pursuant to a routine use; (10) applications for rental assistance and other related documentation obtained from tenant case files maintained by housing agencies, Indian Tribes and Tribally Designated Housing Entities participating in the Section 8 Program, owners, and management agents; (11) data received from employers confirming income or deductions supporting determinations of eligibility for, and the amount of, rental assistance benefits; (12) automated records provided by other Federal agencies under the investigative exclusion of the Computer Matching and Privacy Protection Act of 1988; and (13) automated records provided by housing agencies, Indian Tribes and Tribally Designated Housing Entities participating in the Section 8 Program, owners and management agents regarding actions taken on computer matching results.

AUTHORITY FOR MAINTENANCE OF THE SYSTEM:

Subparagraph (D) of section 6103(l)(7) of the Internal Revenue Code 26 U.S.C. 6103(l)(7)(D), permits HUD to request from the Commissioner of the SSA and the Secretary of the Treasury, SSA and IRS earned and unearned income information, respectively, needed to verify the incomes of tenants who receive rental assistance. Section 6103(l)(7)(D) precludes HUD from redisclosing that information to entities that administer HUD programs (i.e. housing agencies, Indian Tribes and Tribally Designated Housing Entities participating in the Section 8 Program, owners and management agents). Section 542(b) of HUD's 1998 Appropriations Act (Pub. L. 105–65; October 27, 1997) eliminated a September 30, 1998 sunset provision to 26 U.S.C. 6103(l)(7)(D), effectively making permanent the authority for SSA and IRS disclosures of Federal tax return information to HUD.

The Stewart B. McKinney Homeless Assistance Amendments Act of 1988, 42 U.S.C. 3544, as amended, allows HUD to notify those entities that disparities exist between the tenant-reported incomes and income obtained from independent income sources, i.e., the SSA or the IRS. The McKinney Amendments of 1988 also authorized HUD to request, under Section 303(i) of the Social Security Act, wage and claim information from state agencies responsible for the administration of state unemployment law. Section 542(a)(1) of HUD's 1998 Appropriation Act, referenced above, eliminated an October 1, 1994 sunset provision to Section 303(i) of the Social Security Act, effectively making permanent the authority requiring state agencies to disclose wage and claim information to HUD and public housing agencies.

Section 165 of the Housing and Community Development Act of 1987, Pub. L. 100–242; authorizes HUD to require applicants and participants in HUD-administered programs involving rental assistance to disclose to HUD their social security numbers as a condition of initial or continuing eligibility for participation. Subpart T of 24 CFR part 200 applies this requirement to member of households six (6) years of age and older.

Applicable laws concerning HUD's assisted housing programs include: the United States Housing Act of 1937, 42 U.S.C. 1437 note; and section 101 of the Housing and Urban Development Act of 1965, 12 U.S.C. 1701s, and the Native American Housing Assistance and Self-Determination Act of 1996, 25 U.S.C. 4101, et seq.

PURPOSE(S):

The primary purposes of HUD/PIH–1 are to aid HUD and entities that administer HUD's assisted housing programs in: (a) Increasing the availability of rental assistance to individuals who meet the requirements of Federal rental assistance programs, (b) detecting abuses in assisted housing programs, (c) taking administrative or legal actions to resolve past abuses of assisted housing programs and (d) deterring abuses. HUD/PIH–1 serves as a repository for automated information used in and resulting from computer matching tenant data for recipients of Federal rental assistance to other data sources; HUD/PIH also contains non-automated information used in and resulting from verifying computer matching results and in accomplishing the purposes previously cited. Records

in this system are subject to use in authorized and approved computer matching programs regulated under the Privacy Act of 1974, as amended.

ROUTINE USES OF RECORDS MAINTAINED IN THE SYSTEM, INCLUDING CATEGORIES OF USERS AND PURPOSES OF SUCH USES:

1. Records included in the system may be used in conducting computer matching with Federal and State agencies to aid in the identification of tenants who have received excessive rental housing assistance.

2. Records that HUD obtains from the SSA and the IRS under the authority of 26 U.S.C. 6103(l)(7), may be disclosed only to the tenant/taxpayer, to HUD employees responsible for investigating or prosecuting such violation or enforcing or implementing a statute, rule or regulation, or as otherwise permitted under 26 U.S.C. 6103.

3. Records that indicate a potential violation of law, whether criminal, civil or regulatory in nature, except for records obtained from the SSA and the IRS under 26 U.S.C. 6103(l)(7), may be disclosed to the appropriate Federal, state or local agency charged with the responsibility for investigating or prosecuting such violation or enforcing or implementing a statute, rule or regulation.

4. Records, except for those obtained from the SSA or IRS under the authority of 26 U.S.C. 6103(l)(7), may be disclosed to a congressional office in response to an inquiry from that congressional office made at the request of the individual who is the subject of the records.

5. Records, with the exception of those obtained pursuant to 26 U.S.C. 6103(l)(7), may be disclosed to housing agencies, Indian Tribes and Tribally Designated Housing Entities participating in the Section 8 Program, owners and management agents in order to assist them in determining tenants' eligibility for rental assistance, and the amount of that assistance and to facilitate recovery of money or property or other administrative actions, i.e., eviction, necessary to promote the integrity of programs.

6. Records, except for those obtained from the SSA and the IRS under 26 U.S.C. 6103(l)(7), may be disclosed during the course of an administrative proceeding where HUD or housing agencies, Indian Tribes and Tribally Designated Housing Entities participating in the Section 8 Program, owner or management agent are a party to the litigation and disclosure is relevant and reasonably necessary to adjudicate the matter.

7. Records, except for those obtained from the SSA and the IRS under 26 U.S.C. 6103(l)(7), may be disclosed to a Federal agency, in response to its 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 benefit by the requesting agency, to the extent that the record is relevant and necessary to the requesting agency's decision on the matter.

8. Records, except for those obtained from the SSA and the IRS under 26 U.S.C. 6103(l)(7), may be disclosed to a Federal agency to initiate Federal salary or annuity offsets as necessary to collect excessive rental assistance received by the tenant.

9. Records, except for those obtained from the SSA and the IRS under 26 U.S.C. 6103(l)(7), concerning an individual's receipt of excessive rental assistance, including the individual's actions to repay the same, may be disclosed to the Federal agency that employs such individual, for the purpose of notifying the employer of potential violation of the Standards of Ethical Conduct for Employees of the Executive Branch.

10. Records may be used to provide statistical information to Congress and the Office of Management and Budget for use in evaluating: The effectiveness of computer matching and income verification programs; program policies; and actions taken by entities that administer HUD's rental assistance programs to resolve income discrepancies identified through computer matching.

POLICIES AND PRACTICES FOR STORING, RETRIEVING, ACCESSING, RETAINING AND DISPOSING OF RECORDS IN THE SYSTEM:

STORAGE:

Records are stored manually in tenant case files and electronically in office automation equipment. Records, except for those obtained from the SSA and the IRS under 26 U.S.C. 6103(l)(7)(A) and (B), may also be stored on mainframe computer facilities.

RETRIEVABILITY:

Records may be retrieved by manual or computer search of indices by the name, social security number, housing agency, Indian Tribe and Tribally Designated Housing Entity participating in the Section 8 Program, owner or management agent.

SAFEGUARDS:

Records are maintained in locked file cabinets or in metal file cabinets in secured rooms or premises with access limited to those persons whose official duties require access. Computer files and printed listings are maintained in locked cabinets. Computer terminals are secured in controlled areas which are locked when unoccupied. Access to automated records is limited to authorized personnel who must use a password system to gain access. HUD will safeguard the SSA and the IRS records obtained pursuant to 26 U.S.C. 6103(l)(7)(A) and (B) in accordance with 26 U.S.C. 6103(p)(4) and the IRS' ''Tax Information Security Guidelines for Federal, State and Local Agencies,'' Publication 1075 (REV. 1–98).

RETENTION AND DISPOSAL:

Only those computer files and printouts created from the computer matching that meet predetermined criteria are maintained. These records will be destroyed as soon as they have served the matching program's purpose. All other records will be destroyed as soon as possible within 1 year. Paper listings containing personal identifiers will be shredded. Computer source files provided by other organizations will be returned to those organizations or destroyed in accordance with computer matching agreements.

Information obtained through computer matching and tenant case file reviews will be destroyed as soon as follow-up processing of this information is completed, unless the information is required for evidentiary reasons or needed by housing agencies, Indian Tribes and Tribally Designated Housing Entities participating in the Section 8 Program, owners and agents for use in program eligibility determinations. When needed for evidentiary documentation, the information will be referred to the HUD Office of Inspector General (OIG) or other appropriate Federal, state or local agencies charged with the responsibility for investigating or prosecuting such violations. When referred to the HUD OIG the information then becomes a part of the Investigative Files of the Office of Inspector General, HUD/OIG–1.

SYSTEM MANAGER(S) AND ADDRESS:

Director, Computer Matching, Office of the Public and Indian Housing, U.S. Department of Housing and Urban Development, 451 Seventh Street, SW, Room 5156, Washington, DC 20410.

NOTIFICATION AND RECORD ACCESS PROCEDURES:

Individuals seeking to determine whether this system of records contains information about themselves, or seeking access to such records, should address inquiries to the Director, Computer Matching, Office of the Public

and Indian Housing, U.S. Department of Housing and Urban Development, 451 Seventh Street, SW, Room 5156, Washington, DC 20410.

Written requests should contain the full name, Social Security Number, date of birth, current address and telephone number of the individual.

For personal visits, the individual must be able to provide some acceptable identification, such as a driver's license or other identification card.

CONTESTING RECORD PROCEDURES:

The procedures for amendment or correction of records, and for appealing initial agency determinations, appear in 24 CFR part 16.

RECORD SOURCE CATEGORIES:

The Assistant Secretary for Public and Indian Housing and the Assistant Secretary for Housing-Federal Housing Commissioner collect information from a variety of sources, including: housing agencies, Indian Tribes and Tribally Designated Housing Entities participating in the Section 8 Program, owners and management agents, state wage information collection agencies, other Federal and state agencies, law enforcement agencies, program participants, complainants, and other nongovernmental sources.

EXEMPTIONS FROM CERTAIN PROVISIONS OF THE ACT:

To the extent that information in this system of records falls within the coverage of subsection (k)(2) of the Privacy Act, 5 U.S.C. 552(k)(2), the system is exempt from the requirements of subsections (c)(3), (d)(1), (d)(2) and (e)(1) of the Privacy Act. To the extent that information in this system of records falls within the coverage of subsection (k)(5) of the Privacy Act, 5 U.S.C. 552a(k)(5), the system is exempt from the requirements of subsection (d)(1) of the Privacy Act. See 24 CFR 16.15 (c) and (d).

[FR Doc. 99–3080 Filed 2–8–99; 8:45 am]

BILLING CODE 4210–01–P

DEPARTMENT OF THE INTERIOR

Office of the Secretary

Notice of the Proposed Appointment of Teresa E. Poust to the National Indian Gaming Commission

AGENCY: Office of the Secretary, Interior.

ACTION: Notice.

SUMMARY: This notice informs the public of the proposed appointment of Teresa E. Poust as an associate member of the National Indian Gaming Commission. Interested parties have 30 days to comment on this proposed appointment.

DATES: Comments must be received before or on March 11, 1999.

ADDRESSES: Comments should be submitted to the Director, Executive Secretariat, United States Department of the Interior, 1849 C Street, N.W., Mail Stop 7229, Washington, D.C. 20240.

FOR FURTHER INFORMATION CONTACT: Louis G. Leonard, III, Attorney-Advisor, Division of General Law, United States Department of the Interior, 1849 C Street, N.W., Mail Stop 6531, Washington, D.C. 20240; telephone 202–208–5216.

SUPPLEMENTARY INFORMATION: The Indian Gaming Regulatory Act establishes the National Indian Gaming Commission (Commission), composed of three full-time members, a chairman, and two associate members. 25 U.S.C. section 2704(b). Commission members serve for a term of 3 years. 25 U.S.C. section 2704(b)(4)(A). The chairman is appointed by the President with the advice and consent of the Senate. 25 U.S.C. section 2704(b)(1)(A). The two associate members are appointed by the Secretary of the Interior. 25 U.S.C. section 2704(b)(1)(B). Before appointing an associate member to the Commission, the Secretary must ''publish in the Federal Register the name and other information the Secretary deems pertinent regarding a nominee for membership on the Commission and shall allow a period of not less than thirty days for receipt of public comment.'' 25 U.S.C. section 2704(b)(2)(B). Notice is hereby given of the proposed appointment by the Secretary of Teresa E. Poust as an associate member of the Commission for a term of 3 years.

Since 1992, Ms. Poust has served in several capacities as an attorney and administrator for the Poarch Band of Creek Indians. Most recently, as the Tribal Administrator, she directed 13 Tribal departments including Law Enforcement, Human Resources, and Social Services, and supervised Federal contracts and grant programs involving, among others, the United States Bureau of Indian Affairs. Previously, in positions as Tribal Comprehensive Planner and Contract and Grants Attorney, Ms. Poust oversaw the Tribe's compliance with Federal and State law and regularly addressed Tribal gaming issues. She also served as a member of the Board of Directors for the Tribe's gaming activities. In addition, in 1990 and 1991, while pursuing her law degree, Ms. Poust examined Indian law issues at a private law firm and at the National Advisory Council on Indian Education, both located in Washington, D.C. Ms. Poust also clerked in 1991 at the Division of Indian Affairs, Office of the Solicitor, Department of the Interior, and served as a research assistant for the Office of Trust and Economic Development, Bureau of Indian Affairs, in 1988.

Ms. Poust is an enrolled member of the Poarch Band of Creek Indians of Atmore, Alabama, a federally recognized tribe. She received her Bachelor of Arts in Business Administration from the California State University in Fullerton in 1989. In 1992, she earned a Juris Doctor from the Columbus School of Law of the Catholic University of America. She is professionally associated with the Alabama and Escambia County bar association. Ms. Poust does not appear to have any financial interests, management responsibilities, or other circumstances that would make her ineligible to serve on the Commission under 25 U.S.C. section 2704(b)(5).

Any person wishing to submit comments on this proposed appointment may forward written comments to the address listed above. Comments must be received by the due date, which is 30 days from the date of the publication of this notice.

Dated: February 3, 1999.

Edward B. Cohen,

Deputy Solicitor.

[FR Doc. 99–3044 Filed 2–8–99; 8:45 am]

BILLING CODE 4310–02–M

DEPARTMENT OF THE INTERIOR

Fish and Wildlife Service

Endangered and Threatened Species Permit Applications

AGENCY: Fish and Wildlife Service, Interior.

ACTION: Notice of receipt of applications.

The following applicant has applied for a permit to conduct certain activities with endangered species. This notice is provided pursuant to section 10(c) of the Endangered Species Act of 1973, as amended (16 U.S.C. 1531, *et seq.*).

Permit Number TE842503

Applicant: The Organization for Bat Conservation, Williamston, Michigan.

The applicant requests an amendment to existing permit number 842503 to expand take activities with endangered Indiana bats (*Myotis sodalis*) in Illinois, Indiana, Iowa, Michigan, Minnesota, Missouri, Ohio, and Wisconsin. The applicant has applied for authorization

to attach radio transmitters to captured bats for research purposes. Activities are proposed to further study roosting, foraging, and habitat utilization of the species for the purpose of survival and enhancement of the species in the wild.

Permit Number TE007350–1

Applicant: The Nature Conservancy, East Lansing, Michigan.

The applicant requests an amendment to existing permit number 840112 (new file number TE007350) for the endangered Mitchell's satyr (*Neonypha mitchellii mitchellii*) butterfly. The applicant proposes to complete the following activities which may take the Mitchell's satyr: (1) research and monitor the distribution and abundance of the species and quality of its habitat, (2) control invasive, non-native shrub and herbaceous species to manage/maintain suitable Mitchell's satyr habitat, and (3) to expand and restore habitat suitable for occupation by the species. Take (capture and release, handle, kill) is expected to occur in association with proposed activities. Proposed activities are for the enhancement of survival of the species in the wild.

Written data or comments should be submitted to the Regional Director, U.S. Fish and Wildlife Service, Ecological Services Operations, 1 Federal Drive, Fort Snelling, Minnesota 55111–4056, and must be received within 30 days of the date of this publication.

Documents and other information submitted with these applications are available for review by any party who submits a written request for a copy of such documents to the following office within 30 days of the date of publication of this notice: U.S. Fish and Wildlife Service, Ecological Services Operations, 1 Federal Drive, Fort Snelling, Minnesota 55111–4056. Telephone: (612/713–5343); FAX: (612/713–5292).

Dated: February 1, 1999.

T. J. Miller,

Acting Program Assistant Regional Director, Ecological Services, Region 3, Fort Snelling, Minnesota.

[FR Doc. 99–3041 Filed 2–8–99; 8:45 am]

BILLING CODE 4310–55–P

DEPARTMENT OF THE INTERIOR

Geological Survey

Federal Geographic Data Committee (FGDC); Public Comment on the Proposal To Develop the ''Content Standard for Digital Geospatial Metadata: Extensions for Remote Sensing Metadata'' as a Federal Geographic Data Committee Standard

ACTION: Notice; request for comments.

SUMMARY: The FGDC is soliciting public comments on the proposal to develop a ''Content Standard for Digital Geospatial Metadata: Extensions for Remote Sensing Metadata.'' If the proposal is approved, the standard will be developed following the FGDC standards development and approval process and will be considered for adoption by the FGDC.

In its assigned federal leadership role in the development of the National Spatial Data Infrastructure (NSDI), the Committee recognizes that FGDC standards must also meet the needs and recognize the views of State and local governments, academia, industry, and the public. The purpose of this notice is to solicit such views. The FGDC invites the community to review the proposal and comment on the objectives, scope, approach, and usability of the proposed standard; identify existing related standards; and indicate their interest in participating in the development of the standard.

DATES: Comments must be received on or before March 19, 1999. Comments are accepted at any time however the maintenance organization for this proposal has the authority to reject comments received after this date.

CONTACT AND ADDRESSES: Comments may be submitted via Internet mail or by submitting electronic copy on diskette. Send comments via Internet to: gdc-rsex@www.fgdc.gov. A soft copy version, on a 3.5 x 3.5 diskette in WordPerfect 5.0 or 6.0/6.1 format, along with one hardcopy version of the comments may be sent to the FGDC Secretariat (attn: Jennifer Fox) at U.S. Geological Survey, 590 National Center, 12201 Sunrise Valley Drive, Reston, Virginia, 20192.

SUPPLEMENTARY INFORMATION: Following is the complete proposal for the ''Content Standard for Digital Geospatial Metadata: Extensions for Remote Sensing Metadata''.

Project Title: Content Standard for Digital Geospatial Metadata: Extensions for Remote Sensing Metadata.

Data of Proposal: October 21, 1998.

Submitting Organization: FGDC Standards Working Group, Imagery subgroup (National Aeronautics and Space Administration (NASA)).

Point of Contact: Benjamin Kobler, NASA Goddard Space Flight Center, Mail Code 423, Greenbelt, MD 20771. Phone: 301–614–5231. Electronic mail: ben.kobler@gsfc.nasa.gov.

Objectives

The purpose of this proposal is to provide extensions to the Federal Geographic Data Committee (FGDC) Content Standard for Digital Geospatial Metadata (also referred to hereafter as the Metadata Content Standard) for metadata describing geospatial data obtained from remote sensing. Efforts will be made to make these extentions consistent with the ISO metadata standard under development. Adding these extensions will provide a way to incorporate the metadata needed for remote sensing into the Metadata Content Standard.

Scope

These extensions will define content standards for metadata not defined in the Metadata Content Standard that are needed for describing data obtained from remote sensing. They will include metadata describing the observing geometry, the sensor, and the method and process of deriving geospatial information from raw telemetry. In addition, metadata to describe granules, the individual files or images that collectively make up a data product, will be defined.

Justification

Proper use of remote sensing data requires an understanding of how those data were obtained. While ground-based data are often compiled from existing data sources without change of form or are obtained by direct *in situ* measurement, deriving geospatial data from the measurements made by remote sensing instruments is often much less direct. To do so may require knowledge of the observing geometry, the instrument behavior, and the processing methods and history. In addition, remote sensing measurements produce large volumes of data, and users typically do not access the entire data set, only selected files or frames.

Information about the viewing geometry and the properties and behavior of the instrument in the FGDC Metadata Content Standard is limited to the description of the number of points along the raster axes. The draft ISO metadata standard also includes solar elevation and azimuth angles and the angle of an image to the vertical.

However, many users need a more detailed viewing geometry: satellite orbit or aircraft flight path, platform orientation, and orientation of instruments relative to the platform. While the proposed ISO standard includes a number of items in the section of spatial data representation describing instrumentation not present in the FGDC Metadata Content Standard, the only calibration information is whether camera calibration information is available. More information on the calibration of the instrument, including its dependence on wavelength and time, is usually required. A standard description of such metadata should be defined.

Processing of remote sensing data passes through several stages. The instrument calibration must be applied to the readings communicated by the raw telemetry and the resulting physical meaurements located geographically. In some cases, what the instruments measure is not the final product; for example, radiation measurements may be used to infer temperatures. Maps and grids may be generated from data at individual points. Information on the algorithms used for these steps should accompany the data. In addition, information about the processing itself, such as what stage a given processing represents, or which version of processing is represented, is needed. The FGDC Metadata Content Standard allows for this information an entry for lineage, which the draft ISO standard has expanded this item to an entire section on lineage information, but in both cases the content is unspecified free text. These extensions will define the specific items that are needed in remote sensing metadata.

The dataset containing results from a remote sensing mission is large and heterogeneous. Necessary descriptive metadata may not apply to the entire dataset, but only to individual pictures or files. While the FGDC Metadata Content Standard has no specific provision for such granularity, the informative Appendix F to the ISO draft provides but does not define granule-specific metadata. These extensions will define the granule-level metadata appropriate to remote sensing.

Benefits

Adoption of these extensions will broaden the applicability of the Metadata Content Standard to include metadata needed to describe geospatial data derived from remote sensing. Making this standard directly relevant to the remote sensing community will encourage its use. There will be less chance that future producers of remote sensing data will see the Metadata Content Standard as inapplicable to their needs and develop separate standards.

Approach

Data standardization and modeling are major research issues within the Earth Observing System Data and Information System (EOSDIS) development process. Results of this research, combined with comments from scientists around the world, from the EOSDIS Data Model Working Group, and from Earth Science Data and Information System (ESDIS) staff, have been developed into metadata for the EOSDIS Core System (ECS). There metadata are described in the Proposed ECS Core Metadata Standard. This document defines metadata in several areas in the scope of the extensions to be developed and will be used as a basis of the extensions covering those areas. The Moderate-Resolution Imaging Radiometer (MODIS) Level 1A Earth Location: Algorithm Theoretical Basis Document has a detailed discussion of the information and process required to derive positions in geographical coordinates given spacecraft and instrument position and orientation. That discussion will serve as the basis for the definition of viewing geometry metadata. As the proposed extensions are to be developed following FGDC prescriptions, development and adoption is to proceed through the FGDC Standards Working Group (SWG) procedures. The Imagery Subgroup will develop these extensions; working scientists with whom it is in contact will also contribute. Because both metadata and remote sensing applications are involved, the Metadata Ad Hoc Working Group should be involved at appropriate stages.

Related Standards

This standard is intended as extended elements of the FGDC Content Standard for Digital Geospatial Metadata. It will follow the prescriptions of Appendix D of that Standard, which specifies the requirements for extended elements. ISO/Technical Committee 211, Working Group 3 is developing an international standard for metadata; the current draft is ISO/CD 15046–15. When development of that standard is complete, it is likely to be considered for adoption by FGDC, superseding those parts of the current standard where there is overlap. The ISO standard also has a recommended extension methodology, in Appendix E. The information there will be used to guide the process of development of these extensions to the metadata standard. Extensions to the current FGDC standard covering areas in the ISO standard not in the FGDC standard will be constructed to be compatible with the ISO standard.

As noted in the section on approach, the ECS Core Metadata Standard, which covers many of the areas in the scope of these extensions, will be used where relevant as a basis for the FGDC codification.

Schedule

Submission of proposal to FGDC/SWG: November 1998.

Submission of Working Draft to FGDC/SWG: late 1999.

Resources

NASA's ESDIS project will fund the effort required to develop these FGDC Content Standard for Digital Geospatial Metadata: Extensions for Remote Sensing Metadata.

Potential Participants

Through the Mission to Planet Earth, NASA already involves many diverse groups in the remote sensing community. The continuing standards work for ESDIS has provided considerable insight into the requirements of these groups. Other federal agencies that produce large quantities of remote sensing data, such as the National Oceanic and Atmospheric Administration, the National Imagery and Mapping Agency, and the U.S. Geological Survey, may also participate in development of the standard. Contributions will be solicited from the academic remote sensing community.

Target Authorization Body

The proposed extensions are not specifically targeted for consideration by any authorizing agency other than FGDC. However, as efforts to bring the FGDC standard into consistency with the ISO standard proceed, efforts may be made to gain ISO endorsement as well.

Dated: January 28, 1999.

Richard E. Witmer,

Chief, National Mapping Division.

[FR Doc. 99–3048 Filed 2–8–99; 8:45 am]

BILLING CODE 4310–Y7–M

DEPARTMENT OF THE INTERIOR

Geological Survey

Federal Geographic Data Committee (FGDC); Public Review of the Geospatial Positioning Accuracy Standards, Part 4: Architecture, Engineering, Construction, and Facilities Management

ACTION: Notice; Request for comments.

SUMMARY: The FGDC is conducting a public review of the Geospatial Positioning Accuracy Standards, Part 4: Architecture, Engineering, Construction, and Facilities Management. The purpose of this public review is to provide software vendors, data users and producers with an opportunity to comment on this standard in order to ensure that it meets their needs.

Participants in the public review are encouraged to provide comments that address specific issues/changes/additions that may result in revisions to the draft Geospatial Positioning Accuracy Standards, Part 4: Architecture, Engineering, Construction, and Facilities Management. All participants who make comments during the public review period will receive an acknowledgment of the receipt of their comment. After comments have been considered, participants will receive notification of how their comments were addressed. After the formal adoption of the standard by the FGDC, the revised standard and a summary analysis of the changes will be made available.

DATES: Comments must be received on or before May 20, 1999.

CONTACT AND ADDRESSES: The draft standard is posted at Internet address: http://www.fgdc.gov/standards/documents/standards/accuracy/chapter4.pdf.

Requests for written copies of the standard should be addressed to ''Geospatial Positioning Accuracy Standards, Part 4: Architecture, Engineering, Construction, and Facilities Management'', FGDC Secretariat (attn: Jennifer Fox), U.S. Geological Survey, 590 National Center, 12201 Sunrise Valley Drive, Reston, Virginia 20192; or facsimile 703–648–4270; or Internet at gdc@usgs.gov.

Reviewer's comments may be sent to the FGDC via Internet mail to: *gdc-geoposp4@www.fgdc.gov*. Reviewer comments may also be sent to the FGDC Secretariat at the above address. Please send one hardcopy version of the comments and a soft copy version, preferably on a 3.5x3.5 diskette in WordPerfect 5.0 or 6.0/6.1 format.

For answers to general questions related to this standard, please contact the Federal Geographic Data Committee (FGDC) Facilities Working Group.

SUPPLEMENTARY INFORMATION: Following is the complete proposal for the ''Geospatial Positioning Accuracy Standards, Part 4: Architecture, Engineering, Construction, and Facilities Management.''

Project Title: Geospatial Positioning Accuracy Standards, Part 4: Architecture, Engineering, Construction, and Facilities Management.

Submitting Organization: Federal Geographic Data Committee (FGDC) Facilities Working Group.

Objectives

This Part 4 provides accuracy standards for engineering drawings, maps, and surveys used to support planning, design, construction, operation, maintenance, and management of facilities, installations, structures, transportation systems, and related projects. It is intended to support geospatial mapping data used in various engineering documents, such as architectural, engineering, and construction (A/E/C) drawings, site plans, regional master planning maps, and related Geographical Information System (GIS), Computer-Aided Drafting and Design (CADD), and Automated Mapping/Facility Management (AM/FM) products. These products are typically created from terrestrial, satellite, acoustic, or aerial mapping techniques that ouput planimetric, topographic, hydrographic, or feature attribute data.

Scope

This standard defines accuracy criteria, accuracy testing methodology, and accuracy reporting criteria for object features depicted on A/E/C spatial data products and related control surveys. It references established voluntary standards that may be used for some smaller scale A/E/C mapping applications. In addition, Appendix A contains general guidance for specifying accuracy criteria for selected types of A/E/C features or control surveys. Using the standards and guidance contained in this section, end users of A/E/C products (e.g., planners, designers, constructors) can specify surveying and mapping accuracy requirements needed for their projects or specific CADD/GIS layers, levels, or entities. From these specifications, data producers (e.g., surveyors, mappers, photogrammetrists) can determine the instrumentation, procedures, and quality control processes required to obtain and verify the defined accuracies.

Applicability

These standards are applicable to geospatial data products used on various A/E/C or facilities management projects. A/E/C projects are normally confined to small geographical areas typically less than 4,000 ha (10,000 acres) where simple survey techniques are employed to establish project control points, perform topographic or photogrammetric mapping, or provide construction layout and alignment control. Unlike geospatial map products covered under PART 3, A/E/C data products are often only locally referenced within a project site, may not contain absolute georeferenced coordinates, and are typically compiled at scales larger than 1:20,000 (1 in = 1,667 ft). These standards may apply to the following types of engineering applications: transportation systems (roads, railroads, airfields, canals); utility systems (water supply, sanitary sewer, fuel, communication, electrical, mechanical); residential, commercial, recreational, and industrial structures and facilities; flood control and navigation systems (dams, levees, locks); architectural site or landscape plans; engineering master planning studies; environmental mapping, modeling, and assessment studies; hydraulic and hydrological studies; geophysical exploration surveys; and construction measurement and payment surveys. These standards do not generally apply to architectural, mechanical, or electrical detail data inside of a building or structure that are typically used win the CADD system for engineering and design.

Related Standards

This standard was largely taken from existing U.S. Army Corps of Engineers engineering, surveying, and mapping standards, and from Department of Defense Tri-Service Facility Engineering CASS/GIS standards—see References. The American Society for Photogrammetry and Remote Sensing (ASPRS) ''Accuracy Standards for Large-Scale Maps'' outlined in PART 3, Appendix B, is also directly applicable to PART 4—see paragraph 4.4.1 for specific relationships between ASPRS and Part 4.

This PART 4 may be used in conjunction with, or independent of, other Parts of the overall Geospatial Positioning Accuracy Standard. PART 1 Reporting Methodology applies directly to this Part, in particular, accuracy standard reporting. Certain portions of Part 2, Standards for Geodetic Networks, apply to A/E/C projects or features within an A/E/C project that are

connected by control surveys to an established regional geodetic control network (i.e., geo-referenced). PART 2 does not apply to engineering, construction, topographic, or photogrammetric mapping surveys that are referenced to boundary control or physical features (streets, structures, etc.) within, or adjacent, to the project site. If A/E/C projects, or sub features within a project, are connected by control surveys to an established regional geodetic control network (i.e., geo-referenced), then certain portions of PART 2 may be applicable. PART 3, National Standard for Spatial Data Accuracy, applies to those A/E/C map products that are fully geo-referenced. The spatial accuracy definitions, accuracy testing, and accuracy reporting criteria in PART 3 may be used for georeferenced A/E/C map products. Part 4 applies to marine construction and dredging of navigation channels, including related hydrographic surveying support. PART 5 should be consulted for hydrographic surveying standards applicable to preparation of nautical charts.

Standards Development Procedures

This standard was developed and periodically reviewed by the FGDC Facilities Working Group during the period 1996–1998. The initial draft of the standard was taken from U.S. Army Corps of Engineers Engineer Circular 1110–1–87, Standards for Maps, Drawings, Engineering Surveys, Construction Site Plans, and Related Geospatial Data Products.

Maintenance Authority

The U.S. Army Corps of Engineers is responsible for developing and maintaining the A/E/C geospatial positional accuracy data standards for the Facilities Working Group of the Federal Geographic Data Committee. Address questions concerning the standards to: Headquarters, U.S. Army Corps of Engineers, ATTN: CECW–EP (W.A. Bergen), 20 Massachusetts Avenue NW, Washington, DC 20314–1000.

Dated: January 28, 1999.

Richard E. Witmer,

Chief, National Mapping Division, Geological Survey.

[FR Doc. 99–3049 Filed 2–8–99; 8:45 am]

BILLING CODE 4310–Y7–M

DEPARTMENT OF THE INTERIOR

Geological Survey

Federal Geographic Data Committee (FGDC); Public Review of the Remote Sensing Swath Data Content Standard

ACTION: Notice; Request for comments.

SUMMARY: The FGDC is conducting a public review of the Remote Sensing Swath Data Content Standard. The purpose of this public review is to provide software vendors, data users and producers with an opportunity to comment on this standard in order to ensure that it meets their needs.

Participants in the public review are encouraged to provide comments that address specific issues/changes/additions that may result in revisions to the draft Remote Sensing Swath Data Content Standard. All participants who make comments during the public review period will receive an acknowledgment of the receipt of their comment. After comments have been considered, participants will receive notification of how their comments were addressed. After the formal adoption of the standard by the FGDC, the revised standard and a summary analysis of the changes will be made available.

DATES: Comments must be received on or before May 20, 1999.

CONTACT AND ADDRESSES: The draft standard is posted at Internet address: http://www.fgdc.gov/standards/documents/standards/swath_data/

Requests for written copies of the standard should be addressed to ''Remote Sensing Swath Data Content Standard'', FGDC Secretariat (attn: Jennifer Fox), U.S. Geological Survey, 590 National Center, 12201 Sunrise Valley Drive, Reston, Virginia, 20192; or facsimile 703–648–4270; or Internet at gdc@usgs.gov.

Reviewer's comments may be sent to the FGDC via Internet mail to: edc-swathdatawww.fgdc.gov. Reviewer comments may also be sent to the FGDC Secretariat at the above address. Please send one hardcopy version of the comments and a soft copy version, preferably on a 3.5x3.5 diskette in WordPerfect 5.0 or 6.0/6.1 format.

For answers to general questions related to this standard, please contact the Federal Geographic Data Committee (FGDC) Standards Working Group Imagery subgroup, Benjamin Kobler, NASA Goddard Space Flight Center, Mail Code 423, Greenbelt, MD 20771. Phone: 301–614–5231. Electronic mail: ben.kobler@gsfc.nasa.gov.

SUPPLEMENTARY INFORMATION: Following is the complete proposal for the ''Remote Sensing Swath Data Content Standard.''

Project Title: Remote Sensing Swath Data Content Standard.

Submitting Organization: Federal Geographic Data Committee (FGDC) Standards Working Group Imagery subgroup.

Objectives

The primary objective of this standard is to define the minimum content for remote sensing swath data (hereinafter called the swath data model). Such a content standard will provide a solid basis upon which to develop interoperable data formats for this common form of remote sensing data.

The standard has the following goals:

1. To provide a common conceptual framework for encoding swath and swath-like data,

2. To encourage interuse of swath and swath-like data through implementation of transfer standards within the conceptual framework,

3. To involve non-federal organizations in the development of this standard, thus encouraging broad applications.

Scope

The standard defines the minimal content requirements for a remote sensing swath and the relationships among its individual components. It also discusses the treatment of optional supporting information within the swath model. Under the Federal Geographic Data Committee Standards Reference Model (FGDC 1997b), this standard is classified as a Data Content Standard. Data content standards provide semantic definitions of a set of objects and of the relationships among them. This standard defines a concept called a *swath* that provides a means for associating certain kinds of remote sensing data with their geolocation. To that end, it defines those items of information content that are necessary for the realization of the swath concept. As a content standard, it does not specify encoding. Encoding may be specified at some future time by a separate standard or standards.

The standard specifies only the information that varies with time or from pixel to pixel. Information that is constant for all data points, such as the axes about which platform roll, pitch, and yaw are measured or the orientation of individual instruments relative to the platform, would be specified elsewhere, for example, in a content standard for remote sensing metadata.

1.3 Applicability

The swath data standard for remote sensing supports the development of the NSDI by providing a common framework for the organization of a wide range of remotely sensed data. The standard will be particularly useful for data from scanning, profiling, staring, or push-broom type remote sensing instruments, whether they be ground based, shipboard airborne, or spaceborne.

1.4 Related Standards

The Remote Sensing Swath Data Content Standard integrates with existing standards as much as possible. This standard is an outgrowth of standards work done for the Earth Observing System Data and Information System (EOSDIS), part of the Earth Observing System, under NASA's Mission to Planet Earth. As such, it draws heavily on the NASA EOSDIS concepts and data model for remote sensing swath data (HAIS 1995), which were, themselves, developed from existing standards wherever possible. The NASA model specifies the minimal content requirements for a swath and the relationships among its individual components. The EOSDIS project has developed an encoding mechanism and a set of software tools (HTS 1996, 1997) based on that model. Although those tools are related to this content standard, the standard itself in no way depends upon them. In fact, it is the tools that rely on the existing EOSDIS data model. The Committee on Earth Observation Satellites (CEOS), an international information exchange body, has endorsed the development of data models for remotely sensed swath data, through the Data Subgroup of its Working Group on Information Systems and Services (WGISS).

The Spatial Data Transfer Standard (SDTS) addresses the transfer of geospatial data among computer systems (FIPS 1994). The Raster Profile of SDTS, because it can be used to transfer remote sensing data, is remotely related to the proposed swath standard. However, the SDTS Raster Profile is a transfer standard, while the proposed swath standard is a content standard. So, while the SDTS Raster Profile could probably be adapted to transfer remote sensing swath data, there is no overlap between the standards, because they deal with different aspects of the data standardization described by the FGDC Standards Reference Model.

No other current FGDC, national, or international standard addresses this facet of sharing remote sensing swath data.

1.5 Standards Development Procedures

This standard has been developed by the Imagery subgroup of FGDC's Standards Working Group. This group consists of members from NASA, the National Oceanic and Atmospheric Administration, the U.S. Geological Survey, the University of Illinois, the University of Wisconsin, and the OpenGIS Consortium. An initial working draft, discussed by Di and Carlisle (1998), was reviewed by the full membership of the Imagery Subgroup. The draft was then revised, where appropriate, in accordance with these comments, and the author of the comments either notified that the comments had been incorporated or provided an explanation of why they had not been. The revised draft was then submitted to the Imagery Subgroup, and as there were no further changes recommended, on the Standards Working Group. The development of this standard is guided by the FGDC Standards Reference Model (FGDC 1997). The Standards Reference Model, developed by the Standards Working Group of the FGDC, provides guidance to FGDC subcommittees and working groups for the standards development process. It also defines the expectations for FGDC standards, describes different types of geospatial standards, and documents the FGDC standards process.

1.6 Maintenance Authority

The Earth Science Data and Information System (ESDIS) Program of the National Aeronautics and Space Administration (NASA) maintains this standard for the Federal Geographic Data Committee. Address questions concerning this standard to: NASA Goddard Space Flight Center, Code 505, Greenbelt, MD 20771.

Dated: January 28, 1999.

Richard E. Witmer,

Chief, National Mapping Division, Geological Survey.

[FR Doc. 99–3050 Filed 2–8–99; 8:45 am]

BILLING CODE 4310–Y7–M

DEPARTMENT OF INTERIOR

Geological Survey

Proposed Cooperative Research and Development (CRADA) Negotiations

AGENCY: Geological Survey, Interior.

ACTION: Notice of proposed Cooperative Research and Development Agreement (CRADA) negotiations.

SUMMARY: The United States Geological Survey (USGS) is contemplating entering into a CRADA with United Technologies Corporation to use surface and borehole geophysical methods to characterize contaminated fractured rock sites and monitor innovative remediation technologies under development by United Technologies Corporation. Information on the proposed CRADA is available to the public upon request at the following location: U.S. Geological Survey, 11 Sherman Place, U–5010, Storrs Mansfield, Connecticut 06269.

Inquiries: For further information, contact F. Peter Haeni, U.S. Geological Survey, Water Resources Division at the address given above; telephone (860) 487–7402, email:phaeni@usgs.gov.

SUPPLEMENTARY INFORMATION: This notice is to meet the USGS requirement stipulated in the Survey Manual.

Robert M. Hirsch,

Chief Hydrologist.

[FR Doc. 99–3107 Filed 2–8–99; 8:45 am]

BILLING CODE 4310–Y7–M

DEPARTMENT OF THE INTERIOR

Bureau of Land Management

[CO–076–1492–00–241A]

Notice of Intent To Amend the Grand Junction Resource Management Plan

AGENCY: Bureau of Land Management, Department of Interior.

ACTION: Notice of intent to amend the Grand Junction Resource Management Plan, 1987.

SUMMARY: Pursuant to section 102 of the National Environmental Policy Act of 1969 and section 202 of the Federal Land Policy and Management Act of 1976, the Bureau of Land Management, Grand Junction Field Office, is proposing to amend the Grand Junction Resource Management Plan, approved in January 1987. The amendment will consider a mineral withdrawal for the Rough Canyon Area of Critical Environmental Concern (ACEC). The effect of this change is being analyzed in an environmental assessment (EA). The amendment is being developed as part of the Bangs Canyon Management Plan.

FOR FURTHER INFORMATION CONTACT: Bruce Fowler, Grand Junction Field Office, (970) 244–3036.

SUPPLEMENTARY INFORMATION: The affected area includes approximately 2,737 acres of public land in Mesa County located about 6 miles southwest

of Grand Junction, Colorado. The lands include the Rough Canyon ACEC.

Catherine Robertson,

Field Office Manager.

[FR Doc. 99–3086 Filed 2–8–99; 8:45 am]

BILLING CODE 4310–JB–P

INTERNATIONAL TRADE COMMISSION

Sunshine Act Meeting

[USITC SE–99–06]

AGENCY HOLDING THE MEETING: United States International Trade Commission.

TIME AND DATE: February 22, 1999 at 2:00 p.m.

PLACE: Room 101, 500 E Street S.W., Washington, DC 20436, Telephone: (202) 205–2000.

STATUS: Open to the public.

MATTERS TO BE CONSIDERED:

1. Agenda for future meeting: none
2. Minutes
3. Ratification List
4. Inv. No. 731–TA–149 (Review (Barium Chloride from China)—briefing and vote. (The Commission will transmit its determination to the Secretary of Commerce on March 4, 1999).
5. Outstanding action jackets:
   (1) Document No. GC–99–003: Initial determination terminating the investigation on the basis of withdrawal of the compliant in Inv. No. 337–TA–411 (Certain Organic Photoconductor Drums and Products Containing Same).
   (2) Document No. GC–99–007: Approval of Notice of Privacy Act systems of records; and report to the Office of Management and Budget and Congress.
   (3) Document No. INV–99–006: Approval of response to Baker & Botts' request for clarification of antitrust question in questionnaires in Inv. Nos. 751–TA–21–27 (Final) (Ferrosilicon from Brazil, China, Kazakhstan, Russia, Ukraine, and Venezuela).

In accordance with Commission policy, subject matter listed above, not disposed of at the scheduled meeting, may be carried over to the agenda of the following meeting.

Issued: February 5, 1999.

By order of the Commission.

Donna R. Koehnke,

Secretary.

[FR Doc. 99–3242 Filed 2–5–99; 1:05 pm]

BILLING CODE 7020–02–M

DEPARTMENT OF JUSTICE

Immigration and Naturalization Service

Agency Information Collection Activities: Proposed Collection; Comment Request

ACTION: Request OMB Emergency Approval; Employment Eligibility Verification.

The Department of Justice, Immigration and Naturalization Service (INS) has submitted the following information collection request (ICR) utilizing emergency review procedures, to the Office of Management and Budget (OMB) for review and clearance in accordance with the section 1320.13(a)(2)(iii) of the Paperwork Reduction Act of 1995. The INS has determined that it cannot reasonably comply with the normal clearance procedures under this Part because normal clearance procedures are reasonably likely to prevent or disrupt the collection of information. This information collection is needed prior to the expiration of established time periods. Immediate OMB approval has been requested. If granted, the emergency approval is only valid for 180 days. All comments and/or questions pertaining to this pending request for emergency approval must be directed to OMB, Office of Information and Regulatory Affairs, Attention: Stuart Shapiro, 202–395–7316, Department of Justice Desk Officer, Washington, DC 20503. Comments regarding the emergency submission of this information collection may also be telefaxed to Mr. Shapiro at 202–395–6974.

During the first 60 days of this same period, a regular review of this information collection is also being undertaken. During the regular review period, the INS requests written comments and suggestions from the public and affected agencies concerning the proposed collection of information. Comments are encouraged and will be accepted until [Insert date of the 60th day from the date that this notice is published in the Federal Register]. During the 60-day regular review all comments and suggestions, or questions regarding additional information, to include obtaining a copy of the proposed information collection instrument with instructions, should be directed to Mr. Richard A. Sloan, 202–514–3291, Director, Policy Directives and Instructions Branch, Immigration and Naturalization Service, U.S. Department of Justice, Room 5307, 425 I Street, NW., Washington, DC 20536.

Your comments should address one or more of the following four points.

(1) Evaluate whether the proposed collection of information is necessary for the proper performance of the functions of the agency, including whether the information will have practical utility;

(2) Evaluate the accuracy of the agencies estimate of the burden of the proposed collection of information, including the validity of the methodology and assumptions used;

(3) Enhance the quality, utility, and clarity of the information to be collected; and

(4) Minimize the burden of the collection of information on those who are to respond, including through the use of appropriate automated, electronic, mechanical, or other technological collection techniques or other forms of information technology, e.g., permitting electronic submission of responses.

Overview of this information collection:

(1) *Type of Information Collection:* Extension of a currently approved information collection.

(2) *Title of the Form/Collection:* Employment Eligibility Verification.

(3) *Agency form number, if any, and the applicable component of the Department of Justice sponsoring the collection:* Form I–9. Programs Office, IIRIRA Implementation Team, Immigration and Naturalization Service.

(4) *Affected public who will be asked or required to respond, as well as a brief abstract:* Primary: Individuals or Households. This form was developed to facilitate compliance with Section 274A of the Immigration and Nationality Act (the Act), as amended by the Immigration Reform and Control Act of 1986 (IRCA), which prohibits the knowing employment of unauthorized aliens. The information collected is used by employers or by recruiters for enforcement of provisions of immigration laws that are designed to control the employment of unauthorized aliens.

(5) *An estimate of the total number of respondents and the amount of time estimated for an average respondent to respond:* 78,000,000 respondents at 9 minutes (.15) hours per response and 20,000,000 record keepers at 4 minutes (0.066) hours per response.

(6) *An estimate of the total public burden (in hours) associated with the collection:* 13,020,000 annual burden hours.

If additional information is required during the first 60 days of this same regular review period contact Mr. Robert B. Briggs, Clearance Officer, United

States Department of Justice, Information Management and Security Staff, Justice Management Division, Suite 850, Washington Center, 1001 G Street, NW., Washington, DC 20530.

Dated: February 4, 1999.

Richard A. Sloan,

Department Clearance Officer, United States Department of Justice, Immigration and Naturalization Service.

[FR Doc. 99–3123 Filed 2–8–99; 8:45 am]

BILLING CODE 4410–10–M

DEPARTMENT OF LABOR

Office of the Secretary

Office of Inspector General; Notice of Computer Matching Programs

AGENCY: Office of the Secretary, Labor.

ACTION: Notice of Computer Matching Programs.

SUMMARY: In accordance with the provisions of the federal Privacy Act, as amended, this notice announces computer matching programs which the U.S. Department of Labor, Office of Inspector General, and the U.S. Department of Labor, Office of Workers' Compensation Programs, plan to conduct with six States.

DATES: The Office of Inspector General will file a report of the subject matching programs with the Committee on Governmental Affairs of the Senate, the Committee on Government Reform and Oversight of the House of Representatives and the Office of Information and Regulatory Affairs, Office of Management and Budget. The matching programs will be effective as indicated below.

ADDRESSES: Interested parties may comment on this notice by writing to Roger Langsdale, Regional Inspector General for Audit, The Wanamaker Building, 100 Penn Square East, Suite 602–B, Philadelphia, PA 19107. Interested parties may also comment on this notice by sending a facsimile to the Regional Inspector General for Audit at 215–656–2335, or by sending an electronic mail message to Regional Inspector General for Audit at rlangsdale@oig.dol gov. All comments received will be available for public inspection at this address.

FOR FURTHER INFORMATION CONTACT: Roger Langsdale, Regional Inspector General for Audit, at 215–656–2300.

SUPPLEMENTARY INFORMATION:

A. General

The Computer Matching and Privacy Protection Act of 1988 (Pub. L. 100–503), amended the Privacy Act (5 U.S.C. 552a) by establishing the conditions under which computer matching involving the Federal government could be performed and adding certain protections for individuals applying for and receiving Federal benefits. Section 7201 of the Omnibus Budget Reconciliation Act of 1990 (Pub. L. 101–508) further amended the Privacy Act regarding protections for such individuals. The Privacy Act, as amended, regulates the use of computer matching by Federal agencies when records in a system of records are matched with other Federal, State, or local government records. Among other things, it requires Federal agencies involved in computer matching programs to:

(1) Negotiate written agreements with the other agency or agencies participating in the matching programs;

(2) Obtain the Data Integrity Boards' approval of the match agreements;

(3) Furnish detailed reports about matching programs to Congress and OMB;

(4) Notify applicants and beneficiaries that their records are subject to matching; and

(5) Verify match findings before reducing, suspending, terminating or denying an individual's benefits or payments.

B. Office of Inspector General Computer Matches Subject to the Privacy Act

We have taken action to ensure that the Office of Inspector General's computer matching programs comply with the requirements of the Privacy Act, as amended.

NOTICE OF COMPUTER MATCHING PROGRAMS, U.S. DEPARTMENT OF LABOR, OFFICE OF INSPECTOR GENERAL, AND OFFICE OF WORKERS' COMPENSATION PROGRAMS, WITH THE STATES OF MARYLAND, NEW JERSEY, OKLAHOMA, PENNSYLVANIA, TEXAS, AND VIRGINIA

A. Participating Agencies

The Office of Inspector General, the Office of Workers' Compensation Programs, and the States of Maryland, New Jersey, Oklahoma, Pennsylvania, Texas, and Virginia.

B. Purposes of the Matching Program

These computer matching programs between the Office of Inspector General, the Office of Workers' Compensation Programs, and the States of Maryland, New Jersey, Oklahoma, Pennsylvania, Texas, and Virginia (''States'') have several purposes.

One part of these computer matching programs will involve the comparison of beneficiaries receiving workers' compensation under the Federal Employees' Compensation Act (''FECA''), 5 U.S.C. § 8101 et. seq., with Unemployment Compensation wage records maintained by the States pursuant to the Social Security Act, 42 U.S.C. § 501 et. seq., and related State laws. The purpose of these matches is to determine whether any recipients of FECA total disability benefits are receiving or have received any wages in the State without reporting those wages to the Office of Workers' Compensation Programs as required by law.

Another part of these computer matching programs will involve the comparison of beneficiaries receiving workers' compensation under FECA with Unemployment Compensation benefits and payments records maintained by the States. The purposes of these matches are to determine whether any recipients of FECA total disability benefits are receiving or have received any unemployment insurance benefits which may affect entitlement to FECA benefits, and whether any recipients are receiving or have received any unemployment insurance benefits to which they are not entitled.

C. Authority for Conducting the Matching Program

The Federal Employees' Compensation Act (''FECA''), 5 U.S.C. § 8101 et. seq., and the Inspector General Act of 1978, as amended, 5 U.S.C. App. 3. Among its responsibilities in the administration of FECA, the Office of Workers' Compensation Programs must ensure that benefit payments are proper and that fraud and abuse are prevented. The Office of Inspector General, as part of its oversight responsibilities, is conducting these matching programs to further these objectives. Computer matching is an efficient and unobtrusive method of determining whether beneficiaries are appropriately receiving benefits under FECA.

D. Categories of Records and Individuals Covered by the Match

The Office of Workers' Compensation Programs will provide the Office of Inspector General with an electronic or magnetic tape file extracted from the Federal Employees' Compensation Act files. The extracted file will contain certain workers' compensation payment information. The records in this file will be matched to the Unemployment Compensation wage, benefit, and payments records maintained by the participating States to identify individuals potentially subject to benefit reductions or termination of payment

eligibility under the statutory provisions listed above. In some cases, the matches will be performed by the Office of Inspector General. In other cases, the matches will be performed by the respective States and the results of the matches will be transmitted to the Office of Inspector General.

E. Inclusive Dates of the Match

The matching programs shall become effective on a date agreed upon by both parties, but no sooner than 40 days after copies of the six agreements, as approved by the Data Integrity Boards of the Department of Labor, are sent to Congress and notice of agreement is sent to the Office of Management and Budget (or later if the Office of Management and Budget objects to some or all of the agreement) or 30 days after publication of this notice in the **Federal Register**, whichever is later. The matching programs will continue for 18 months from the effective date and may be extended for an additional 12 months thereafter, if certain conditions are met.

F. Security

The personal privacy of individuals identified on the tapes will be protected by strict compliance with the Privacy Act (Pub. L. 93–579). Information from the match will be used only for official purposes, and will not be released to the public.

Signed at Washington, D.C., this 3rd day of February, 1999.

Charles C. Masten,

Inspector General, Department of Labor.

[FR Doc. 99–3121 Filed 2–8–99; 8:45 am]

BILLING CODE 4510–23–P

FEDERAL MINE SAFETY AND HEALTH REVIEW COMMISSION

Sunshine Act Meeting

February 3, 1999.

TIME AND DATE: 10:00 a.m., Thursday, February 11, 1999.

PLACE: Room 6005, 6th Floor, 1730 K Street, N.W., Washington, D.C.

STATUS: Open.

MATTERS TO BE CONSIDERED: The Commission will consider and act upon the following:

1. *Secretary of Labor* v. *BHP Copper, Co.*, Docket No. WEST 98–189–RM (Issues include whether a mine operator is required to disclose to MSHA during an accident inspection the telephone number and home address of a miner who was a witness to the fatal accident and was not at the mine due to injuries suffered in the accident.)

TIME AND DATE: 10:00 a.m., Thursday, March 11, 1999.

PLACE: Room 6005, 6th Floor, 1730 K Street, N.W., Washington, D.C.

STATUS: Open.

MATTERS TO BE CONSIDERED: The Commission will consider and act upon the following:

1. *Secretary of Labor on behalf of Kaczmarczyk* v. *Reading Anthracite Co.,* Docket No. PENN 97–157–D (Issues include whether the judge failed to apply the correct legal standard when analyzing the operator's affirmative defense against a discrimination claim under 30 U.S.C. § 815(c) and whether substantial evidence supports the judge's finding that the operator established an affirmative defense against a discrimination claim under 30 U.S.C. § 815(c).)

TIME AND DATE: 10:00 a.m., Thursday, March 25, 1999.

PLACE: Room 6005, 6th Floor, 1730 K Street, N.W., Washington, D.C.

STATUS: Open.

MATTERS TO BE CONSIDERED: The Commission will hear oral argument on the following:

1. *Secretary of Labor* v. *Cyprus Cumberland Resources, Inc.,* Docket No. PENN 98–15–R (Issues include whether the judge correctly determined that the Secretary of Labor failed to prove the absence of an inspection of the Cumberland mine which disclosed no similar violations within the meaning of section 104(d)(2) of the Mine Act, 30 U.S.C. § 814(d)(2).)

TIME AND DATE: The meeting will commence following upon the conclusion of oral argument in the case which commences at 10:00 a.m., on Thursday, March 25, 1999.

PLACE: Room 6005, 6th Floor, 1730 K Street, N.W., Washington, D.C.

STATUS: Closed [Pursuant to 5 U.S.C. § 552b(c)(10)].

MATTERS TO BE CONSIDERED: It was determined by a unanimous vote of the Commission that the Commission consider and act upon the following in closed session:

1. *Secretary of Labor* v. *Cyprus Cumberland Resources, Inc.,* Docket No. PENN 98–15–R (*See* oral argument listing, *supra,* for issues.)

Any person attending an open meeting who requires special accessibility features and/or auxiliary aids, such as sign language interpreters, must inform the Commission in advance of those needs. Subject to 29 C.F.R. § 2706.150(a)(3) and § 2706.160(d).

CONTACT PERSON FOR MORE INFO: Jean Ellen, (202) 653–5629/(202) 708–9300 for TDD Relay/1–800–877–8339 for toll free.

Jean H. Ellen,

Chief Docket Clerk.

[FR Doc. 99–3310 Filed 2–5–99; 3:54 pm]

BILLING CODE 6735–01–M

NATIONAL AERONAUTICS AND SPACE ADMINISTRATION

[Notice 99–030]

NASA Advisory Council, Aeronautics and Space Transportation Technology Advisory Committee, Air Traffic Management Research and Development Executive Steering Committee; Meeting

AGENCY: National Aeronautics and Space Administration.

ACTION: Notice of meeting cancellation.

FEDERAL REGISTER CITATION OF PREVIOUS ANNOUNCEMENT: 64 FR 1242, Notice Number 99–002, January 8, 1999.

PREVIOUSLY ANNOUNCED DATES OF MEETING: Thursday, February 11, 1999, 9:00 a.m. to 5:00 p.m. and Friday, February 12, 1999, 9:00 a.m. to 12:00 noon. The meeting will be rescheduled.

FOR FURTHER INFORMATION CONTACT: Dr. J. Victor Lebacqz, National Aeronautics and Space Administration, Ames Research Center, Moffett Field, CA 94035, 650/604–5792.

Dated: February 2, 1999.

Matthew M. Crouch,

Advisory Committee Management Officer, National Aeronautics and Space Administration.

[FR Doc. 99–3148 Filed 2–8–99; 8:45 am]

BILLING CODE 7510–01–P

NATIONAL AERONAUTICS AND SPACE ADMINISTRATION

[Notice (99–028)]

Notice of Prospective Patent License

AGENCY: National Aeronautics and Space Administration.

ACTION: Notice of Prospective Patent License.

SUMMARY: NASA hereby gives notice that Patterned Fiber Composites, Inc. of Pleasant Grove, Utah has applied for an exclusive license to practice the invention described and claimed in U.S. Patent No. 5,203,435, entitled ''Composite Passive Damping Struts for Large Precision Structures,'' which is assigned to the United States of America as represented by the Administrator of the National Aeronautics and Space

Administration. Written objections to the prospective grant of a license to Patterned Fiber Composites, Inc. should be sent to John H. Kusmiss, Assistant Patent Counsel of the NASA Management Office at the Jet Propulsion Laboratory.

DATES: Responses to this Notice must be received by April 12, 1999.

FOR FURTHER INFORMATION CONTACT: John H. Kusmiss, Assistant Patent Counsel, NASA Management Office-JPL, 4800 Oak Grove Drive, Mail Station 180–801, Pasadena, CA 91109–8099; telephone (818) 354–7770.

Dated: February 2, 1999.

Edward A. Frankle,

General Counsel.

[FR Doc. 99–3019 Filed 2–8–99; 8:45 am]

BILLING CODE 7510–01–P

NATIONAL AERONAUTICS AND SPACE ADMINISTRATION

[Notice (99–027)]

Notice of Prospective Patent License

AGENCY: National Aeronautics and Space Administration.

ACTION: Notice of Prospective Patent License.

SUMMARY: NASA hereby gives notice that Visual Programs, Inc., of Richmond, Virginia 23228, has applied for an exclusive license to practice the invention described and claimed in U.S. Patent No. 5,755,571, entitled ''DIFFERENTIAL MEASUREMENT PERIODONTAL STRUCTURES MAPPING SYSTEM,'' which is assigned to the United States of America as represented by the Administrator of the National Aeronautics and Space Administration. Written objections to the prospective grant of a license should be sent to Langley Research Center.

DATES: Responses to this notice must be received by April 12, 1999.

FOR FURTHER INFORMATON CONTACT: Robin W. Edwards, Patent Attorney, NASA Langley Research Center, Mail Stop 212, Hampton, VA 23681–0001; telephone (757) 864–3230; fax (757) 864–9190.

Dated: February 2, 1999.

Edward A. Frankle,

General Counsel.

[FR Doc. 99–3018 Filed 2–8–99; 8:45 am]

BILLING CODE 7510–01–P

NATIONAL AERONAUTICS AND SPACE ADMINISTRATION

[Notice 99–029]

Notice of Prospective Patent License

AGENCY: National Aeronautics and Space Administration.

ACTION: Notice of Prospective Patent License.

SUMMARY: NASA hereby gives notice that Williams-Pyro, Inc. of Fort Worth, Texas 76107, has applied for an exclusive license to practice the inventions described and claimed in U.S. Patent No. 5,394,906, entitled ''METHOD AND APPARATUS FOR WEAVING CURVED MATERIAL PREFORMS,'' U.S. Patent No. 5,465,762, entitled ''ADJUSTABLE REED FOR WEAVING NET–SHAPED TAILORED FABRICS,'' U.S. Patent No. 5,681,513, entitled ''METHOD FOR FABRICATING COMPOSITE STRUCTURES USING CONTINUOUS PRESS FORMING,'' U.S. Patent No. 5,617,902, entitled ''WEAVING AND BONDING METHOD TO PREVENT WARP AND FILL DISTORTION,'' NASA Case No. LAR 15128–2, entitled ''LOW–COST MODERATE–TO–HIGH PRODUCTION RATE FABRICATION PROCESSES FOR COMPOSITE PRIMARY STRUCTURE,'' NASA Case Nos. LAR 15128–3 and LAR 15128–4 entitled ''METHOD FOR FABRICATING COMPOSITE STRUCTURES INCLUDING CONTINUOUS PRESS FORMING AND PULTRUSION PROCESSING,'' and NASA Case No. LAR 15686–1, entitled ''A DEVICE FOR THE INSERTION OF DISCONTINUOUS THROUGH–THE–THICKNESS REINFORCEMENTS INTO PREFORMS PREPREG MATERIALS,'' all of which are assigned to the United States of America as represented by the Administrator of the National Aeronautics and Space Administration. Written objections to the prospective grant of a license should be sent to Langley Research Center.

DATES: Responses to this notice must be received by April 12, 1999.

FOR FURTHER INFORMATION CONTACT: Robin W. Edwards, Patent Attorney, NASA Langley Research Center, Mail Stop 212, Hampton, VA 23681–0001; telephone (757) 864–3230; fax (757) 864–9190.

Dated: February 2, 1999.

Edward A. Frankle,

General Counsel.

[FR Doc. 99–3020 Filed 2–8–99; 8:45 am]

BILLING CODE 7510–01–P

THE NATIONAL BIPARTISAN COMMISSION ON THE FUTURE OF MEDICARE

Public Meeting

The National Bipartisan Commission on the Future of Medicare will hold a public meeting during the week of February 22, 1999. Details about the meeting date, time and location to be announced. Please check the Commission's web site for additional information: **http://Medicare.Commission.Gov**

Agenda: Members of the Commission to discuss a premium support system.

If you have any questions, please contact the Bipartisan Medicare Commission, ph: 202–252–3380.

I hereby authorize publication of the Medicare Commission meetings in the **Federal Register**.

Julie Hasler,

Office Manager, National Bipartisan Medicare Commission.

[FR Doc. 99–3182 Filed 2–5–99; 9:30 am]

BILLING CODE 1132–00–M

NATIONAL EDUCATION GOALS PANEL

Meeting

AGENCY: National Education Goals Panel.

ACTION: Notice of meeting.

SUMMARY: This notice sets forth the date and location of a forthcoming meeting of the National Education Goals Panel. This notice also describes the functions of the Panel.

DATE AND TIME: Saturday, February 20, 1999, 10:15 a.m. to 12 p.m.

ADDRESSES: National Press Club, 529 14th Street, NW, HOLEMAN LOUNGE, Washington, DC 20045.

FOR FURTHER INFORMATION CONTACT: Ken Nelson, Executive Director, 1255 22nd Street, NW, Suite 502, Washington, DC 20037. Telephone: (202) 724–0015.

SUMMARY: The National Education Goals Panel was established to monitor, measure and report state and national progress toward achieving the eight National Education Goals, and report to the states and the Nation on that progress.

AGENDA ITEMS: Agenda items will include (1) a presentation by Dr. Nick Zill, WESTAT, Inc. on alternative reporting. The Panel will explore additional expressions NEGP's reports could take; (2) a presentation by Dr. Paul Barton, Director of the Policy Information at ETS, and Ms. Emily

Wurtz, Senior Education Associate at NEGP which begins to characterize the Panel's Message 2000; and (3) Dr. David Grissmer, Rand Corporation, will describe his methods of calculating value-added measurements of educational performance.

Dated: February 3, 1999.

Ken Nelson,

Executive Director, National Education Goals Panel.

[FR Doc. 99–3082 Filed 2–8–99; 8:45 am]

BILLING CODE 4010–01–M

NATIONAL FOUNDATION FOR THE ARTS AND HUMANITIES

Institute of Museum and Library Services, Office of Museum Services; Submission for OMB Review, Comment Request; Conservation Assessment Program (CAP) Evaluation

AGENCY: Institute of Museum and Library Services.

ACTION: Notice.

SUMMARY: The Institute of Museum Services has submitted the following public information request to the Office of Management and Budget for review and approval in accordance with the Paperwork Reduction Act of 1995 (Pub. L. 104–13, 44 U.S.C. Chapter 35). Currently, the Institute of Museum and Library Services is soliciting comment concerning a new collection entitled, Conservation Assessment Program (CAP) Evaluation.

A copy of this proposed form, with applicable supporting documentation, may be obtained by calling the Institute of Museum and Library Services, Director of Research and Technology, Rebecca Danvers (202) 606–2478. Individuals who use a telecommunications device for the deaf (TTY/TDD) may call (202) 606–8636.

Comments should be sent to Office of Information and Regulatory Affairs, Attn.: OMB Desk Officer for Education, Office of Management and Budget, Room 10235, Washington, DC 20503 (202) 395–7316), by 30 days from publication date.

The OMB is particularly interested in comments which:

- Evaluate whether the proposed collection of information is necessary for the proper performance of the functions of the agency, including whether the information will have practical utility;
- Evaluate the accuracy of the agency's estimate of the burden of the proposed collection of information, including the validity of the methodology and assumptions used;
- Enhance the quality, utility, and clarity of the information to be collected; and
- Minimize the burden of the collection of information on those who are to respond, including through the use of appropriate automated, electronic, mechanical, or other technological collection techniques or other forms of information technology, e.g., permitting electronic submission of responses.

BACKGROUND: The Institute of Museum and Library Services (IMLS) is seeking to collect and analyze information related to the Conservation Assessment Program (CAP), which provides small-to-mid-size museums with a source for general conservation survey grants. The research evaluation will help IMLS evaluate the outcomes for museums that participated in CAP, evaluate the effectiveness and efficiency of CAP, identify potential areas for improvement, determine the level of need/interest for the program within the key stakeholder groups, and to assess the overall effectiveness of CAP in meeting its goals. From this evaluation, IMLS will be able to assess the strengths, weaknesses, and overall success of the CAP program, and make improvements to the program.

Type of Review: New collection.

Agency: Institute of Museum and Library Services.

Title: Conservation Assessment Program (CAP) Evaluation.

OMB Number: N/A.

Affected Publics: Museums and conservation assessors.

Total Respondents: 3,674.

Frequency: One time.

Total Responses: 3,674.

Average Time per Response: 20 minutes.

Estimated Total Burden Hours: 1,255.

Total Burden Cost (capital/startup): $0.

Total Burden Cost (operating/maintenance): $0.

FOR FURTHER INFORMATION CONTACT: Mamie Bittner, Director Public and Legislative Affairs, Institute of Museum and Library Services, 1100 Pennsylvania Ave., N.W. Washington, DC 20506.

Dated: February 3, 1999.

Mamie Bittner,

Director Public and Legislative Affairs.

[FR Doc. 99–3147 Filed 2–8–99; 8:45 am]

BILLING CODE 7036–01–M

NORTHEAST DAIRY COMPACT COMMISSION

Notice of Meeting

AGENCY: Northeast Dairy Compact Commission.

ACTION: Notice of meeting.

SUMMARY: The Compact Commission will hold its Annual Meeting and Regular Monthly Meeting as provided under Article V of the Commission's Bylaws. The Monthly Meeting will immediately follow the Annual Meeting to consider matters relating to administration and the price regulation. The Annual Meeting and Regular Monthly Meeting will follow the Public Hearing as previously noticed for this time and place.

DATES: The Annual Meeting is scheduled for Wednesday, March 3, 1999 to commence at the close of the public hearing for a proposed rule beginning at 9:00 a.m. as previously noticed at 64 FR 4353 (January 28, 1999).

ADDRESSES: The Annual Meeting and Regular Monthly Meeting will be held at the Tuck Library Building, Chubb Auditorium, 30 Park Street, Concord, NH (exit 14 off I–93).

FOR FURTHER INFORMATION CONTACT: Kenneth Becker, Executive Director, Northeast Dairy Compact Commission, 34 Barre Street, Suite 2, Montpelier, VT 05602. Telephone (802) 229–1941.

Authority: U.S.C. 7256.

Dixie Henry,

General Counsel.

[FR Doc. 99–3091 Filed 2–8–99; 8:45 am]

BILLING CODE 1650–01–P

NUCLEAR REGULATORY COMMISSION

[IA 98–061]

Randall W. Allmon; Confirmatory Order Prohibiting Involvement in NRC-Licensed Activities (Effective Immediately)

I

Randall W. Allmon is employed by March Metalfab, Inc. (MMI) as a Project Manager. MMI is a subcontractor of Sierra Nuclear Corporation (SNC), which holds NRC Certificate of Compliance 72–1007 for the VSC–24 cask, used by general licensees, Palisades Nuclear Plant (PNP) and Arkansas Nuclear One (ANO). The general license (10 CFR 72.210) relied on by PNP and ANO is for the storage of spent nuclear fuel under 10 CFR Part 72.

II

In March 1995, PNP loaded spent fuel into a multi-assembly sealed basket (MSB) spent fuel cask that had been supplied by SNC and fabricated by MMI. When the cask was pressurized with helium, two leaks were identified in the wall of the MSB adjacent to the closure weld. Subsequent analysis by PNP metallurgical personnel determined that the defects were caused by underbead or hydrogen cracking, resulting from a base metal weld repair to the MSB shell inner wall that was performed during MSB manufacturing. The NRC staff learned of the problem experienced by PNP as a result of inspection activities following a similar closure weld failure at ANO. The staff became concerned that undetected cracks in other MSBs, produced by SNC that were already loaded with spent fuel, could propagate while the casks were in storage, affecting the integrity of the cask confinement boundary. As a result, during the week of March 17–21, 1997, a special inspection was conducted at SNC and MMI.

During the special inspection, five MMI employees who were considered most likely to have been aware of the fabrication activities during the manufacture of the MSBs that failed were interviewed. In his interview at this time, regarding temporary attachments and weld repairs, Mr. Allmon stated that there was no reason to use temporary attachments and the only weld repairs would be those for repair of lifting clamp marks and the lifting clamp area was within approximately the first 2.5 inches from the top of the cask. Mr. Allmon stated that no welding was done on the inside of the top area of the MSB where the ''tear'' occurred during the closure welding at PNP.

In July 1997, the NRC conducted a further inspection of MMI and SNC. During that inspection, employees of both companies acknowledged that undocumented welds had been made on casks sold to ANO and PNP. In the course of this inspection, both Mr. Allmon, the Project Manager and the Quality Assurance Manager for MMI admitted that they were aware that repair welding had been performed on the inside of the MSBs during fabrication and that they had not informed the NRC inspectors of those welds during the March 1997 inspection interviews. The NRC continued to investigate the matter and the Office of Investigations issued its report on October 16, 1998.

The NRC has concluded that because Mr. Allmon was knowledgeable about the fabrication process and was aware that welding had been done on the insides of the MSBs, he deliberately made statements in March 1997 to SNC and to the NRC that were inaccurate concerning the internal welding. The information involved was material to the NRC's understanding as to the quality of the MSBs and delayed the NRC's action to ensure integrity of MSBs. As a result, the NRC has further concluded that in providing the information, Mr. Allmon violated 10 CFR 72.11, ''Completeness and Accuracy of Information'' and 10 CFR 72.12, ''Deliberate Misconduct.'' The NRC believes that the circumstances of this matter raise questions as to Mr. Allmon's willingness to comply with Commission requirements. Mr. Allmon has not admitted that a violation occurred.

III

In a telephone call on December 7, 1998, Mr. Allmon agreed to issuance of a Confirmatory Order prohibiting him from engaging in NRC-licensed activities for a period of five years from the date that the Order is issued. The staff believes that this will adequately protect the public heath and safety and, therefore, finds this acceptable. MMI and Mr. Allmon requested that if the Order is issued, they be allowed to complete work on one small existing contract to supply 10 plug assemblies for a NUHOMS cask. This provision is acceptable, as the assemblies have a limited safety function that can be verified by measurement at the time of use. On January 6, 1999, the staff forwarded to Mr. Allmon a copy of the factual basis of the proposed order and the implementation paragraph. On January 11, 1999, Mr. Allmon consented to the issuance of the order with those provisions and waived his rights to a hearing on this action.

I find that Mr. Allmon's commitments as set forth in Section IV are acceptable and necessary and conclude that with these commitments the public health and safety are reasonably assured. In view of the foregoing, I have determined that the public health and safety require that Mr. Allmon's commitments be confirmed by this Order. Based on the above and Mr. Allmon's consent to this action, this Order is immediately effective upon issuance.

IV

Accordingly, pursuant to sections 53, 161b, 161i, 161o, 182 and 186 of the Atomic Energy Act of 1954, as amended, and the Commission's regulations in 10 CFR 2.202, 10 CFR part 72, and 10 CFR 72.12, *it is hereby ordered, effective immediately,* as follows:

A. Except as noted in paragraph B, Mr. Allmon is prohibited for five years from the date of this Order from any involvement in NRC-licensed activities. For purposes of this Order, licensed activities include providing or supplying, whether directly to NRC licensees or Certificate of Compliance holders, or as a contractor or subcontractor to a licensee or Certificate of Compliance holder, structures, systems, or components, subject to a procurement contract specifying compliance with 10 CFR Ch. I.

B. Mr. Allmon may complete work on the contract that MMI entered into prior to the date of this order to fabricate a total of 10 plug assemblies for a NUHOMS cask.

The Director, Office of Enforcement, may relax or rescind, in writing, any of the above conditions upon a showing by Mr. Allmon of good cause.

V

Any person adversely affected by this Confirmatory Order, other than Mr. Allmon, may request a hearing within 20 days of its issuance. Where good cause is shown, consideration will be given to extending the time to request a hearing. A request for extension of time must be made in writing to the Director, Office of Enforcement, U.S. Nuclear Regulatory Commission, Washington, DC 20555, and include a statement of good cause for the extension. Any request for a hearing shall be submitted to the Secretary, U.S. Nuclear Regulatory Commission, ATTN: Rulemakings and Adjudications Staff, Washington, DC 20555. Copies also shall be sent to the Director, Office of Enforcement, U.S. Nuclear Regulatory Commission, Washington, DC 20555, to the Deputy Assistant General Counsel for Enforcement, and to the Director, Office of Nuclear Materials Safety and Safeguards, at the same address, and to Sierra Nuclear Corporation. If such a person requests a hearing, that person shall set forth with particularity the manner in which his or her interest is adversely affected by this Order and shall address the criteria set forth in 10 CFR 2.714(d).

If a hearing is requested by a person whose interest is adversely affected, the Commission will issue an Order designating the time and place of any hearing. If a hearing is held, the issue to be considered at such hearing shall be whether this Confirmatory Order should be sustained.

In the absence of any request for hearing, or written approval of an extension of time in which to request a

hearing, the provisions specified in Section IV above shall be final 20 days from the date of this Order without further order or proceedings. If an extension of time for requesting a hearing has been approved, the provisions specified in Section IV shall be final when the extension expires if a hearing request has not been received.

Dated this 27th day of January 1999.

For the Nuclear Regulatory Commission.

James Lieberman,

Director, Office of Enforcement.

[FR Doc. 99–3095 Filed 2–8–99; 8:45 am]

BILLING CODE 7590–01–P

NUCLEAR REGULATORY COMMISSION

Receipt of Petition for U.S. Nuclear Regulatory Commission Action

Notice is hereby given that, by petition dated December 30, 1998, Mr. Thomas B. Cochran of the Natural Resources Defense Council has requested that the U.S. Nuclear Regulatory Commission (NRC) take action with regard to Khosrow B. Semnani, former President, Envirocare of Utah, Inc. (Envirocare). The Petitioner requests that NRC issue an order to show cause why Mr. Semnani should not be prohibited permanently from participating in any NRC-licensed activity.

As basis for this request, the Petitioner asserts that Mr. Semnani has been convicted of a federal crime—aiding and abetting in the filing of a false income tax return and fined $100,000. The Petitioner further asserts that this federal crime was committed in direct relation to the facilitation of a license authorized by the Atomic Energy Act. The Petitioner asserts that Mr. Semnani admitted under oath that: (1) He paid Mr. Larry F. Anderson, the Director of the Utah Bureau of Radiation Control and the Agreement State official responsible for radiological safety, cash, gold coins, and the deed to a ski condo in order to facilitate the first disposal license and the issuance of other favorable license actions, and (2) he knew these actions were inappropriate, but informed no governmental authorities of the payments.

As further basis the Petitioner states that ''independent of the results of any criminal or civil proceeding against Mr. Semnani it is incumbent upon the NRC to take appropriate action to ensure the integrity of its own licensing process.'' In stating that a licensee's character is fundamental in the protection of public health the Petitioner cites several cases involving nuclear power reactor licensees where the character of the licensees was allegedly brought into question.

The request has been referred to the Director of the Office of Nuclear Material Safety and Safeguards. As provided by section 2.206, action will be taken on this petition within a reasonable time.

FOR FURTHER INFORMATION CONTACT: Harold Lefevre, Uranium Recovery Branch, Division of Waste Management, Office of Nuclear Material Safety and Safeguards, U.S. Nuclear Regulatory Commission, Mail Stop T7–J9, Washington, DC 20555. Telephone 301/415–6678. A copy of the petition is available for inspection at the Commission's Public Document Room at 2121 L Street, NW, Washington, DC 20555.

Dated at Rockville, Maryland, this 2nd day of February 1999.

For the Nuclear Regulatory Commission.

Carl J. Paperiello,

Director, Office of Nuclear Material Safety and Safeguards.

[FR Doc. 99–3094 Filed 2–8–99; 8:45 am]

BILLING CODE 7590–01–P

NUCLEAR REGULATORY COMMISSION

[Docket No. 72–1007, EA 98–529]

March Metalfab, Inc., Hayward, California; Confirmatory Order Prohibiting Involvement in NRC-Licensed Activities (Effective Immediately)

I

March Metalfab, Inc. (MMI) is a subcontractor of Sierra Nuclear Corporation (SNC), which holds NRC Certificate of Compliance 72–1007 for the VSC–24 cask, used by general licensees, Palisades Nuclear Plant (PNP) and Arkansas Nuclear One (ANO). The general license (10 CFR 72.210) relied on by PNP and ANO is for the storage of spent nuclear fuel under 10 CFR part 72.

II

In March 1995, PNP loaded spent fuel into a multi-assembly sealed basket (MSB) spent fuel cask that had been supplied by SNC and fabricated by MMI. When the cask was pressurized with helium, two leaks were identified in the wall of the MSB adjacent to the closure weld. Subsequent analysis by PNP metallurgical personnel determined that the defects were caused by underbead or hydrogen cracking, resulting from a base metal weld repair to the MSB shell inner wall that was performed during MSB manufacturing. The NRC staff learned of the problem experienced by PNP as a result of inspection activities following a similar closure weld failure at ANO. The staff became concerned that undetected cracks in other MSBs, produced by SNC that were already loaded with spent fuel, could propagate while the casks were in storage, affecting the integrity of the cask confinement boundary. As a result, during the week of March 17–21, 1997, a special inspection was conducted at SNC and MMI.

During the special inspection, five MMI employees who were considered most likely to have been aware of the fabrication activities during the manufacture of the MSBs that failed were interviewed. They included two managers, the Project Manager and the Quality Assurance (QA) Manager. All of the individuals interviewed denied having any knowledge of any undocumented or unauthorized welds or weld repairs during the manufacture of the MSBs.

In July 1997, the NRC conducted a further inspection of MMI and SNC. During that inspection, employees of both companies acknowledged that undocumented welds had been made on casks sold to ANO and PNP. In the course of this inspection, both the Project Manager and the QA Manager for MMI admitted that they were aware that repair welding had been performed on the inside of the MSBs during fabrication and that they had not informed the NRC inspectors of those welds during the March 1997 inspection interviews. The NRC continued to investigate the matter and the Office of Investigations issued its report on October 16, 1998.

The NRC has concluded that because the two managers were knowledgeable about the fabrication process and were aware that welding had been done on the insides of the MSBs, they deliberately made statements in March 1997 to SNC and to the NRC that were inaccurate concerning the internal welding. The information involved was material to the NRC's understanding as to the quality of the MSBs and delayed the NRC's action to ensure integrity of MSBs. As a result, the NRC has further concluded that in providing the information, MMI violated 10 CFR 72.11, ''Completeness and Accuracy of Information'' and 10 CFR 72.12, ''Deliberate Misconduct.'' The NRC believes that the circumstances of this matter raise questions as to MMI's willingness to comply with Commission requirements. MMI has not admitted that a violation occurred.

III

In a telephone call on December 7, 1998, MMI agreed to issuance of a Confirmatory Order prohibiting MMI from engaging in NRC-licensed activities for a period of five years from the date that the Order is issued. The staff believes that such a prohibition will adequately protect the public health and safety and, therefore, finds this acceptable. MMI requested that if the Order is issued, it be allowed to complete work on one small existing contract to supply 10 plug assemblies for a NUHOMS cask. This provision is acceptable, as the assemblies have a limited safety function that can be verified by measurement at the time of use. On January 6, 1999, the staff forwarded to MMI a copy of the factual basis of the proposed order and the implementation paragraph. On January 10, 1999, MMI consented to the issuance of the order with those provisions and waived its rights to a hearing on this action.

I find that MMI's commitments as set forth in Section IV are acceptable and necessary and conclude that with these commitments the public health and safety are reasonably assured. In view of the foregoing, I have determined that the public health and safety require that MMI's commitments be confirmed by this Order. Based on the above and MMI's consent to this action, this Order is immediately effective upon issuance.

IV

Accordingly, pursuant to sections 53, 161b, 161i, 161o, 182 and 186 of the Atomic Energy Act of 1954, as amended, and the Commission's regulations in 10 CFR 2.202, 10 CFR part 72, and 10 CFR 72.12, *it is hereby ordered, effective immediately,* as follows:

A. Except as noted in paragraph B, MMI is prohibited for five years from the date of this Order from any involvement in NRC-licensed activities. For purposes of this Order, licensed activities include providing or supplying, whether directly to NRC licensees or Certificate of Compliance holders, or as a contractor or subcontractor to a licensee or Certificate of Compliance holder, structures, systems, or components, subject to a procurement contract specifying compliance with 10 CFR Ch. I.

B. Provided that MMI notifies Transnuclear West, the Certificate of Compliance holder for the NUHOMS cask, of the existence of this Order, MMI may complete work on the contract that was entered into prior to the date of this order to fabricate a total of 10 plug assemblies for a NUHOMS cask.

The Director, Office of Enforcement, may relax or rescind, in writing, any of the above conditions upon a showing by the Licensee of good cause.

V

Any person adversely affected by this Confirmatory Order, other than MMI, may request a hearing within 20 days of its issuance. Where good cause is shown, consideration will be given to extending the time to request a hearing. A request for extension of time must be made in writing to the Director, Office of Enforcement, U.S. Nuclear Regulatory Commission, Washington, DC 20555, and include a statement of good cause for the extension. Any request for a hearing shall be submitted to the Secretary, U.S. Nuclear Regulatory Commission, ATTN: Rulemakings and Adjudications Staff, Washington, DC 20555. Copies also shall be sent to the Director, Office of Enforcement, U.S. Nuclear Regulatory Commission, Washington, DC 20555, to the Deputy Assistant General Counsel for Enforcement, and to the Director, Office of Nuclear Materials Safety and Safeguards, at the same address, and to Sierra Nuclear Corporation. If such a person requests a hearing, that person shall set forth with particularity the manner in which his or her interest is adversely affected by this Order and shall address the criteria set forth in 10 CFR 2.714(d).

If a hearing is requested by a person whose interest is adversely affected, the Commission will issue an Order designating the time and place of any hearing. If a hearing is held, the issue to be considered at such hearing shall be whether this Confirmatory Order should be sustained.

In the absence of any request for hearing, or written approval of an extension of time in which to request a hearing, the provisions specified in Section IV above shall be final 20 days from the date of this Order without further order or proceedings. If an extension of time for requesting a hearing has been approved, the provisions specified in Section IV shall be final when the extension expires if a hearing request has not been received.

Dated this 27th day of January 1999.

For the Nuclear Regulatory Commission.

James Lieberman,

Director, Office of Enforcement.

[FR Doc. 99–3096 Filed 2–8–99; 8:45 am]

BILLING CODE 7590–01–P

NUCLEAR REGULATORY COMMISSION

[IA 98–062]

Brian K. Rogers; Confirmatory Order Prohibiting Involvement in NRC-Licensed Activities (Effective Immediately)

I

Brian K. Rogers is employed by March Metalfab, Inc. (MMI) as a Quality Assurance (QA) Manager. MMI is a subcontractor of Sierra Nuclear Corporation (SNC), which holds NRC Certificate of Compliance 72–1007 for the VSC–24 cask, used by general licensees, Palisades Nuclear Plant (PNP) and Arkansas Nuclear One (ANO). The general license (10 CFR 72.210) relied on by PNP and ANO is for the storage of spent nuclear fuel under 10 CFR part 72.

II

In March 1995, PNP loaded spent fuel into a multi-assembly sealed basket (MSB) spent fuel cask that had been supplied by SNC and fabricated by MMI. When the cask was pressurized with helium, two leaks were identified in the wall of the MSB adjacent to the closure weld. Subsequent analysis by PNP metallurgical personnel determined that the defects were caused by underbead or hydrogen cracking, resulting from a base metal weld repair to the MSB shell inner wall that was performed during MSB manufacturing. The NRC staff learned of the problem experienced by PNP as a result of inspection activities following a similar closure weld failure at ANO. The staff became concerned that undetected cracks in other MSBs, produced by SNC that were already loaded with spent fuel, could propagate while the casks were in storage, affecting the integrity of the cask confinement boundary. As a result, during the week of March 17–21, 1997, a special inspection was conducted at SNC and MMI.

During the special inspection, five MMI employees who were considered most likely to have been aware of the fabrication activities during the manufacture of the MSBs that failed were interviewed. In his interview at this time, Mr. Rogers stated that he never saw any temporary attachments being installed or removed from the MSBs and had no knowledge of any unauthorized welding being conducted on the MSBs. He stated that there was no reason to conduct welding on the inside top area of the MSBs above the structural support ring area.

In July 1997, the NRC conducted a further inspection of MMI and SNC. During that inspection, employees of both companies acknowledged that undocumented welds had been made on casks sold to ANO and PNP. In the course of this inspection, both Mr. Rogers, the Quality Assurance Manager and the Project Manager for MMI admitted that they were aware that repair welding had been performed on the inside of the MSBs during fabrication and that they had not informed the NRC inspectors of those welds during the March 1997 inspection interviews. The NRC continued to investigate the matter and the Office of Investigations issued its report on October 16, 1998.

The NRC has concluded that because Mr. Rogers was knowledgeable about the fabrication process and was aware that welding had been done on the insides of the MSBs, he deliberately made statements in March 1997 to SNC and to the NRC that were inaccurate concerning the the internal welding. The information involved was material to the NRC's understanding as to the quality of the MSBs and delayed the NRC's action to ensure integrity of MSBs. As a result, the NRC has further concluded that in providing the information, Mr. Rogers violated 10 CFR 72.11, ''Completeness and Accuracy of Information'' and 10 CFR 72.12, ''Deliberate Misconduct.'' The NRC believes that the circumstances of this matter raise questions as to Mr. Rogers willingness to comply with Commission requirements. Mr. Rogers has not admitted that a violation occurred.

III

In a telephone call on December 7, 1998, Mr. Rogers agreed to issuance of a Confirmatory Order prohibiting him from engaging in NRC-licensed activities for a period of five years from the date that the Order is issued. The staff believes that this will adequately protect the public heath and safety and, therefore, finds this acceptable. MMI and Mr. Rogers requested that if the Order is issued, they be allowed to complete work on one small existing contract to supply 10 plug assemblies for a NUHOMS cask. This provision is acceptable, as the assemblies have a limited safety function that can be verified by measurement at the time of use. On January 6, 1999, the staff forwarded to Mr. Rogers a copy of the factual basis of the proposed order and the implementation paragraph. On January 11, 1999, Mr. Rogers consented to the issuance of the order with those provisions and waived his rights to a hearing on this action.

I find that Mr. Rogers' commitments as set forth in Section IV are acceptable and necessary and conclude that with these commitments the public health and safety are reasonably assured. In view of the foregoing, I have determined that the public health and safety require that Mr. Rogers' commitments be confirmed by this Order. Based on the above and Mr. Rogers' consent to this action, this Order is immediately effective upon issuance.

IV

Accordingly, pursuant to sections 53, 161b, 161i, 161o, 182 and 186 of the Atomic Energy Act of 1954, as amended, and the Commission's regulations in 10 CFR 2.202, 10 CFR part 72 and 10 CFR 72.12, it is hereby ordered, effective immediately, as follows:

A. Except as noted in paragraph B, Mr. Rogers is prohibited for five years from the date of this Order from any involvement in NRC-licensed activities. For purposes of this Order, licensed activities include providing or supplying, whether directly to NRC licensees or Certificate of Compliance holders, or as a contractor or subcontractor to a licensee or Certificate of Compliance holder, structures, systems, or components, subject to a procurement contract specifying compliance with 10 CFR Ch. I.

B. Mr. Rogers may complete work on the contract that MMI entered into prior to the date of this order to fabricate a total of 10 plug assemblies for a NUHOMS cask.

The Director, Office of Enforcement, may relax or rescind, in writing, any of the above conditions upon a showing by Mr. Rogers of good cause.

V

Any person adversely affected by this Confirmatory Order, other than Mr. Rogers, may request a hearing within 20 days of its issuance. Where good cause is shown, consideration will be given to extending the time to request a hearing. A request for extension of time must be made in writing to the Director, Office of Enforcement, U.S. Nuclear Regulatory Commission, Washington, DC 20555, and include a statement of good cause for the extension. Any request for a hearing shall be submitted to the Secretary, U.S. Nuclear Regulatory Commission, ATTN: Rulemakings and Adjudications Staff, Washington, DC 20555. Copies also shall be sent to the Director, Office of Enforcement, U.S. Nuclear Regulatory Commission, Washington, DC 20555, to the Deputy Assistant General Counsel for Enforcement, and to the Director, Office of Nuclear Materials Safety and Safeguards, at the same address, and to Sierra Nuclear Corporation. If such a person requests a hearing, that person shall set forth with particularity the manner in which his or her interest is adversely affected by this Order and shall address the criteria set forth in 10 CFR 2.714(d).

If a hearing is requested by a person whose interest is adversely affected, the Commission will issue an Order designating the time and place of any hearing. If a hearing is held, the issue to be considered at such hearing shall be whether this Confirmatory Order should be sustained.

In the absence of any request for hearing, or written approval of an extension of time in which to request a hearing, the provisions specified in Section IV above shall be final 20 days from the date of this Order without further order or proceedings. If an extension of time for requesting a hearing has been approved, the provisions specified in Section IV shall be final when the extension expires if a hearing request has not been received.

Dated this 27th day of January, 1999.

For the Nuclear Regulatory Commission.

James Lieberman,

Director, Office of Enforcement.

[FR Doc. 99–3097 Filed 1–8–99; 8:45 am]

BILLING CODE 7590–01–P

NUCLEAR REGULATORY COMMISSION

[NUREG—1600, Rev.1]

Policy and Procedure for NRC Enforcement Actions; Revised Treatment of Severity Level IV Violations at Power Reactors

AGENCY: Nuclear Regulatory Commission.

ACTION: Policy Statement: Amendment.

SUMMARY: The Nuclear Regulatory Commission (NRC) is amending its ''General Statement of Policy and Procedure for NRC Enforcement Actions,'' NUREG–1600, Rev.1, by adding Appendix C to the policy. This amendment revises the treatment of Severity Level IV violations at power reactors by: (1) Expanding the use of Non-Cited Violations (NCVs) to include Severity Level IV violations identified by the NRC; (2) providing that except under limited, defined circumstances, individual Severity Level IV violations normally will result in NCVs and not in Notices of Violation (NOVs); and (3) permitting NRC closure of most Severity Level IV violations based on their

having been entered into a licensee's corrective action program.

DATES: This action is effective March 11, 1999. Comments on this revision should be submitted within 30 days of publication in the **Federal Register** and will be considered by the NRC prior to the next Enforcement Policy revision.

ADDRESSES: Submit written comments to: David L. Meyer, Chief, Rules and Directives Branch, Division of Administrative Services, Office of Administration, Mail Stop: T6D59, U. S. Nuclear Regulatory Commission, Washington, DC 20555. Hand deliver comments to: 11555 Rockville, Maryland, between 7:30 am and 4:15 pm, Federal workdays. Copies of comments received may be examined at the NRC Public Document Room, 2120 L Street, NW, (Lower Level), Washington, DC.

FOR FURTHER INFORMATION CONTACT: James Lieberman, Director, Office of Enforcement, U.S. Nuclear Regulatory Commission, Washington, DC 20555–0001, (301) 415–2741.

SUPPLEMENTARY INFORMATION: Severity Level IV violations are defined in the NRC's Enforcement Policy as violations of more than minor concern which, if left uncorrected, could lead to a more serious concern. Violations at Severity Level IV, the least significant of the four severity levels established in the NRC Enforcement Policy, involve noncompliances with NRC requirements for which the associated risks are not significant. NOVs are issued pursuant to 10 CFR 2.201, and normally require a written response within 30 days addressing: (1) The reason for the violation or basis for disputing the violation; (2) corrective steps that have been taken and results achieved; (3) corrective steps that will be taken to avoid further violations; and (4) the date when full compliance will be achieved. The policy provides that NOVs need not require a response if all of the necessary information is already available on the docket. The policy also permits certain licensee-identified Severity Level IV violations to be treated as Non-Cited Violations (NCVs), but only if the licensee has committed to corrective actions by the end of the inspection, including corrective action to prevent recurrence.

In fiscal year (FY) 1997, power reactor licensees experienced a sharp increase in NOVs issued for Severity Level IV violations, from approximately 770 in FY 1996 to 1,400 in FY 1997. In FY 1998, approximately 1,300 Severity Level IV NOVs were issued. In a memorandum to the Commission dated July 31, 1998, the NRC staff attributed the increase, in part, to efforts to improve the quality and consistency of the inspection and enforcement programs and to increased emphasis on the nexus between safety and compliance, and not to a decline in the performance of power reactor licensees.

In response to concerns about this increase, and its apparent contradiction with the substantial performance improvements of operating power reactors in the last two decades, the NRC initiated efforts to reconsider the treatment of Severity Level IV violations. In an August 25, 1998, memorandum to the Chairman, the Executive Director for Operations submitted a plan which included the objective of maintaining the NRC's ability to identify licensee problems in a timely manner and reducing unnecessary licensee burden associated with responding to Severity Level IV violations.

The approach to enforcement of Severity Level IV violations, including the requirement to provide a written response to cited violations (those subject to an NOV) has essentially been unchanged since before the 1979 accident at Three Mile Island. Since that time, by almost all indicators, the overall performance of reactor licensees has substantially improved. Licensees have generally developed effective corrective action programs that cover not only safety-related activities under 10 CFR part 50, appendix B, but usually other activities regulated by the NRC (e.g., fire protection and physical security). In fact, findings of the NRC are generally only a small percentage of the issues, including noncompliances, identified by licensees and addressed in corrective action programs.

From a safety perspective, NRC Severity Level IV findings generally are not the most important matters being addressed in a licensee's corrective action program. Consequently, in light of the requirement to develop a comprehensive corrective action plan to address recurrence and provide a response to the NRC within 30 days pursuant to 10 CFR 2.201, an NOV may result in licensee priorities and activities that are inconsistent with a violation's relative safety significance. Thus, NRC findings may drive licensee priorities in their corrective action programs, rather than having the fundamental safety significance of the issue establish its priority. Additionally, requiring formal responses to Severity Level IV violations, which are included in a licensee's corrective action program subject to NRC inspection, may in most cases be an unnecessary administrative burden.

As a preliminary step to addressing this concern, the Director of the NRC's Office of Enforcement issued Enforcement Guidance Memorandum 98–006, dated July 27, 1998, to emphasize the provisions in the current Enforcement Policy that permit certain licensee-identified Severity Level IV violations to be treated as Non-Cited Violations (NCVs) and certain NOVs to be issued without requiring a written response. Preliminary data indicates that this guidance has resulted in a decrease in the number of cited NOVs and in cited NOVs requiring a response. Notwithstanding the results of this initiative, licensees must still address Severity Level IV violations with a higher priority than may be justified by their safety significance. Licensee action is required to provide information to the NRC to support treatment of violations as NCVs, or to avoid having to provide a formal response to an NOV. The current policy also requires that NOVs be issued for Severity Level IV violations identified by NRC inspectors.

Severity Level IV violations represent a small fraction of issues identified by licensees and included in licensee corrective action programs. The current Enforcement Policy approach has resulted in licensees placing a higher priority on these violations than their risk significance would merit. Accordingly, corrective action program issues with relatively higher risk significance may, by default, have been assigned lower priorities. Since individual Severity Level IV violations by definition do not involve matters of significant risk, the staff believes that there may be a benefit to safety if licensees are able to prioritize the resolution of Severity Level IV violations based on their safety significance. This can be accomplished if most Severity Level IV violations are closed by the NRC based on their being entered into a licensee's corrective action program. NOVs will be reserved for those cases where the NRC considers it important to obtain a description of the licensee's corrective actions on the docket. These changes will enhance the ability of licensees to address issues in their corrective action programs in accordance with their safety and risk significance, and will reduce unnecessary administrative burden associated with Severity Level IV violations.

Therefore, the NRC is revising its Enforcement Policy for power reactor licensees. The revised policy affects the treatment of individual Severity Level IV violations by: (1) Expanding the use of NCVs to include Severity Level IV violations identified by the NRC; (2)

providing that except under limited, defined circumstances, individual Severity Level IV violations normally will result in NCVs and not NOVs; and (3) permitting closure of most Severity Level IV violations based on their having been entered into a licensee's corrective action program.

This revised enforcement approach is not intended to modify the NRC's emphasis on compliance with requirements. Severity Level IV violations will continue to be described in inspection reports as they are now, although the NRC will close these violations based on their being entered into the licensee's corrective action program rather than a complete understanding of the licensee's corrective actions. At the time a violation is closed in an inspection report, the licensee may not have completed its corrective actions or begun the process to identify the root cause and develop action to prevent recurrence. Licensee actions will be taken commensurate with the established priorities and processes of the licensee's corrective action program. The NRC inspection program will provide an assessment of the effectiveness of the corrective action program. If such inspections identify significant violations or programmatic deficiencies in a licensee's corrective action program, broader and more in depth inspections may be carried out to understand the extent of the problem. The NRC will monitor the licensee's restoration of its corrective action program. In addition to documentation in inspection reports, violations will continue to be entered into the Plant Issues Matrix (PIM) that the NRC maintains for each facility to assist in identifying declining performance and determining repetitiveness. The revised approach will allow licensees to dispute violations described as NCVs.

The circumstances under which an NOV will be considered and a brief discussion of each follows. Any one of these will result in consideration of an NOV requiring a formal written response from a licensee. The decision to issue an NOV will be based on the merits of the case.

1. The licensee failed to restore compliance within a reasonable time after a violation was identified.

The purpose of this exception is to emphasize the need to take appropriate action to restore compliance, or take compensatory measures if compliance cannot be immediately restored, once a licensee becomes aware of a violation.

2. The licensee did not place the violation into a corrective action program to address recurrence.

The purpose of this exception is to emphasize the need to consider actions beyond those necessary to restore compliance and which may be necessary to prevent recurrence. Placing a violation into a corrective action program to prevent recurrence is fundamental to the NRC's ability to close out a violation in an inspection report without detailed information regarding the licensee's corrective actions. The licensee is expected to provide the NRC with a file reference evidencing that the violation has been placed in the corrective action program. This will assist the NRC should it review the particular violation as part of an NRC inspection of the effectiveness of the licensee's corrective action program. The NRC recognizes that there are violations that do not require substantial efforts to prevent recurrence. In such cases, a corrective action process that includes: (1) Restoring compliance, (2) evaluating the need for additional corrective actions to prevent recurrence, and (3) maintaining records that may be inspected at a later time, would be adequate to avoid an NOV.

3. The violation is repetitive as a result of inadequate corrective action, and was identified by the NRC.

The purpose of this exception is to emphasize the importance of effective corrective action to prevent recurrence and the importance of licensees identifying recurring issues. For the purposes of this exception, the term ''repetitive violation'' is consistent with its definition in the Enforcement Policy, provided that the previous violation is one that was described in an NRC inspection report or otherwise described in docketed information. This exception will be used in those cases where: (1) Corrective action for the previous violation had time to take effect and was deemed inadequate; or (2) corrective action for the previous violation wasn't taken in a time frame commensurate with its safety significance. An NOV will not result if, despite the violation's recurrence, the NRC found the licensee's corrective actions for the previous violation reasonable. In addition, this exception will be applied only to repetitive violations identified by the NRC so as to encourage licensee identification and correction of repetitive issues.[1]

[1] Licensee-identified, non-willful repetitive violations will be cited only if the ineffectiveness of the licensee's corrective action program is significant enough to rise to Severity Level III. Before making a decision to issue such a Severity Level III violation, consideration will be given to additional inspection effort, issuance of Demands for Information, management meetings, predecisional enforcement conferences, and outcomes of performance assessments.

4. The violation was willful and is not subject to discretion pursuant to Section VII.B.1 of the Enforcement Policy.

The purpose of this exception is to emphasize the importance of integrity and candor in carrying out licensed activities, as expressed in Section IV.C. of the Enforcement Policy. Nonetheless, certain licensee-identified willful violations (e.g., those involving the isolated acts of relatively low-level individuals, etc.) will remain eligible for treatment as NCVs, as they are under the current policy in Section VII.B.1. In addition, the NRC notes that willfulness may result in increasing the severity level of a violation; the use of this exception refers only to those situations where the significance of the willfulness does not justify an increase to Severity Level III, in which case escalated enforcement action will be considered.

In recommending a revised enforcement approach, the NRC has not lost sight of the lessons of plants that have had ineffective corrective action programs resulting in deficient performance and, in some cases, extended shutdowns. Given the lower risk significance of Severity Level IV violations, the staff's inspection efforts should be focused on the overall effectiveness of the corrective action program and not on the licensee's actions taken for each such violation. The staff intends to utilize a ''smart'' sample of NRC and licensee-identified findings in reviewing the effectiveness of corrective action programs. If such inspections identify significant violations or programmatic deficiencies in a licensee's corrective action program, broader and more in depth inspections may be carried out to understand the extent of the problem. The NRC will monitor the licensee's restoration of its corrective action program. The immediate changes necessary in the inspection program and associated training necessary to implement this approach are expected to be completed by early 1999.

The NRC recognizes that additional Enforcement Policy changes may be considered as a result of ongoing efforts to make improvements to the inspection and performance assessment processes for power reactors. In addition, the NRC is considering additional changes to the Enforcement Policy and guidance documents to address issues such as the use of the term ''regulatory significance'' in determining severity levels, and further clarifying the threshold between Severity Level IV and ''minor'' violations, which are not normally described in inspection reports.

This Enforcement Policy revision addresses only power reactor licensees

because of the scope, formality and general effectiveness of their corrective action programs, and the extent of the NRC inspection effort associated with these facilities. However, the NRC notes that it is considering the feasibility of expanding this revised enforcement approach to other categories of licensees in the future.

Since additional changes to the Policy may be necessary to address future changes to the reactor oversight process, a more risk-informed and performance-based regulatory process, and application to other categories of licensees, this approach for Severity Level IV violations involving power reactors is being implemented by adding Appendix C to the Enforcement Policy as an interim step. The staff intends to hold a public meeting to obtain views of stakeholders six months after implementation of this interim policy.

Paperwork Reduction Act

This final policy statement does not amend information collection requirements that are subject to the Paperwork Reduction Act of 1995 (44 U.S.C. 3501 et seq.). These requirements were approved by the Office of Management and Budget, approval number 3150–0136.

Public Protection Notification

If an information collection does not display a currently valid OMB control number, the NRC may not conduct or sponsor, and a person is not required to respond to, the information collection.

Small Business Regulatory Enforcement Fairness Act

In accordance with the Small Business Regulatory Enforcement Fairness Act of 1996, the NRC has determined that this action is not ''a major'' rule and has verified this determination with the Office of Information and Regulatory Affairs, Office of Management and Budget.

Accordingly, the NRC Enforcement Policy is amended by adding Appendix C as follows:

GENERAL STATEMENT OF POLICY AND PROCEDURE FOR NRC ENFORCEMENT ACTIONS

Table of Contents

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Appendix B: Supplements—Violation Examples
Appendix C: Interim Enforcement Policy for Severity Level IV Violations Involving Activities of Power Reactors

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Appendix C: Interim Enforcement Policy for Severity Level IV Violations Involving Activities of Power Reactor Licensees

The Commission is issuing this Appendix to revise its policy with respect to Severity Level IV violations at power reactors. This is being issued as an appendix to the policy and characterized as interim because the Commission expects to make additional changes to its Enforcement Policy as a result of the efforts to improve its inspection and performance assessment programs.

This Appendix revises the NRC's treatment of individual Severity Level IV violations at power reactors by: (1) Expanding the use of Non-Cited Violations (NCVs) to include Severity Level IV violations identified by the NRC; (2) providing that except under limited, defined circumstances, individual Severity Level IV violations normally will result in NCVs and not Notices of Violation (NOVs); and (3) permitting NRC closure of most Severity Level IV violations based on their having been entered into a licensee's corrective action program.

This revised enforcement approach is not intended to modify the NRC's emphasis on compliance with requirements. Severity Level IV violations will continue to be described in inspection reports as they are now, although the NRC will close these violations based on their being entered into the licensee's corrective action program rather than a complete understanding of the licensee's corrective actions. At the time a violation is closed in an inspection report, the licensee may not have completed its corrective actions or begun the process to identify the root cause and develop action to prevent recurrence. Licensee actions will be taken commensurate with the established priorities and processes of the licensee's corrective action program. The NRC inspection program will provide an assessment of the effectiveness of the corrective action program. In addition to documentation in inspection reports, violations will continue to be entered into the Plant Issues Matrix (PIM) that the NRC maintains for each facility to assist in identifying declining performance and determining repetitiveness. The revised approach will allow licensees to dispute violations described as NCVs.

Because the NRC will not normally obtain a written response from licensees describing actions taken to restore compliance and prevent recurrence of Severity Level IV violations, this revised enforcement approach places greater NRC reliance on licensee corrective action programs. Therefore, notwithstanding the normal approach of treating most Severity Level IV violations as NCVs, the NRC has identified four circumstances in which a written response to a Severity Level IV violation may be important. Any one of the following circumstances will result in consideration of an NOV requiring a formal written response from a licensee.

1. The licensee failed to restore compliance within a reasonable time after a violation was identified.

2. The licensee did not place the violation into a corrective action program to address recurrence.

3. The violation is repetitive as a result of inadequate corrective action, and was identified by the NRC.

4. The violation was willful and is not subject to discretion pursuant to Section VII.B.1 of the Enforcement Policy.

To the extent the NRC Enforcement Policy is not modified by the above, the Policy remains applicable to power reactor licensees.

Dated at Rockville, Maryland, this 3rd day of February, 1999.

For the Nuclear Regulatory Commission.

Annette Vietti-Cook,

Secretary of the Commission.

[FR Doc. 99–3093 Filed 2–8–99; 8:45 am]

BILLING CODE 7590–01–P

NUCLEAR REGULATORY COMMISSION

Sunshine Act Meeting

AGENCY HOLDING THE MEETING: Nuclear Regulatory Commission.

DATES: Weeks of February 8, 15, 22, and March 1, 1999.

PLACE: Commissioners' Conference Room, 11555 Rockville Pike, Rockville, Maryland.

STATUS: Public and Closed.

MATTERS TO BE CONSIDERED:

Week of February 8

Monday, February 8

2:00 p.m.—Briefing on HLW Program Viability Assessment (Public Meeting).

3:30 p.m.—Briefing by Executive Branch (Closed—Ex. 4 & 9b).

Tuesday, February 9

9:00 a.m.—Briefing on Fire Protection Issues (Public Meeting).

11:30 a.m.—Affirmation Session (Public Meeting) a: Final Rule—Requirements for Initial Operator Licensing Examinations.

Thursday, February 11

9:00 a.m.—Briefing on Y2K Issues (Public Meeting).

Week of February 15—Tentative

There are no meetings scheduled for the Week of February 15.

Week of February 22—Tentative

There are no meetings scheduled for the Week of February 22.

Week of March 1—Tentative

Tuesday, March 2

9:30 a.m.—Meeting with Commonwealth Edison (Public Meeting).

11:30 a.m.—Affirmation Session (Public Meeting (If needed).

Wednesday, March 3

9:00 a.m.—Briefing by Executive Branch (Closed—Ex. 4 & 9b).

*The schedule for Commission meetings is subject to change on short notice. To verify the status of meetings call (recording)—(301) 415–1292. Contact person for more information: Bill Hill, (301) 415–1661.

ADDITIONAL INFORMATION: By a vote of 5–0 on January 29, the Commission determined pursuant to U.S.C. 552b(e) and § 9.107(a) of the Commission's rules that ''Affirmation of Hydro Resources Inc.: Presiding Officer's Scheduling Orders Dated January 21, 1999 And January 25, 1999'' (PUBLIC MEETING) be held on January 29, and on less than one week's notice to the public.''

The NRC Commission Meeting Schedule can be found on the Internet at:

http://www.nrc.gov/SECY/smj/schedule.htm

This notice is distributed by mail to several hundred subscribers; if you no longer wish to receive it, or would like to be added to it, please contact the Office of the Secretary, Attn: Operations Branch, Washington, D.C. 20555 (301–415–1661). In addition, distribution of this meeting notice over the Internet system is available. If you are interested in receiving this Commission meeting schedule electronically, please send an electronic message to wmh@nrc.gov or dkw@nrc.gov.

Dated: February 5, 1999.

William M. Hill, Jr.,

Secy, Tracking Officer, Office of the Secretary.

[FR Doc. 99–3261 Filed 2–5–99; 2:50 pm]

BILLING CODE 7590–01–M

SECURITIES AND EXCHANGE COMMISSION

[Rel. No. IC–23678; File No. 812–11302]

AAL Variable Product Series Fund, Inc., et al.; Notice of Application

February 2, 1999.

AGENCY: Securities and Exchange Commission (''SEC'' or ''Commission'').

ACTION: Notice of application for an order pursuant to section 6(c) of the Investment Company Act of 1940 (''1940 Act'') granting relief from sections 9(a), 13(a), 15(a) and 15(b) of the 1940 Act and Rules 6e–2(b)(15) and 6e–3(T)(b)(15) thereunder.

SUMMARY OF APPLICATION: Applicants seek an order to permit shares of certain series of the AAL Variable Product Series Fund, Inc. that are designed to fund insurance products (''Funds'') and shares of any other investment company that is designed to fund insurance products and for which Aid Association for Lutherans or any of its affiliates may serve as investment adviser, administrator, manager, principal underwriter, or sponsor (collectively with the Funds, the ''Insurance Product Funds'') to be sold to and held by: (1) Separate accounts funding variable annuity and variable life insurance contracts (''Separate Accounts'') of both affiliated and unaffiliated life insurance companies (''Participating Insurance Companies''); and (2) qualified pension and retirement plans (''Plans'').

APPLICANTS: The AAL Variable Product Series Fund, Inc. (''Company'') and Aid Association for Lutherans (''Adviser'').

FILING DATE: The application was filed on September 11, 1998, and amended and restated on December 9, 1998.

HEARING OR NOTIFICATION OF HEARING: An order granting the application will be issued unless the Commission orders a hearing. Interested persons may request a hearing by writing to the Secretary of the SEC and serving applicants with a copy of the request, personally or by mail. Hearing requests must be received by the Commission by 5:30 p.m. on March 1, 1999, and should be accompanied by proof of service on the Applicants in the form of an affidavit or, for lawyers, a certificate of service. Hearing requests should state the nature of the writer's interest, the reason for the request, and the issues contested. Persons may request notification of the date of a hearing by writing to the Secretary of the SEC.

ADDRESSES: Secretary, Securities and Exchange Commission, 450 Fifth Street, NW., Washington DC 20549. Applicants, 125 North Superior Avenue, Appleton, Wisconsin 54911.

FOR FURTHER INFORMATION CONTACT: Elisa D. Metzger, Senior Counsel, or Susan Olson, Branch Chief, Office of Insurance Products, Division of Investment Management, at (202) 942–0670.

SUPPLEMENTARY INFORMATION: The following is a summary of the application. The complete application is available for a fee from the Public Reference Branch of the SEC, 450 Fifth Street, NW., Washington DC 20549 (tel. (202) 942–8090).

Applicant's Representations

1. The Company is a Maryland corporation and is organized under the 1940 Act as a diversified, open-end management investment company. The Company is comprised of seven series, each with its own investment objective or objectives and policies.

2. The Company may in the future create additional series and/or issue multiple classes of shares of each series.

3. The Adviser, is registered under the Investment Advisers Act of 1940 and is a non-profit, non-stock membership organization licensed to do business as a fraternal benefit society.

4. Shares of the Funds may be offered to Separate Accounts, which are either registered or unregistered under the federal securities laws, that fund variable annuity contracts or variable life insurance policies (''Contracts''). Shares of the Funds may also be offered to Plans.

Applicants' Legal Analysis

1. Section 6(c) of the 1940 Act authorizes the Commission, by order upon application, to conditionally or unconditionally exempt any person, security or transaction, or any class or classes of persons, securities or transactions from any provisions of the 1940 Act or the rules promulgated thereunder, if and to the extent that such exemption is necessary or appropriate in the public interest and consistent with the protection of investors and the purposes fairly intended by the policy and provisions of the 1940 Act.

2. In connection with the funding of scheduled premium variable life insurance contracts issued through a separate account registered under the 1940 Act as a unit investment trust, Rule 6e–2(b)(15) under the 1940 Act provides partial exemptions from sections 9(a), 13(a), 15(a) and 15(b) of the 1940 Act. The exemptions granted by Rule 6e–2(b)(15) are available, however, only where all of the assets of the separate account consist of the shares of one or more registered management investment companies which offer their shares ''*exclusively* to variable life insurance separate accounts of the life insurer, or of any affiliated life insurance company'' (emphasis added). Therefore, the relief granted by Rule 6e–2(b)(15) is not available with respect to a scheduled premium variable life insurance separate account that owns shares of a management company that also offers its shares to variable annuity and variable life insurance separate accounts of the same insurance company or any other insurance company or to trustees of a Plan. The use of a common management investment company as the underlying investment medium for a variable annuity or a variable life insurance separate account of the same insurance company or of any affiliated life insurance company is referred to herein as ''mixed funding.'' In addition, the

relief granted by Rule 6e–2(b)(15) is not available if the scheduled premium variable life insurance separate account owns shares of any underlying investment company that also offers its shares to separate accounts funding variable contracts of one or more unaffiliated life insurance companies. The use of a common management company as the underlying investment medium for separate accounts of unaffiliated life insurance companies is referred to herein as ''shared funding.'' Furthermore, the relief granted by Rule 6e–2(b)(15) is not available if the scheduled premium variable life insurance separate account owns shares of an underlying management company that also offers its shares to Plans.

3. In connection with the funding of flexible premium variable life insurance contracts issued through a separate account registered under the 1940 Act as a unit investment trust, Rule 6e–3(T)(b)(15) under the 1940 Act provides partial exemptions from sections 9(a), 13(a), 15(a) and 15(b) of the 1940 Act. These exemptions, however, are available only where all of the assets of the separate account consist of the shares of one or more registered management investment companies which offer their shares ''*exclusively* to separate accounts of the life insurer, or of any affiliated life insurance company, offering either scheduled contracts or flexible contracts, or both; or which also offer their shares to variable annuity separate accounts of the life insurer or of an affiliated life insurance company'' (emphasis added). Therefore, Rule 6e–3(T) grants the exemptions if the underlying fund engages in mixed funding, subject to certain conditions, but not if it engages in shared funding or sells its shares to Plans.

4. Applicants state that the current tax law permits the Insurance Product Funds to increase their asset base through the sale of shares to Plans. Section 817(h) of the Internal Revenue Code of 1986, as amended (the ''Code''), imposes certain diversification standards on the assets underlying the Contracts. The Code provides that such Contracts will not be treated as annuity contracts or life insurance contracts for any period (and any subsequent period) during which the investments are not adequately diversified in accordance with regulations prescribed by the Treasury Department (the ''Regulations''). Treasury Regulations provide that, to meet the diversification requirements, all of the beneficial interests in an investment company must be held by the segregated asset accounts of one or more insurance companies. The Treasury Regulations do contain certain exceptions to this requirement, however. One such exception permits shares of an investment company to be held by the trustees of a Plan without adversely affecting the ability of shares in the same investment company also to be held by the separate accounts of insurance companies in connection with their Contracts (Treas. Reg. Sec. 1.817–5(f)(3)(iii)).

5. Applicants state that the promulgation of Rules 6e–2(b)(15) and 6e–3(T)(b)(15) preceded the issuance of the Regulations. Thus, the sale of shares of the same investment company to both separate accounts and Plans could not have been envisioned at the time of the adoption of Rules 6e–2(b)(15) and 6e–3(T)(b)(15), given the then-current tax law.

6. Moreover, Applicants assert that if the Insurance Product Funds were to sell their shares only to Plans, no exemptive relief would be necessary. Applicants state that none of the relief provided for in Rules 6e–2(b)(15) and 6e–3(T)(b)(15) relates to Plans or to the ability of a registered investment company to sell its shares to Plans.

7. Section 9(a)(3) of the 1940 Act makes it unlawful for any company to serve as an investment adviser to, or principal underwriter for, any registered open-end investment company if an affiliated person of that company is subject to any disqualification specified in either Sections 9(a)(1) or 9(a)(2) of the 1940 Act. Rules 6e–2(b)(15) (i) and (ii) and 6e–3(T)(b)(15) (i) and (ii) provide partial exemptions from section 9(a) under certain circumstances, subject to limitations on mixed and shared funding. These exemptions limit the application of the eligibility restrictions to affiliated individuals or companies that directly participate in the management of the underlying fund.

8. Applicants state that the partial relief granted under Rules 6e–2(b)(15) and 6e–3(T)(b)(15) from the requirements of section 9, in effect, limits the amount of monitoring necessary to ensure compliance with Section 9 to that which is appropriate in light of the policy and purposes of Section 9. Applicants submit that Rules 6e–2 and 6e–3(T) recognize that it is not necessary for the protection of investors or for the purposes of the 1940 Act to apply the provisions of Section 9(a) to the many individuals who may be involved in an insurance company complex, but who would have no involvement in matters pertaining to investment companies funding the separate accounts. Applicants assert, therefore, that there is no regulatory purpose in denying the partial exemptions because of mixed and shared funding and sales to Plans.

9. Applicants state that Rules 6e–2(b)(15)(iii) and 6e–3(T)(b)(15)(iii) provide exemptions from the pass-through voting requirement with respect to several significant matters, assuming the limitations on mixed and shared funding are observed. More specifically, Rules 6e–2(b)(15)(iii)(A) and 6e–3(T)(b)(15)(iii)(A) provide that the insurance company may disregard the voting instructions of its contract owners with respect to the investments of an underlying investment company or any contract between the underlying investment company and its investment adviser, when required to do so by an insurance regulatory authority and subject to certain requirements. In addition, Rules 6e–2(b)(15)(iii)(B) and 6e–3(T)(b)(15)(iii)(A)(*2*) provide that the insurance company may disregard contract owners' voting instructions if the contract owners initiate any change in an underlying investment company's investment policies, principal underwriter or any investment adviser (provided that disregarding such voting instructions is reasonable and subject to the other provisions of Rules 6e–2 and 6e–3(T)).

10. Applicants assert that the offer and sale of shares of the Insurance Product Funds to Plans will not have an impact on the relief requested. Under Section 403(a) of the Employment Retirement Income Security Act (''ERISA''), shares of the Insurance Product Funds sold to Plans must be held by the trustees of the Plan. Section 403(a) also provides that the trustee(s) must have exclusive authority and discretion to manage and control the Plan with two exceptions:

(a) When the Plan expressly provides that the trustee(s) is (are) subject to the direction of a named fiduciary who is not a trustee, in which case the trustee(s) is (are) subject to proper directions made in accordance with the terms of the Plan and not contrary to ERISA; and

(b) When the authority to manage, acquire or dispose of assets of the Plan is delegated to one or more investment managers pursuant to section 402(c)(3) of ERISA.

Unless one of the two above exceptions stated in section 403(a) applies, Plan trustees have the exclusive authority and responsibility for voting proxies.

11. Where a named fiduciary to a Plan appoints an investment manager, the investment manager has the responsibility to vote the shares held unless the right to vote such shares is reserved to the trustees or the named

fiduciary. In any event, Applicants assert that ERISA does not require pass-through voting to participants in Plans. Some of the Plans, however, may provide participants with the right to give voting instructions.

12. Where a Plan provides participants with the right to give voting instructions, Applicants assert that there is no reason to believe that participants in Plans generally or those in a particular Plan, either as a single group or in combination with participants in other Plans, would vote in a manner that would disadvantage Contract owners. The purchase of shares of the Insurance Product Funds by Plans that provide voting rights to participants does not present any complications not otherwise occasioned by mixed and shared funding.

13. Applicants also maintain that no increased conflicts of interest would be presented by the granting of the requested relief. In this regard, Applicants assert that shared funding does not present any issues that do not already exist where a single insurance company is licensed to do business in several or all states. A particular state insurance regulatory body could require action that is inconsistent with the requirements of insurance regulators of other states in which the insurance company offers its policies. The fact that different insurers may be domiciled in different states does not create a significantly different or enlarged problem.

14. Applicants submit that shared funding is, in this respect, no different than the use of the same investment company as the funding vehicle for affiliated insurers, which Rules 6e–2(b)(15) and 6e–3(T)(b)(15) permit under various circumstances. Affiliated insurers may be domiciled in different states and be subject to differing state law requirements. Affiliation does not reduce the potential, if any exists, for differences in state regulatory requirements. In any event, Applicants submit that the conditions set forth in the application and included in this notice are designed to safeguard against, and provide procedures for, resolving any adverse effects that differences among state regulatory requirements may produce.

15. Applicants assert that the right of an insurance company under Rules 6e–2(b)(15) and 6e–3(T)(b)(15) to disregard contract owners' voting instructions does not raise any issues different from those raised by the authority of state insurance administrators over separate accounts. Under Rules 6e–2(b)(15) and 6e–3(T)(b)(15), an insurer can disregard contract owner voting instructions only with respect to certain specified items. Affiliation does not eliminate the potential, if any exists, for divergent judgments as to the advisability or legality of a change in investment policies, principal underwriter, or investment adviser initiated by contract owners. The potential for disagreement is limited by the requirements in Rules 6e–2 and 6e–3(T) that an insurance company's disregard of voting instructions be reasonable and based on specific good-faith determinations.

16. A particular insurer's disregard of voting instructions nevertheless could conflict with the majority of Contract owner voting instructions. The insurer's action could be different from the determination of all or some of the other insurers (including affiliated insurers) that the contract owners' voting instructions should prevail, and either could preclude a majority vote approving the change or could represent a minority view. If the insurer's judgment represents a minority position or would preclude a majority vote, the insurer may be required, at the election of the relevant Insurance Product Fund, to withdraw its Separate Account's investment in that Insurance Product Fund, and no charge or penalty would be imposed as a result of such withdrawal.

17. Applicants submit that there is no reason why the investment policies of the Insurance Product Funds would or should be materially different from what those policies would or should be if the Insurance Product Funds funded only annuity contracts or only scheduled or flexible premium life contracts. In this regard, Applicants note that each type of insurance product is designed as a long-term investment program. In addition, Applicants represent that each Insurance Product Fund will be managed to attempt to achieve the investment objective of that Insurance Product Fund and not to favor or disfavor any particular insurer or type of insurance product.

18. Furthermore, Applicants submit that no one investment strategy can be identified as appropriate to a particular insurance product or to a Plan. Each pool of variable annuity and variable life insurance contract owners is composed of individuals of diverse financial status, age, insurance and investment goals. A fund supporting even one type of insurance product must accommodate those factors in order to attract and retain purchasers.

19. Applicants note that section 817(h) of the Code imposes certain diversification standards on the underlying assets of variable annuity and variable life insurance contracts held in the portfolios of management investment companies. The Regulations specifically permit ''qualified pension or retirement plans'' and insurance company separate accounts to share the same underlying investment company. For this reason, Applicants have concluded that neither the Code, nor the Treasury Regulations, nor the revenue rulings thereunder, present any inherent conflicts of interest of Plans, variable annuity separate accounts, and variable life insurance separate accounts all invest in the same management investment company.

20. Applicants note that while there are differences in the manner in which distributions from variable annuity contracts, variable life insurance contracts and Plans are taxed, the tax consequences do not raise any conflicts of interest. When distributions are to be made, and a Separate Account or Plan is unable to net purchase payments to make the distributions, the Separate Account or the Plan will redeem shares of the Insurance Product Fund at their net asset value. A Plan will make distributions in accordance with the terms of the Plan, and the Participating Insurance Company will make distributions in accordance with the terms of the Contract.

21. With respect to voting rights, Applicants state that it is possible to provide an equitable means of giving voting rights to Contract owners and to Plans. Applicants represent that the Insurance Product Funds will inform each shareholder, including each Separate Account and each Plan, of information necessary for the shareholder meeting, including its respective share of ownership in the respective Insurance Product Fund. Each Participating Insurance Company will then solicit voting instructions in accordance with the ''pass-through'' voting requirement.

22. Applicants content that the ability of the Insurance Product Funds to sell their shares directly to Plans does not crease a ''senior security,'' as that term is defined in section 18(g) of the 1940 Act. Regardless of the rights and benefits of participants under the Plans or Contract owners under the Contracts, the Plans and the Separate Accounts have rights only with respect to their respective shares of the Insurance Product Funds. They can only redeem such shares at their net asset value. No shareholder of any of the Insurance Product Funds has any preference over any other shareholder with respect to distribution of assets or payments of dividends.

23. Applicants submit that there are no conflicts between the Contract

owners of the Separate Accounts and Plan participants with respect to the state insurance commissions' veto powers over investment objectives. State insurance commissioners have been given the veto power in recognition of the fact that insurance companies usually cannot simply redeem their separate accounts out of one fund and invest another. Generally, time-consuming complex transactions must be undertaken to accomplish such redemptions and transfers. Conversely, trustees of Plans can make the decision quickly and redeem their interest in an Insurance Product Fund and reinvest in another funding vehicle without the same regulatory impediments faced by separate accounts or, as is the case with most Plans, even hold cash pending suitable investment. Based on the foregoing, Applicants have concluded that even if there should arise issues where the interest of Contract owners and the interests of participants in Plans are in conflict, the issues can be resolved almost immediately because the trustees of Plans can, on their own, redeem the shares out of the Insurance Product Fund.

24. Applicants assert that various factors have limited the number of insurance companies that offer variable annuities and variable life insurance contracts. These factors include the costs of organizing and operating a funding medium, the lack of expertise with respect to investment management (principally with respect to stock and money market investments), and the lack of name recognition by the public of certain insurers as investment experts. In particular, some smaller life insurance companies may not find it economically feasible, or within their investment or administrative expertise, to enter the variable contract business on their own.

25. Applicants content that the use of the Insurance Product Funds as common investment vehicles for variable contracts would reduce or alleviate these concerns. Mixed and shared funding should provide several benefits to variable contract owners by eliminating a significant portion of the costs of establishing and administering separate funds. Participating Insurance Companies will benefit not only from the investment and administrative expertise of the Adviser, but also from the cost efficiencies and investment flexibility afforded by a larger pool of assets. Therefore, making the Insurance Product Funds available for mixed and shared funding will encourage more insurance companies to offer variable contracts, and accordingly should result in increased competition with respect to both variable contract design and pricing, which can be expected to result in more product variation and lower charges. Applicants also assert that the sale of shares of the Insurance Product Funds to Plans can also be expected to increase the amount of assets available for investment by the Insurance Product Funds and thus promote economies of scale and diversification.

Applicants' Conditions

Applicants Consent to the Following Conditions

1. A majority of the Board of each Insurance Product Fund shall consist of persons who are not ''interested persons'' thereof, as defined by section 2(a)(19) of the 1940 Act, and the rules thereunder and as modified by any applicable orders of the Commission, except that if this condition is not met by reason of the death, disqualification or bona fide resignation of any Board Member or Members, than the operation of this condition shall be suspended: (a) For a period of 45 days if the vacancy or vacancies may be filled by the remaining Board Members; (b) for a period of 60 days if a vote of shareholders is required to fill the vacancy or vacancies; or (c) for such longer period as the Commission may prescribe by order upon application.

2. The Board will monitor their respective Insurance Product Fund for the existence of any material irreconcilable conflict among the interests of the Contract owners of all Separate Accounts investing in the Insurance Product Funds and of the Plans participants investing in the Insurance Product Funds. The Board will determine what action, if any, shall be taken in response to such conflicts. A material irreconcilable conflict may arise for a variety of reasons, including: (a) An action by any State insurance regulatory authority; (b) a change in applicable Federal or State insurance, tax or securities laws or regulations, or a public ruling, private letter ruling, no-action or interpretive letter, or any similar action by insurance, tax or securities regulatory authorities; (c) an administrative or judicial decision in any relevant proceeding; (d) the manner in which the investments of the Insurance Product Funds are being managed; (e) a difference in voting instructions given by variable annuity Contract owners, variable life insurance Contract owners, and trustees of Plans; (f) a decision by an insurer to disregard the voting instructions of Contract owners; or (g) if applicable, a decision by a Plan to disregard the voting instructions of Plan participants.

3. Participating Insurance Companies, the Adviser, and any Plan that executes a fund participation agreement upon becoming an owner of 10 percent or more of the assets of an Insurance Product Fund (a ''Participating Plan''), will report any potential or existing conflicts of which it becomes aware to the Board of any relevant Insurance Product Fund. Participating Insurance Companies, the Adviser and the Participating Plans will be responsible for assisting the Board in carrying out its responsibilities under these conditions by providing the Board with all information reasonably necessary for the Board to consider any issues raised. This responsibility includes, but is not limited to, an obligation by each Participating Insurance Company to inform the Board whenever voting instructions of Contract owners are disregarded and, if pass-through voting is applicable, an obligation by each Participating Plan to inform the Board whenever it has determined to disregard Plan participant voting instructions. The responsibility to report such information and conflicts, and to assist the Board, will be contractual obligations of all Participating Insurance Companies investing in the Insurance Product Funds under their agreements governing participation in the Insurance Product Funds, and such agreements shall provide that these responsibilities will be carried out with a view only to the interests of the Contract owners. The responsibility to report such information and conflicts, and to assist the Board, will be contractual obligations of all Participating Plans under their agreements governing participation in the Insurance Product Funds, and such agreement will provide that their responsibilities will be carried out with a view only to the interests of Plan participants.

4. If it is determined by a majority of the Board of an Insurance Product Fund, or by a majority of the disinterested Board Members, that a material irreconcilable conflict exists, the relevant Participating Insurance Companies and Participating Plans will, at their own expense and to the extent reasonably practicable as determined by a majority of the disinterested Board Members, take whatever steps are necessary to remedy or eliminate the material irreconcilable conflict, which steps could include: (a) In the case of Participating Insurance Companies, withdrawing the assets allocable to some or all of the Separate Accounts from the Insurance Product Fund or any portfolio thereof and reinvesting such assets in a different investment medium,

including another portfolio of an Insurance Product Fund or another Insurance Product Fund, or submitting the question as to whether such segregation should be implemented to a vote of all affected Contract owners and, as appropriate, segregating the assets of any appropriate group (i.e., variable annuity Contract owners or variable life insurance Contract owners of one or more Participating Insurance Companies) that votes in favor of such segregation, or offering to the affected Contract owners the option of making such a change; (b) in the case of Participating Plans, withdrawing the assets allocable to some or all of the Plans from the Insurance Product Fund and reinvesting such assets in a different investment medium; and (c) establishing a new registered management investment company or managed Separate Account. If a material irreconcilable conflict arises because of a decision by a Participating Insurance Company to disregard Contract owner voting instructions, and that decision represents a minority position or would preclude a majority vote, then the insurer may be required, at the Insurance Product Fund's election, to withdraw the insurer's Separate Account investment in such Insurance Product Fund, and no charge or penalty will be imposed as a result of such withdrawal. If a material irreconcilable conflict arises because of a Participating Plan's decision to disregard Plan participant voting instructions, if applicable, and that decision represents a minority position or would preclude a majority vote, the Participating Plan may be required, at the Insurance Product Fund's election, to withdraw its investment in such Insurance Product Fund, and no charge or penalty will be imposed as a result of such withdrawal. The responsibility to take remedial action in the event of a determination by a Board of a material irreconcilable conflict and to bear the cost of such remedial action will be a contractual obligation of all Participating Insurance Companies and Participating Plans under their agreements governing participation in the Insurance Product Funds, and these responsibilities will be carried out with a view only to the interest of Contract owners and Plan participants.

5. For purposes of Condition 4, a majority of the disinterested Board Members of the applicable Board will determine whether or not any proposed action adequately remedies any material irreconcilable conflict, but in no event will the relevant Insurance Product Fund or the Adviser be required to establish a new funding medium for any Contract. No Participating Insurance Company shall be required by Condition 4 to establish a new funding medium for any Contract if any offer to do so has been declined by vote of a majority of the Contract owners materially and adversely affected by the material irreconcilable conflict. Further, no Participating Plan shall be required by Condition 4 to establish a new funding medium for any Participating Plan if (a) a majority of Plan participants materially and adversely affected by the irreconcilable material conflict vote to decline such offer, or (b) pursuant to governing Plan documents and applicable law, the Participating Plan makes such decision without a Plan participant vote.

6. The determination of the Board of the existence of a material irreconcilable conflict and its implications will be made known in writing promptly to all Participating Insurance Companies and Participating Plans.

7. Participating Insurance Companies will provide pass-through voting privileges to Contract owners who invest in registered Separate Accounts so long as and to the extent that the Commission continues to interpret the 1940 Act as requiring pass-through voting privileges for Contract owners. As to Contracts issued by unregistered Separate Accounts, pass-through voting privileges will be extended to participants to the extent granted by issuing insurance companies. Each Participating Insurance Company will also vote shares of the Insurance Product Funds held in its Separate Accounts for which no voting instructions from Contract owners are timely received, as well as shares of the Insurance Product Funds which the Participating Insurance Company itself owns, in the same proportion as those shares of the Insurance Product Funds for which voting instructions from contract owners are timely received. Participating Insurance Companies will be responsible for assuring that each of their registered Separate Accounts participating in the Insurance Product Funds calculates voting privileges in a manner consistent with other Participating Insurance Companies. The obligation to calculate voting privileges in a manner consistent with all other registered Separate Accounts investing in the Insurance Product Funds will be a contractual obligation of all Participating Insurance Companies under their agreements governing their participation in the Insurance Product Funds. Each Participating Plan will vote as required by applicable law and governing Plan documents.

8. All reports of potential or existing conflicts received by the Board of an Insurance Product Fund and all action by such Board with regard to determining the existence of a conflict, notifying Participating Insurance Companies and Participating Plans of a conflict, and determining whether any proposed action adequately remedies a conflict, will be properly recorded in the minutes of the meetings of such Board or other appropriate records, and such minutes or other records shall be made available to the Commission upon request.

9. Each Insurance Product Fund will notify all Participating Insurance Companies that separate disclosure in their respective Separate Account prospectuses may be appropriate to advise accounts regarding the potential risks of mixed and shared funding. Each Insurance Product Fund shall disclose in its prospectus that (a) the Insurance Product Fund is intended to be a funding vehicle for variable annuity and variable life insurance contracts offered by various insurance companies and for qualified pension and retirement plans; (b) due to differences of tax treatment and other considerations, the interests of various Contract owners participating in the Insurance Product Fund and/or the interests of Plans investing in the Insurance Product Fund may at some time be in conflict; and (c) the Board of such Fund will monitor events in order to identify the existence of any material irreconcilable conflicts and to determine what action, if any, should be taken in response to any such conflict.

10. Each Insurance Product Fund will comply with all provisions of the 1940 Act requiring voting by shareholders (which, for these purposes, will be the persons having a voting interest in the shares of the Insurance Product Funds), and, in particular, the Insurance Product Funds will either provide for annual shareholder meetings (except insofar as the Commission may interpret section 16 of the 1940 Act not to require such meetings) or comply with section 16(c) of the 1940 Act, although the Insurance Product Funds are not the type of trust described in section 16(c) of the 1940 Act, as well as with section 16(a) of the 1940 Act and, if and when applicable, section 16(b) of the 1940 Act. Further, each Insurance Product Fund will act in accordance with the Commission's interpretation of the requirements of section 16(a) with respect to periodic elections of Board Members and with whatever rules the Commission may promulgate with respect thereto.

11. If and to the extent Rules 6e–2 or 6e–3(T) under the 1940 Act is amended, or proposed Rule 6e–3 under the 1940

Act is adopted, to provide exemptive relief from any provision of the 1940 Act or the rules promulgated thereunder, with respect to mixed or shared funding on terms and conditions materially different from any exemptions granted in the order requested in the application, then the Insurance Product Funds and/or Participating Insurance Companies and Participating Plans, as appropriate, shall take such steps as may be necessary to comply with such Rules 6e–2 and 6e–3(T), as amended, or proposed Rule 6e–3, as adopted, to the extent that such Rules are applicable.

12. The Participating Insurance Companies and Participating Plans and/or the Adviser, at least annually, will submit to the Board such reports, materials or data as the Board may reasonably request so that the Board may fully carry out obligations imposed upon it by the conditions contained in the application. Such reports, materials and data will be submitted more frequently if deemed appropriate by the Board. The obligations of the Participating Insurance Companies and Participating Plans to provide these reports, materials and data to the Board, when the Board so reasonably requests, shall be a contractual obligation of all Participating Insurance Companies and Participating Plans under their agreements governing participation in the Insurance Product Funds.

13. If a Plan should ever become a holder of ten percent or more of the assets of an Insurance Product Fund, such Plan will execute a participation agreement with the Insurance Product Fund that includes the conditions set forth herein to the extent applicable. A Plan will execute an application containing an acknowledgment of this condition upon such Plan's initial purchase of the shares of any Insurance Product Fund.

Conclusion

For the reasons summarized above, Applicants submit that the exemptive relief requested is necessary and appropriate in the public interest and consistent with the protection of investors and the purposes fairly intended by the policy and provisions of the 1940 Act.

For the Commission, by the Division of Investment Management, pursuant to delegated authority.

Margaret H. McFarland,

Deputy Secretary.

[FR Doc. 99–3102 Filed 2–8–99; 8:45 am]

BILLING CODE 8010–01–M

SECURITIES AND EXCHANGE COMMISSION

[Rel. No. IC–23677; File No. 812–11366]

Endeavor Series Trust, et al.; Notice of Application

February 2, 1999.

AGENCY: Securities and Exchange Commission (''SEC'' or ''Commission'').

ACTION: Notice of application for an order under section 6(c) of the Investment Company Act of 1940 (''Act'') for exemptions from the provisions of sections 9(a), 13(a), 15(a) and 15(b) of the Act, and Rules 6e–2(b)(15) and 6e–3(T)(b)(15) thereunder.

SUMMARY OF APPLICATION: Applicants seek an order to permit shares of any current or future series of the Trust and shares of any other investment company that is designed to fund insurance products or to serve as an investment vehicle for qualified pension and retirement plans and for which Endeavor or any of its affiliates may in the future serve as investment adviser, administrator, manager, principal underwriter or sponsor (the Trust and such other investment companies are hereinafter referred to collectively as the ''Funds'') to be sold to and held by (i) variable annuity and variable life insurance company separate accounts of both affiliated and unaffiliated life insurance companies (''Participating Insurance Companies'') and (ii) qualified pension and retirement plans outside the separate account context (''Plans'').

APPLICANTS: Endeavor Series Trust (''Trust'') and Endeavor Management Co. (''Endeavor'' or ''Manager'').

FILING DATE: The application was filed on October 20, 1998, and amended on December 21, 1998.

HEARING OR NOTIFICATION OF HEARING: An order granting the application will be issued unless the SEC orders a hearing. Interested persons may request a hearing by writing to the Secretary of the SEC and serving Applicants with a copy of the request, personally or by mail. Hearing requests must be received by the SEC by 5:30 p.m. on March 1, 1999, and accompanied by proof of service on Applicants in the form of an affidavit or, for lawyers, a certificate of service. Hearing requests should state the nature of the writer's interest, the reason for the request, and the issues contested. Persons who wish to be notified of a hearing may request notification by writing to the Secretary of the SEC.

ADDRESSES: Secretary, SEC, 450 Fifth Street, NW, Washington, DC 20549. Applicants, c/o Vincent J. McGuinness, Jr., President, Endeavor Management Co., 2101 East Coast Highway, Suite 300, Corona del Mar, California 92625.

FOR FURTHER INFORMATION CONTACT: Elisa D. Metzger, Senior Counsel, or Susan M. Olson, Branch Chief, Division of Investment Management, Office of Insurance Products, at (202) 942–0670.

SUPPLEMENTARY INFORMATION: The following is a summary of the application. The complete application may be obtained for a fee from the Public Reference Branch of the SEC, 450 Fifth Street, NW, Washington, DC 20549 (tel. (202) 942–8090).

Applicants' Representations

1. The Trust was organized on November 18, 1988 as a Massachusetts business trust and is registered as an open-end management investment company with the SEC. The Trust consists of multiple, separately managed investment portfolios (''Portfolios'') and may in the future issue shares of additional Portfolios.

2. Endeavor is registered under the Investment Advisers Act of 1940. Endeavor serves as Manager of the Trust. The Manager is responsible for providing investment management and administrative services to the Trust and in the exercise of such responsibility selects other affiliated and unaffiliated registered investment advisers (''Advisers'') for each of the Portfolios and monitors the Advisers' investment programs and results, reviews brokerage matters, oversees compliance matters and supervises the provision of services by third parties such as the Trust's custodian. The Manager has entered into or will enter into investment advisory agreements with the Advisers that will be primarily responsible for the day-to-day investment programs of each Portfolio. Vincent J. McGuinness, a trustee of the Trust, together with his family members and trusts for the benefit of his family members, owns all of Endeavor's outstanding common stock.

3. The Funds (including the Trust) propose to offer shares of one or more of their series to insurance company separate accounts that fund variable annuity and variable life insurance contracts (''Contracts'') established by Participating Insurance Companies. These separate accounts may be registered as investment companies under the Act or exempt from registration pursuant to Section 3(c)(l). Each Participating Insurance Company will enter into a fund participation agreement with the Funds in which the Participating Insurance Company

invests. Shares of the Trust are currently offered to variable annuity separate accounts established by PFL Life Insurance Company and certain of its affiliates.

4. The Funds also intend to offer shares of each series directly to Plans outside of the separate account context. The Plans may choose from one of several series of any of the Funds as the sole investment under the Plan or as one of several investments. Plan participants may or may not be given the right to select among Funds, depending on the Plans. Plan participants include not only those participants of qualified pension or retirement plans as set forth in Treasury Regulation § 1.817–5(f)(3)(iii) and Revenue Ruling 94–62, but also include the holders of annuity contracts described in sections 403(b) of the Internal Revenue Code of 1986, as amended (''Code''), including section 403(b)(7); holders of individual retirement accounts described in section 408(b) of the Code; and holders of any other trust, account, contract or annuity that is determined to be within the scope of Regulation § 1.817–5(f)(3)(iii).

Applicants' Legal Analysis

1. In connection with the funding of scheduled premium variable life insurance contracts issued through a separate account registered under the Act as a unit investment trust (''UIT''), Rule 6e–2(b)(15) provides partial exemptions from sections 9(a), 13(a), 15(a) and 15(b) of the Act. The relief provided by Rule 6e–2 is available to a separate account's investment adviser, principal underwriter, and sponsor or depositor. The exemptions granted by Rule 6e–2(b)(15) are available only where the management investment company underlying the UIT offers its shares ''exclusively to variable life insurance separate accounts of the life insurer, or of any affiliated life insurance company.'' The use of a common management investment company as the underlying investment medium for both variable annuity and variable life insurance separate accounts of a single insurance company (or of two or more affiliated insurance companies) is referred to as ''mixed funding.'' The use of a common management investment company as the underlying investment medium for variable annuity and variable life insurance separate accounts of unaffiliated insurance companies is referred to as ''shared funding.'' ''Mixed and shared funding'' denotes the use of a common management investment company to fund the variable annuity and variable life insurance separate accounts of affiliated and unaffiliated insurance companies. The relief granted by Rule 6e–2(b)(15) is not available with respect to a scheduled premium variable life insurance separate account that owns shares of an underlying fund that offers its shares to variable annuity and variable life insurance separate accounts of the same company or of any other affiliated or unaffiliated life insurance company. Therefore, Rule 6e–2(b)(15) precludes mixed funding as well as shared funding.

2. Applicants state that because the relief under Rule 6e–2(b)(15) is available only where shares are offered exclusively to separate accounts of insurance companies, additional exemptive relief is necessary if shares of the Funds also are to be sold to Plans.

3. In connection with flexible premium variable life insurance contracts issued through a separate account registered under the Act as a UIT, Rule 6e–3(T)(b)(15) provides partial exemptions from sections 9(a), 13(a), 15(a) and 15(b) of the Act. The exemptions granted to a separate account by Rule 6e–3(T)(b)(15) are available only where all of the assets of the separate account consist of the shares of one or more registered management investment companies which offer their shares ''exclusively to separate accounts of the life insurer, or of any affiliated life insurance company, offering either scheduled or flexible contracts, or both; or which also offer their shares to variable annuity separate accounts of the life insurer or of an affiliated life insurance company.'' Thus, Rule 6e–3(T) permits mixed funding, but does not permit shared funding.

4. Applicants state that because the relief under Rule 6e–3(T) is available only where shares are offered exclusively to separate accounts, additional relief is necessary if shares of the Funds also are to be sold to Plans. Applicants assert that the relief granted by paragraph (b)(15) of Rules 6e–2 and 6e–3(T) should not be affected by the proposed sale of Fund shares to Plans because such sales may allow for the development of larger pools of assets, resulting in the potential for greater investment and diversification opportunities and for decreased expenses at higher asset levels resulting in greater cost efficiencies.

5. Applicants state that changes in the tax law have created the opportunity for the Funds to increase their asset base through the sale of Fund shares to the Plans. Applicants state that section 817(h) of the Code, imposes certain diversification requirements on the underlying assets of the Contracts held in the Funds. The Code provides that such Contracts shall not be treated as an annuity contract or life insurance contract for any period in which the underlying assets are not, in accordance with regulations prescribed by the Treasury Department, adequately diversified. On March 2, 1989, the Treasury Department issued regulations which established diversification requirements for the investment portfolios underlying variable contracts. Treas. Reg. § 1.817–5 (1989). The regulations provide that, to meet the diversification requirements, all of the beneficial interests in the investment company must be held by the segregated asset accounts of one or more insurance companies. The regulations do, however, contain certain exceptions to this requirement, one of which allows shares in an investment company to be held by a qualified pension or retirement plan without adversely affecting the ability of shares in the same investment company to also be held by the separate accounts of insurance companies in connection with their variable contracts. Treas. Reg. § 1.817–5(f)(3)(iii).

6. Applicants state that the promulgation of Rules 6e–2 and 6e–3(T) under the Act preceded the issuance of these Treasury regulations. Applicants assert that, given the then current tax law, the sale of shares of the same investment company to both separate accounts and Plans could not have been envisioned at the time of the adoption of Rules 6e–2(b)(15) and 6e–3(T)(b)(15).

7. Applicants therefore request relief from sections 9(a), 13(a), 15(a) and 15(b) of the Act, and Rules 6e–2(b)(15) and 6e–3(T)(b)(15) thereunder, to the extent necessary to permit shares of the Funds to be offered and sold in connection with both mixed and shared funding, and to be sold directly to Plans. Relief is requested for a class or classes of persons and transactions consisting of Participating Insurance Companies and their scheduled premium variable life insurance separate accounts and flexible premium variable life insurance accounts (and, to the extent necessary, any investment adviser, principal underwriter and depositor of such separate accounts) investing in any of the Funds.

Disqualification

8. Section 9(a) of the Act provides that it is unlawful for any company to serve as an investment adviser to or principal underwriter for any registered open-end investment company if an affiliated person of that company is subject to a disqualification enumerated in section 9(a)(1) or (2). Rules 6e–2(b)(15) and 6e–3(T)(b)(15) provide exemptions from

section 9(a) under certain circumstances, subject to the limitations on mixed and shared funding. The relief provided by Rules 6e–2(b)(15)(i) and 6e–3(T)(b)(15)(i) permits a person disqualified under section 9(a) to serve as an officer, director or employee of the life insurer, or any of its affiliates, so long as that person does not participate directly in the management or administration of the underlying fund. The relief provided by Rules 6e–2)(b)(15)(ii) and 6e–3(T)(b)(15)(ii) permits the life insurer to serve as the underlying fund's investment adviser or principal underwriter, provided that none of the insurer's personnel who are ineligible pursuant to section 9(a) participate in the management or administration of the fund.

9. Applicants state that the partial relief from section 9(a) found in Rules 6e–2(b)(15) and 6e–3(T)(b)(15), in effect, limits the amount of monitoring necessary to ensure compliance with section 9 to that which is appropriate in light of the policy and purposes of section 9. Applicants state that those Rules recognize that it is not necessary for the protection of investors or the purposes fairly intended by the policy and provisions of the Act to apply the provisions of section 9(a) to the many individuals employed by the Participating Insurance Companies, most of whom will have no involvement in matters pertaining to investment companies within that organization. Applicants note that the Participating Insurance Companies are not expected to play any role in the management or administration of the Funds. Therefore, Applicants assert, applying the restrictions of section 9(a) serves no regulatory purpose. Applicants state that the relief requested should not be affected by the proposed sale of shares of the Funds to the Plans because the Plans are not investment companies and are not, therefore, subject to section 9(a).

Pass-Through Voting

10. Rules 6e–2(b)(15)(iii) and 6e–3(T)(b)(15)(iii) under the Act assume the existence of a pass-through voting requirement with respect to management investment company shares held by a separate account. The application states that the Participating Insurance Companies will provide pass-through voting privileges to all Contract owners so long as the Commission interprets the Act to require such privileges.

11. Rules 6e–2(b)(15)(iii) and 6e–3(T)(b)(15)(iii) under the Act provide exemptions from the pass-through voting requirement with respect to several significant matters, assuming observance of the limitations on mixed and shared funding imposed by the Act and the rules thereunder. Rules 6e–2(b)(15)(iii)(A) and 6e–3(T)(b)(15)(iii)(A) provide that the insurance company may disregard the voting instructions of its Contract owners with respect to the investments of an underlying fund, or any contract between a fund and its investment adviser, when required to do so by an insurance regulatory authority. Rules 6e–2(b)(15)(iii)(B) and 6e–3(T)(b)(15)(iii)(B) provide that the insurance company may disregard voting instructions of its Contract owners if the Contract owners initiate any change in the investment company's investment policies, principal underwriter, or any investment adviser, provided that disregarding such voting instructions is reasonable and subject to the other provisions of paragraphs (b)(5)(ii) and (b)(7)(ii)(B) and (C) of each Rule.

12. Applicants further state that shares of the Funds sold to Plans will be held by the trustees of such Plans as required by section 403(a) of ERISA. Section 403(a) also provides that the trustees must have exclusive authority and discretion to manage and control the Plan with two exceptions: (a) when the Plan expressly provides that the trustees are subject to the direction of a named fiduciary who is not a trustee, in which case the trustees are subject to proper directions made in accordance with the terms of the Plan and not contrary to ERISA; and (b) when the authority to manage, acquire or dispose of assets of the Plan is delegated to one or more investment managers pursuant to section 402(c)(3) of ERISA. Unless one of the two exceptions stated in Section 403(a) applies, Plan trustees have the exclusive authority and responsibility for voting proxies. Where a named fiduciary appoints an investment manager, the investment manager has the responsibility to vote the shares held unless the right to vote such shares is reserved to the trustees or to the named fiduciary. In any event, there is no pass-through voting to the participants in such Plans. Accordingly, Applicants note that, unlike the case with insurance company separate accounts, the issue of the resolution of irreconcilable material conflicts with respect to voting is not present with Plans because the Plans are not entitled to pass-through voting privileges. Applicants further assert that investments in the Funds by Plans will not create any of the voting complications occasioned by mixed and shared funding because Plan investor voting rights cannot be frustrated by veto rights of insurers or state regulators.

13. Applicants state that some Plans may provide participants with the right to give voting instructions. Applicants submit that there is no reason to believe that participants in Plans generally, or those in a particular Plan, either as a single group or in combination with other Plans, would vote in a manner that would disadvantage Contract owners. Accordingly, Applicants assert that the purchase of Fund shares by Plans that provide voting rights to participants does not present any complications not otherwise occasioned by mixed and shared funding.

Conflicts of Interest

14. Applicants state that no increased conflicts of interest would be present by the granting of the requested relief. Applicants assert that shared funding does not present any issues that do not already exist where a single insurance company is licensed to do business in several states. Applicants note that where different Participating Insurance Companies are domiciled in different states, it is possible that the state insurance regulatory body in a state in which one Participating Insurance Company is domiciled could require action that is inconsistent with the requirements of insurance regulators in one or more other states in which other Participating Insurance Companies are domiciled. Applicants submit that this possibility is no different or greater than exists where a single insurer and its affiliates offer their insurance products in several states.

15. Applicants further submit that affiliation does not reduce the potential for differences in state regulatory requirements. In any event, the conditions (adapted from the conditions included in Rule 6e–3(T)(b)(15) discussed below) are designed to safeguard against any adverse effects that these differences may produce. If a particular state insurance regulator's decision conflicts with the majority of other state regulators, the affected insurer may be required to withdraw its separate account's investment in the relevant Funds.

16. Applicants also argue that affiliation does not eliminate the potential, if any exists, for divergent judgments as to when a Participating Insurance Company could disregard Contract owner voting instructions. Potential disagreement is limited by the requirement that the Participating Insurance Company's disregard of voting instructions be both reasonable and based on specified good faith determinations. However, if a

Participating Insurance Company's decision to disregard Contract owner instructions represents a minority position or would preclude a majority vote approving a particular change, such Participating Insurance Company may be required, at the election of the relevant Fund, to withdraw its separate account's investment in that Fund. No charge or penalty will be imposed as a result of such a withdrawal.

17. Applicants submit that there is no reason why the investment policies of a Fund with mixed funding would, or should, be materially different from what those policies would, or should, be if such investment company or series thereof funded only variable annuity or variable life insurance contracts. Applicants therefore argue that there is no reason to believe that conflicts of interest would result from mixed funding. Moreover, Applicants represent that the funds will not be managed to favor or disfavor any particular insurer or type of Contract.

18. Section 817(h) of the Code imposes certain diversification requirements on the underlying assets of variable annuity and variable life insurance contracts held in the portfolios of management investment companies. Treasury Regulation § 1.817–5(f)(3)(iii), which established diversification requirements for such portfolios, specifically permits ''qualified pension or retirement plans'' and separate accounts to share the same underlying management investment company. Therefore, Applicants have concluded that neither the Code, the Treasury regulations, nor the revenue rulings thereunder present any inherent conflicts of interest if Plans, variable annuity and variable life insurance separate accounts all invest in the same management investment company.

19. Applicants note that while there are differences in the manner in which distributions are taxed for variable annuity contracts, variable life insurance contracts and Plans, Applicants states that these tax consequences do not raise any conflicts of interest. When distributions are to be made, and the separate account or the Plan is unable to net purchase payments to make the distributions, the separate account or the Plan will redeem shares of the Funds at their respective net asset values. The Plan will then make distributions in accordance with the terms of the Plan. The life insurance company will make distributions in accordance with the terms of the variable contract.

20. Applicants state that they do not see any greater potential for irreconcilable material conflicts arising between the interests of participants under the Plans and owners of the Contracts issued by the separate accounts of Participating Insurance Companies from possible future changes in the federal tax laws than that which already exists between variable annuity contract owners and variable life insurance contract owners.

21. With respect to voting rights, Applicants state that it is possible to provide an equitable means of giving such voting rights to Contract owners and to Plans. Applicants represent that a Fund will inform each shareholder, including each separate account and Plan, of information necessary for the shareholder meeting, including their respective share ownership in the Fund. A Participating Insurance Company will then solicit instructions in accordance with the ''pass-through'' voting requirements of Rules 6e–2 and 6e–3(T).

22. Applicants argue that the ability of the Funds to sell their respective shares directly to Plans does not create a ''senior security,'' as such term is defined under Section 18(g) of the Act, with respect to any Contract owner as opposed to a participant under a Plan. Regardless of the rights and benefits of participants and Contract owners under the respective Plans and Contracts, the Plans and the separate accounts have rights only with respect to their shares of the Funds. Such shares may be redeemed only at net asset value. No shareholder of any of the Funds has any preference over any other shareholder with respect to distributions of assets or payment of dividends.

23. Applicants state that there are no conflicts of interest between Contract owners and participants under the Plans with respect to the state insurance commissioners' veto powers over investment objectives. The state insurance commissioners have been given the veto power to prevent insurance companies indiscriminately redeeming their separate accounts out of one fund and investing those monies in another fund. Generally, to accomplish such redemptions and transfers, complex and time consuming transactions must be undertaken. Conversely, trustees of Plans or the participants in participant-directed Plans can make the decision quickly and implement redemption of shares from a Fund and reinvest the monies in another funding vehicle without the same regulatory impediments or, as is the case with most Plans, even hold cash pending a suitable investment. Based on the foregoing, Applicants represent that even should there arise issues where the interests of Contract owners and the interests of Plans and Plan participants conflict, the issues can be almost immediately resolved in that trustees of the Plans can, independently, redeem shares out of the Funds.

24. Applicants state that various factors have kept certain insurance companies from offering variable annuity and variable life insurance contracts. According to Applicants, these factors include: the cost of organizing and operating an investment funding medium; the lack of expertise with respect to investment managers (principally with respect to stock and money market investments); and the lack of public name recognition as investment experts. Specifically, Applicants state that smaller life insurance companies may not find it economically feasible, or within their investment or administrative expertise, to enter the Contract business on their own. Applicants argue the use of Funds as common investment media for the Contracts would ease these concerns. Participating Insurance Companies would benefit not only from the investment and administrative expertise of Endeavor and the Advisers, but also from the cost efficiencies and investment flexibility afforded by a large pool of funds. Applicants state that making the Funds available for mixed and shared funding may encourage more insurance companies to offer variable contracts such as the Contracts, which may then increase competition with respect to both the design and the pricing of variable contracts. Applicants submit that this can be expected to result in greater product variation and lower charges. Thus, Applicants argue that Contract owners would benefit because mixed and shared funding will eliminate a significant portion of the costs of establishing and administering separate funds. Moreover, Applicants assert that sales of shares of the Funds to Plans should increase the amount of assets available for investment by such Funds. This should, in turn promote economies of scale, permit increased safety of investments through greater diversification, and make the addition of new portfolio more feasible.

25. Applicants state that, regardless of the types of Fund shareholders, Endeavor is legally obligated to manage the Funds in accordance with each Fund's investment objectives, policies and restrictions as well as any guidelines established by the relevant Board of Directors or Trustees of the Funds. Applicants assert that Endeavor works with a pool of money without consideration for the identity of shareholders, and, thus, manages the Funds in the same manner as any other mutual fund.

26. Applicants believe that there is no significant legal impediment to permitting mixed and shared funding.

Applicants' Conditions

Applicants have consented to the following conditions if the order requested in the application is granted:

1. A majority of the Trustees or Board of Directors (each, a ''Board'') of each Fund will consist of persons who are not ''interested persons'' thereof, as defined by section 2(a)(19) of the Act and the Rules thereunder and as modified by any applicable orders of the Commission, except that if this condition is not met by reason of death, disqualification, or bona fide resignation of any trustee(s) or director(s), then the operation of this condition shall be suspended: (a) For a period of 45 days if the vacancy or vacancies may be filled by the Board; (b) for a period of 60 days if a vote of shareholders is required to fill the vacancy or vacancies; or (c) for such longer period as the SEC may prescribe by order upon application.

2. The Boards will monitor their respective Funds for the existence of any irreconcilable material conflict between the interests of Contract owners of all separate accounts and of Plan Participants and Plans investing in the Funds, and determine what action, if any, should be taken in response to such conflicts. An irreconcilable material conflict may arise for a variety of reasons, which may include: (a) An action by any state insurance regulatory authority; (b) a change in applicable federal or state insurance, tax, or securities laws or regulations, or a public ruling, private letter ruling, no-action or interpretive letter or any similar action by insurance, tax, or securities regulatory authorities; (c) an administrative or judicial decision in any relevant proceeding; (d) the manner in which the investments of the Funds are being managed; (e) a difference in voting instructions given by variable annuity and variable life insurance Contract owners or trustees of Eligible Plans; (f) a decision by a Participating Insurance Company to disregard the voting instructions of Contract owners; and (g) if applicable, a decision by a Plan to disregard the voting instructions of Plan participants.

3. The Manager, Advisers (or any other investment adviser of a Fund), any Participating Insurance Company and any Plan that executes a fund participation agreement upon becoming an owner of 10% or more of the issued and outstanding shares of a Fund (such Plans referred to hereafter as ''Participating Plans'') will report any potential or existing conflicts to the Board of any relevant fund. The Manager, Advisers (or any other investment adviser of a Fund), Participating Insurance Companies and Participating Plans will be responsible for assisting the appropriate Board in carrying out its responsibilities under these conditions by providing the Board with all information reasonably necessary for the Board to consider any issues raised. This includes, but it not limited to, an obligation by a Participating Insurance Company to inform the Board whenever it has determined to disregard Contract owner voting instructions and, if pass-through voting is applicable, an obligation by a Participating Plan to inform the Board whenever it has determined to disregard Plan participant voting instructions. The responsibility to report such information and conflicts, and to assist the Boards, will be contractual obligations of all Participating Insurance Companies and Participating Plans investing in Funds under their agreements governing participation in the Funds, and such agreements shall provide that these responsibilities will be carried out with a view only to the interests of Contract owners and if applicable, Plan participants.

4. If a majority of the Board of a Fund, or a majority of its disinterested trustees or directors, determine that an irreconcilable material conflict exists, the relevant Participating Insurance Companies and Participating Plans, at their expense and to the extent reasonably practical (as determined by a majority of the disinterested trustees or directors), will take whatever steps are necessary to remedy or eliminate the irreconcilable material conflict. Such steps could include: (a) Withdrawing the assets allocable to some or all of the separate accounts from the Fund or any series and reinvesting such assets in a different investment medium, which may include another series of a Fund or another Fund; (b) submitting the question of whether such segregation should be implemented to a vote of all affected Contract owners and, as appropriate, segregating the assets of any appropriate group (i.e., variable annuity or variable life insurance Contract owners of one or more Participating Insurance Companies) that votes in favor of such segregation, or offering to the affected Contract owners the option of making such a change; and (c) establishing a new registered management investment company or managed separate account. If an irreconcilable material conflict arises because of a decision by a Participating Insurance Company to disregard Contract owner voting instructions and that decision represents a minority position or would preclude a majority vote, the Participating Insurance Company may be required, at the election of the Fund, to withdraw its separate account's investment in such Fund, and no charge or penalty will be imposed as a result of such withdrawal. If an irreconcilable material conflict arises because of a Participating Plan's decision to disregard Plan participant voting instructions, if applicable, and that decision represents a minority position or would preclude a majority vote, the Participating Plan may be required, at the election of the Fund, to withdraw its investment in such Fund, and no charge or penalty will be imposed as a result of such withdrawal. To the extent permitted by applicable law, the responsibility of taking remedial action in the event of a Board determination of an irreconcilable material conflict and bearing the cost of such remedial action will be a contractual obligation of all Participating Insurance Companies and Participating Plans under their agreements governing participation in the Funds, and these responsibilities will be carried out with a view only to the interests of Contract owners and Plans participants, as applicable.

For purposes of this Condition 4, a majority of the disinterested members of the applicable Board will determine whether or not any proposed action adequately remedies any irreconcilable material conflict, but in no event will a Fund, Manager, Advisers (or any other investment adviser of the Funds) be required to establish a new funding medium for any Contract. No Participating Insurance Company shall be required by this Condition 4 to establish a new funding medium for any Contract if a majority of Contract owners materially affected by the irreconcilable material conflict, vote to decline such offer. No Participating Plan shall be required by this Condition 4 to establish a new funding medium for such Plan if (a) a majority of Plan participants materially and adversely affected by the irreconcilable material conflict vote to decline such offer, or (b) pursuant to governing plan documents and applicable law, the Participating Plan makes such decision without Plan participant vote.

5. The Manager, Advisers, all Participating Insurance Companies and Participating Plans will be promptly informed in writing of any Board's determination that an irreconcilable material conflict exists, and its implications.

6. Participating Insurance Companies will provide pass-through voting privileges to all Contract owners so long as the SEC interprets the Act to require pass-through voting privileges for Contract owners. Accordingly, the Participating Insurance Companies will vote shares of a Fund held in their separate accounts in a manner consistent with voting instructions received from Contract owners. Participating Insurance Companies will be responsible for assuring that each of their separate accounts calculates voting privileges in a manner consistent with all other Participating Insurance Companies. The obligation to calculate voting privileges in a manner consistent with all other separate accounts investing in the Fund will be a contractual obligation of all Participating Insurance Companies under the agreements governing participation in the Fund. Each Participating Insurance Company will vote shares for which it has not received voting instructions as well as shares attributable to it in the same proportion as it votes shares for which it has received instructions. Each Participating Plan will vote as required by applicable law and governing plan documents.

7. All reports of potential or existing conflicts of interest received by a Board, and all Board action with regard to determining the existence of a conflict, notifying the Manager, Advisers, Participating Insurance Companies and Participating Plans of a conflict, and determining whether any proposed action adequately remedies a conflict, will be properly recorded in the minutes of the appropriate Board or other appropriate records, and such minutes or other records shall be made available to the Commission upon request.

8. Each Fund will notify all Participating Insurance Companies that separate account prospectus disclosure regarding potential risks of mixed and shared funding may be appropriate. Each Fund will disclose in its prospectus that: (A) Shares of the Fund may be offered to insurance company separate accounts of both annuity and life insurance variable contracts, and to Plans; (b) due to differences of tax treatment and other considerations, the interests of various Contract owners participating in the Fund and the interests of Plans investing in the Fund may conflict; and (c) the Board will monitor events in order to identify the existence of any material conflicts of interest and to determine what action, if any, should be taken in response to any such conflict.

9. Each Fund will comply with all the provisions of the Act requiring voting by shareholders (which, for these purposes, shall be the persons having a voting interest in the shares of the Funds) and, in particular, each such Fund will either provide for annual meetings (except to the extent that the SEC may interpret section 16 of the Act not to require such meetings) or comply with section 16(c) of the Act (although the Funds are not within the trusts described in section 16(c) of the Act) as well as section 16(a) and, if applicable, section 16(b) of the Act. Further, each Fund will act in accordance with the SEC's interpretation of the requirements of section 16(a) with respect to periodic elections of directors (or trustees) and with whatever rules the SEC may promulgate with respect thereto.

10. If and to the extent that Rules 6e–2 and 6e–3(T) are amended (or if Rule 6e–3) under the Act is adopted) to provide exemptive relief from any provisions of the Act or the rules promulgated thereunder, with respect to mixed and shared funding on terms and conditions materially different from any exemptions granted in the order requested by Applicants, then the Funds, the Participating Insurance Companies and Participating Plans, as appropriate, shall take such steps as may be necessary to comply with Rules 6e–2 and 6e–3(T), as amended, and Rules 6e–3, as adopted, to the extent applicable.

11. No less than annually, the Manager, Advisers (or any other investment adviser of a Fund), the Participating Insurance Companies and Participating Plans shall submit to the Boards such reports, materials, or data as such Boards may reasonably request so that the Boards may carry out all the obligations imposed upon them by the conditions contained in the application. Such reports, materials and data shall be submitted more frequently if deemed appropriate by the applicable Boards. The obligations of the Participating Insurance Companies and Participating Plans to provide these reports, materials and data to the Boards shall be a contractual obligation of all Participating Insurance Companies and Participating Plans under the agreements governing their participation in the Funds.

12. If a Plan or Plan participant shareholder should become an owner of 10% or more of the issued and outstanding shares of a Fund, such Plan will execute a participation agreement with such Fund including the conditions set forth herein to the extent applicable. A Plan or Plan participant shareholder will execute an application containing an acknowledgment of this condition at the time of its initial purchase of shares of the Fund.

Conclusion

For the reasons set forth above, Applicants represent that the exemptions requested are necessary and appropriate in the public interest and consistent with the protection of investors and purposes fairly intended by the policy and provisions of the Act.

For the SEC, by the Division of Investment Management, pursuant to delegated authority.

Margaret H. McFarland,

Deputy Secretary.

[FR Doc. 99–3101 Filed 2–8–99; 8:45 am]

BILLING CODE 8010–01–M

SECURITIES AND EXCHANGE COMMISSION

[Release No. IC–23680; 812–11356]

Robertson Stephens Investment Trust; Notice of Application

February 4, 1999.

AGENCY: Securities and Exchange Commission (''SEC'').

ACTION: Notice of application for an order under section 6(c) of the Investment Company Act of 1940 (the ''Act'') for relief from section 2(a)(19) of the Act.

SUMMARY OF APPLICATION: Applicant, a registered investment company, requests an order under section 6(c) of the Act declaring that two of its trustees, each of whom is affiliated with a registered broker-dealer, will not be deemed ''interested persons'' of applicant until June 1, 1999.

FILING DATE: The application was filed on October 15, 1998. Applicant has agreed to file an amendment during the notice period, the substance of which is reflected in this notice.

HEARING OR NOTIFICATION OF HEARING: An order granting the application will be issued unless the SEC orders a hearing. Interested persons may request a hearing by writing to the SEC's Secretary and serving applicant with a copy of the request, personally or by mail. Hearing requests should be received by the SEC by 5:30 p.m. on February 24, 1999, and should be accompanied by proof of service on applicant in the form of an affidavit, or, for lawyers, a certificate of service. Hearing requests should state the nature of the writer's interest, the reason for the request, and the issues contested. Persons who wish to be notified of a hearing may request notification by writing to the SEC's Secretary.

ADDRESSES: Secretary, SEC, 450 Fifth Street, NW., Washington, DC 20549. Applicant: Andrew P. Pilara, Jr., President, Robertson Stephens Investment Trust, 555 California Street, San Francisco, California 94104.

FOR FURTHER INFORMATION CONTACT: Timothy R. Kane, Senior Counsel, at (202) 942–0615, or Mary Kay Frech, Branch Chief, at (202) 942–0564 (Division of Investment Management, Office of Investment Company Regulation).

SUPPLEMENTARY INFORMATION: The following is a summary of the application. The complete application may be obtained for a fee from the SEC's Public Reference Branch, 450 Fifth Street, NW., Washington, DC 20549 (tel. (202) 942–8090).

Applicant's Representations

1. Robertson Stephens Investment Trust (''Trust'') is a Massachusetts business trust registered under the Act as an open-end management investment company consisting of ten series. Nine series are advised by Robertson, Stephens & Company Investment Management, L.P., and one series is advised by RS Investment Management, Inc., (the ''Advisers''). The Advisers are registered under the Investment Advisers Act of 1940. The Advisers are indirect subsidiaries of BankAmerica Corporation (''BankAmerica'').

2. The Trust's board of trustees (''Board'') is composed of four individuals, three of whom are ''interested persons'' within the meaning of section 2(a)(19) of the Act. Two of the trustees—John W. Glynn, Jr. and James K. Peterson—are interested persons solely because each is affiliated with a broker-dealer registered under the Securities Exchange Act of 1934 (''1934 Act'').

3. Mr. Glynn is a director of Sterling Payot Company (''Sterling''), a private firm that advises senior executives and entrepreneurs on financial and strategic matters. Sterling does not engage in securities trading activity, make markets in securities, or engage in agency transactions. Mr. Peterson is an employee of Mitchum, Jones & Templeton, Inc. (''Mitchum''). Mitchum's business consists primarily in placing private equity investments. Mr. Peterson is a research analyst for Mitchum; he does not purchase, sell, or trade securities for Mitchum.

4. Mr. Peterson became an employee of Mitchum in October 1998. Prior to that time, Mr. Peterson was a disinterested trustee and Mr. Glynn was able to rely on rule 2a19–1 under the Act (discussed below) to be considered a disinterested trustee. Mr. Peterson also would have been able, subject to the conditions set forth in rule 2a19–1, to continue to serve as a disinterested trustee, but for the fact that the rule provides that no more than a minority of the Trust's disinterested trustees may rely on the rule (''minority requirement''). As a result of the minority requirement, neither Mr. Glynn nor Mr. Peterson could rely on the rule.

5. Applicant states that it has not yet reconstituted the Board for several reasons. First, from the time Mr. Peterson became affiliated with Mitchum until mid-November, 1998, BankAmerica had been attempting to sell the Advisers' parent company. Applicant states that, until a sale was completed, it would have been difficult to determine whether any potential trustee would have been affiliated with the ultimate purchaser and, therefore, an interested person of the Trust. Applicant states that an agreement to sell the Advisers' parent company has been reached and is expected to be implemented at the end of February, 1999.[1] Applicant also believes that it would have been difficult to attract new trustees with the experience and judgment appropriate to the position in light of the uncertainty involving the Trust and its advisory arrangements, and that any qualified candidate would have deferred consideration for the position until after the uncertainty had been resolved. Finally, applicant states that the alternative to electing more disinterested trustees would have been resignations by both Mr. Peterson and Mr. Glynn in order to meet the minority requirement in rule 2a19–1. Applicant asserts that the Board believed that losing both Mr. Peterson and Mr. Glynn would not have been in the best interests of the Trust and its shareholders.

6. Applicant seeks an order declaring Mr. Glynn and Mr. Peterson to be disinterested persons until June 1, 1999. Applicant states that the requested relief would allow it sufficient time to reconstitute the Board.

Applicant's Legal Analysis

1. Section 2(a)(19)(A)(v) of the Act defines an ''interested person'' of a registered investment company to include any broker-dealer registered under the 1934 Act or any affiliated person of the broker-dealer. Applicant states that Mr. Glynn and Mr. Peterson are interested persons solely because they are affiliated persons of registered broker-dealers.

2. Rule 2a19–1 under the Act provides, in relevant part, that a director of a registered investment company will not be considered an interested person solely because the director is an affiliated person of a registered broker-dealer, provided that: (1) The broker-dealer does not execute any portfolio transactions for the ''company complex,'' as that term is defined in the rule, engage in any principal transactions with the company complex, or distribute shares of the company complex, for at least six months prior to the time the director is to be considered disinterested and for the period during which the director continues to be considered disinterested; (2) the company's board of directors finds that the company and its shareholders will not be adversely affected if the broker-dealer does not engage in transactions for or with the company complex; and (3) no more than a minority of the company's disinterested directors are affiliated with broker-dealers. The Trust states that it may not rely on rule 2a19–1 in determining Mr. Glynn's and Mr. Peterson's status because they would represent two of the three disinterested trustees.

3. The Trust requests an order under section 6(c) of the Act declaring that neither Mr. Glynn nor Mr. Peterson will be deemed an interested person under section 2(a)(19) of the Act until June 1, 1999. Section 6(c) of the Act provides, in part, that the SEC may exempt any person from any provision of the Act or any rule under the Act if and to the extent the exemption is necessary or appropriate in the public interest and consistent with the protection of investors and the purposes fairly intended by the policy and provisions of the Act.

4. Applicant states that its request for relief meets this standard. Applicant asserts that Mr. Glynn's relationship with Sterling and Mr. Peterson's employment with Mitchum pose no potential conflict of interest because all of the requirements of rule 2a19–1, other than the minority requirement, will be met with respect to each. Even

[1] On November 19, 1998, certain senior managers of the Advisers (''Management Group'') signed an agreement to purchase the Advisers' parent company from BankAmerica. On January 26, 1999, the Board approved new advisory agreements and voted to recommend that shareholders approve the agreements at a shareholders meeting scheduled for February 26, 1999. Proxies for the shareholder meeting were mailed on or about February 2, 1999. The new advisory agreements will not be implemented until a majority of the Trust's trustees who are not interested persons have approved the agreements. Applicant further states that no member of the Management Group has any material business or professional relationship with Sterling or Mitchum or with the principal executive officers or controlling persons of Sterling or Mitchum.

though applicant believes that Messrs. Peterson and Glynn will not have the types of conflicts of interest that section 2(a)(19) was designed to address, they will constitute a majority of the disinterested trustees. Applicant believes that any concerns raised by their being in the majority can be addressed by requiring the approval of the third disinterested trustee on any matter that requires approval of a majority of the disinterested trustees.

Applicant's Conditions

Applicant agrees that any order granting the requested relief will be subject to the following conditions:

1. All of the requirements of rule 2a19–1 will be met with respect to each of Mr. Glynn and Mr. Peterson, except paragraph (a)(3) of the rule.

2. The Trust will not consider any action requiring the approval of disinterested trustees to be effective unless such action has been approved by a majority of the disinterested trustees who serve as such without reliance on rule 2a19–1 or the requested order.

3. The Trust may not rely on the requested relief beyond June 1, 1999.

For the Commission, by the Division of Investment Management, under delegated authority.

Jonathan G. Katz,

Secretary.

[FR Doc. 99–3099 Filed 2–8–99; 8:45 am]

BILLING CODE 8010–01–M

SECURITIES AND EXCHANGE COMMISSION

[Release No. 34–41010; File No. SR–Amex–99–01]

Self-Regulatory Organizations; Notice of Filing of Proposed Rule Change by the American Stock Exchange, LLC Relating to Reductions in Airline, Natural Gas, Pharmaceutical and Securities Broker/Dealer Indices Values

February 1, 1999.

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 January 6, 1999, the American Stock Exchange, LLC (''Amex'' 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. 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 Amex proposes to split the Airline, Natural Gas, Pharmaceutical and Securities Broker/Dealer Indices to one-half their current values.

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 test of these statements may be examined at the places specified in Item IV below. The Exchange has prepared summaries, set forth in Sections A, B, and C below, of the most significant aspects of such statements.

A. Self-Regulatory Organization's Statement of the Purpose of, and Statutory Basis for, the Proposed Rule Change

1. Purpose

The Exchange proposes to split the Airline, Natural Gas, Pharmaceutical and Securities Broker/Dealer Indices to one-half their current values and temporarily increase their respective position and exercise limits to twice their current levels as discussed more fully below.

Airline Index. On December 12, 1994, the Commission granted the Exchange approval to permit the trading of options on the Airline Index.[3] Thereafter, on May 1, 1998, the Commission granted the Exchange approval to split the Airline Index in half.[4] Initially, the aggregate value of the stocks contained in the Airline Index was reduced by a divisor to establish an index benchmark value of 200. The Airline Index's current value is approximately 275.[5]

Natural Gas Index. On March 7, 1994, the Commission granted the Exchange approval to permit the trading of options on the Natural Gas Index.[6] Initially, the aggregate value of the stock contained in the Natural Gas Index was reduced by a divisor to establish an index benchmark value of 300. The Natural Gas Index's value is currently at 216.[7]

Pharmaceutical Index. On June 18, 1992, the Commission granted the Exchange approval to permit the trading of options on the Pharmaceutical Index.[8] Initially, the aggregate value of the stocks contained in the Pharmaceutical Index was reduced by a divisor to establish an index benchmark value of 200. Since its creation, the index value of the Pharmaceutical Index has more than tripled in value from 200 to 742.[9]

Securities Broker/Dealer Index. On March 15, 1994, the Commission granted the Exchange approval to permit the trading of options on the Securities Broker/Dealer Index.[10] Thereafter, on March 20, 1998, the Commission granted the Exchange approval to split the Securities Broker/Dealer Index in half.[11] Initially, the aggregate value of the stocks contained in the Securities Broker/Dealer Index was reduced by a divisor to establish an index benchmark value of 300. The Securities Broker/Dealer Index's value is currently at 464.[12]

As a consequence of the rising Indices' values, premium levels for Airline, Natural Gas, Pharmaceutical and Securities Broker/Dealer Index options have also risen. The Amex cites these higher premium levels as the principal factor that has discouraged retail investors and some market professionals from trading these index options. In addition, the Exchange represents that its membership has indicated that indexes with values between 100 and 200 tend to promote increased liquidity in the overlying

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[1] 15 U.S.C. 78s(b)(1).

[2] 17 CFR 240.19b–4.

[3] Securities Exchange Act Release No. 35084 (December 12, 1994), 59 FR 65419 (December 19, 1994).

[4] Securities Exchange Act Release No. 39941 (May 1, 1998), 63 FR 25251 (May 7, 1998).

[5] The Airline Index's value as of the close, December 16, 1998, taken from Bloomberg and rounded to the nearest whole number was 275. As of January 28, 1999, the open interest in the index options was approximately 200.

[6] Securities Exchange Act Release No. 33720 (March 7, 1994), 59 FR 11630 (March 11, 1994).

[7] The Natural Gas Index's value as of the close, December 16, 1998, taken from Bloomberg and rounded to the nearest whole number was 216. As of January 28, 1999, the open interest in the index options was approximately 375.

[8] Securities Exchange Act Release No. 39830 (June 18, 1992), 57 FR 28221 (June 24, 1992).

[9] The Pharmaceutical Index's value as of the close, December 16, 1998, taken from Bloomberg and rounded to the nearest whole number was 742. As of January 28, 1999, the open interest in the index options was approximately 200.

[10] Securities Exchange Act Release No. 33766 (March 15, 1994), 50 FR 13518 (March 22, 1994).

[11] Securities Exchange Act Release No. 39775 (March 20, 1998), 63 FR 14741 (March 26, 1998).

[12] The Securities Broker/Dealer Index's value as of the close, December 16, 1998, taken from Bloomberg and rounded to the nearest whole number was 464. As of January 28, 1999, the open interest in the index options was approximately 1000.

options. As a result of the foregoing, the Exchange is proposing to decrease the Airline, Natural Gas, Pharmaceutical and Securities Broker/Dealer Indices to one-half of their respective present values.

To decrease the Indices' values, the Exchange proposes to double the divisor used in calculating the Indices. No other changes are proposed as to the components of the Indices, their methods of calculation (other than the change in the divisor), expiration style of the options or any other Index specification.

The Amex believes that lower valued indices will result in substantial lowering of the dollar values of options premiums for the Airline, Natural Gas, Pharmaceutical and Securities Broker/Dealer contracts. The Exchange plans to adjust outstanding series similar to the manner in which equity options are adjusted for a 2-for-1 stock split. On the effective date of the split ''ex-date,'' the number of outstanding Airline, Natural Gas, Pharmaceutical and Securities Broker/Dealer option contracts will be doubled and strike prices halved.

Position and exercise limits. Currently, position and exercise limits (on the same side of the market) for each of the Indices are as follows: Airline, 15,000 contracts; Natural Gas, 15,000 contracts; Pharmaceutical, 12,000 contracts; and Securities Broker/Dealer, 15,000 contracts. The Exchange proposes to double each Index's position and exercise limits to 30,000, 30,000, 24,000 and 30,000 contracts respectively, on the same side of the market. This change will be made in conjunction with the simultaneous reduction of the Indices' values and the doubling of the number of contracts.

Since the new limits will be equivalent to the Indices' present limits, the Amex believes that there is no additional potential for manipulation of the Indices or the underlying securities. Further, an investor who is currently at the 12,000 or 15,000 contract limit will, as a result of the index value reductions, automatically hold 24,000 or 30,000 contracts to correspond with the lowered Index values. These position limits will revert to their original limits at the expiration of the furthest non-LEAP (long Term Equity Anticipation Security) expiration month as established on the date of the split.

The Exchange believes that decreasing the values of the Airline, Natural Gas, Pharmaceutical and Securities Broker/Dealer Indices may make these index options more attractive to retail investors and other market professionals and therefore more competitive with other products in the marketplace.

2. Statutory Basis

The basis under the Act for the proposed rule change is the requirement under Section 6(b)(5)[13] that an Exchange have rules that are designed to prevent fraudulent and manipulative acts and practices, to promote just and equitable principles of trade, to foster cooperation and coordination with persons engaged in facilitating transactions in securities, and to remove impediments to and perfect the mechanism of a free and open market and a national market system.

B. Self-Regulatory Organization's Statement on Burden on Competition

The Exchange represents that the proposed rule change will impose no 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 the proposed rule change, or

B. Institute proceedings to determine whether the proposed rule change should be disapproved.

IV. Solicitation of Comments

Interested persons are invited to submit written data, views, and arguments concerning the foregoing, 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 at the Commission's Public Reference Room. Copies of such filing will also be available for inspection and copying at the principal office of the Exchange. All submissions should refer to File No. SR–Amex–99–01 and should be submitted by March 2, 1999.

For the Commission, by the Division of Market Regulation, pursuant to delegated authority.[14]

Margaret H. McFarland

Deputy Secretary.

[FR Doc. 99–3030 Filed 2–8–99; 8:45 am]

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[13] 15 U.S.C. 78f(b)(5).

[14] 17 CFR 200.30–3(a)(12).

SECURITIES AND EXCHANGE COMMISSION

[Release No. 34–41011; File No. SR–Amex–98–38]

Self-Regulatory Organizations; Notice of Filing and Order Granting Accelerated Approval of Proposed Rule Change and Amendment No. 1 Thereto by the American Stock Exchange, Inc. Relating to an Elimination of Position and Exercise Limits for Certain Broad-Based Index Options

February 1, 1999.

Pursuant to section 19(b)(1) of the Securities Exchange Act of 1934 (''Exchange Act'' or ''Act''),[1] and Rule 19b–4 thereunder,[2] notice is hereby given that on October 13, 1998, the American Stock Exchange, Inc. (''Amex'' or ''Exchange'') filed with the Securities and Exchange Commission (''SEC'' or ''Commission'') the proposed rule change as described in Items I and II below, which Items have been prepared by the self-regulatory organization. Amex filed an amendment to the proposed rule change on January 28, 1999.[3] The Commission is

[1] 15 U.S.C. 78s(b)(1).

[2] 17 CFR 240.19b–4.

[3] *See* Letter to Richard Strasser, Assistant Director, Division of Market Regulation, Commission, from Scott G. VanHatten, Legal Counsel, Amex, dated January 27, 1999 (''Amendment No. 1''). Amendment No. 1 deleted MidCap (MID) index options from the proposal and requested that the proposed rule change be approved on a two-year pilot basis. Amendment No. 1 also provided that the Exchange may impose additional margin on accounts holding an underhedged position in Institutional Index Options or Major Market Index options or FLEX options on those indexes, as warranted by the Exchange. In addition, Amendment No. 1 clarified that the 100,000 reporting threshold that XMI and XII will be subject to will also apply to FLEX

Continued

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 Amex proposes to establish a two-year pilot program eliminating position and exercise limits for Major Market (''XMI'') and Institutional (''XII'') broad-based index options, as well as FLEX broad-based index options on these two indexes.[4] The current reporting procedures for XII,[5] as modified by this proposal, and new reporting requirements for XMI will serve to identify large option holdings and information concerning the hedging of those positions.[6] The proposal also requires the Exchange to submit a report detailing the Exchange's experience with the program no later than three months prior to the end of the program.[7] Finally, the Exchange is proposing to add text to Exchange Rule 904C to include the existing position limits for Eurotop 100 Index options.[8]

II. Self-Regulatory Organization's Statement of the Purpose of, and Statutory Basis for, the Proposed Rule Change

In its filing with the Commission, the self-regulatory organization included statements concerning the purpose of and basis for the proposed rule change and discussed any comments it received on the proposed rule change. The text of these statements may be examined at the places specified in Item III below. The self-regulatory organization has prepared summaries, set forth in sections A, B, and C below, of the most significant aspects of such statements.

A. Self-Regulatory Organization's Statement of the Purpose of, and Statutory Basis for, the Proposed Rule Change

1. Purpose

The Exchange is proposing a two year pilot program eliminating position and exercise limits for XMI, XII and FLEX options on those indexes. The Exchange will continue to require that member organizations report all index option positions exceeding 200 contracts, pursuant to Exchange Rule 906C. In addition, the Exchange is proposing to increase the reporting requirement from 45,000 to 100,000 contracts for XII and adopt a similar reporting requirement for XMI index options, and FLEX options on those indexes.[9] Lastly, the Exchange is adding text to Amex Rule 904C to state the current position limit for Eurotop 100 Index options.

Manipulation. The Amex believes that position and exercise limits in broad-based index options no longer serve their stated purpose. On the fifteenth anniversary of listed index options trading, the Exchange believes that the size of the market underlying broad-based index options is so large as to dispel any concerns regarding market manipulation. To date, there has not been a single disciplinary action involving manipulation in any broad-based index product listed on the Exchange. The Exchange believes that its fifteen years of experience conducting surveillance of index options and program trading activity is sufficient to identify improper activity. The Exchange also believes that routine oversight inspections of Amex's regulatory programs by the Commission have not uncovered any inconsistencies or shortcomings in the manner in which index option surveillance is conducted. These procedures entail a daily monitoring of market movements via automated surveillance techniques to identify unusual activity in both the options and underlying stock basket components.

Competition. In today's market, the Exchange believes that position and exercise limits severely hamper Amex's ability to compete with the OTC and futures markets. Investors who trade listed options on the Amex are placed at a serious disadvantage in comparison to the OTC market where index options and other types of index based derivatives (*e.g.*, forwards and swaps) are not subject to position and exercise limits. Member firms continue to express concern to the Exchange that position limits on Amex products are an impediment to their business and that they have no choice but to move their business to the OTC market where position limits are not an issue.

In addition, the Amex believes that the current base limits for XMI and XII [10] options are not adequate for the hedging needs of institutions which engage in trading strategies differing from those covered under the index hedge exemption policy (*e.g.*, delta hedges, OTC vs. listed hedges). The Amex believes that, with the elimination of position limits for these products, staff resources could be better utilized elsewhere.

Financial requirements. The Exchange believes that financial requirements imposed by the Exchange and by the Commission adequately address concerns that a member or its customer may try to maintain an inordinately large unhedged position in XMI or XII. Current margin, and risk-based haircut methodologies serve to limit the size of positions maintained by any one account by increasing the margin and/or capital that a member must maintain for a large position held by itself or by its customer. It should also be noted that the Exchange has the authority under paragraph (d)(2)(K) of Rule 462 to impose a higher margin requirement upon the member or member organization when the Exchange determines a higher requirement is warranted.

FLEX Equity options. In 1997, the SEC approved the elimination of position and exercise limits in FLEX Equity options under a two-year pilot program.[11] To date, there have been no adverse affects on the market as a result of the elimination of position and exercise limits. Member firms have commented favorably on this change and believe that it is the first step towards eliminating position and exercise limits in all option products. In its release approving the elimination of FLEX equity option position and exercise limits, the Commission stated that the elimination of position limits

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options on those indexes. Finally, Amendment No. 1 added that the Exchange will provide a report to the Commission detailing the Exchange's experience with the program no later than three months prior to the expiration of the two-year pilot program, containing certain data from the first eighteen month period of the pilot.

[4] The current position limits for XMI and XII are 34,000 and 200,000, respectively. *See* Amex Rule 904C(b).

[5] Reporting of positions in XII exceeding 45,000 contracts on the same side of the market is currently required by Exchange Rule 904C, Commentary .03. The Exchange proposes to increase this reporting requirement to 100,000 contracts and add the same reporting requirement for XMI.

[6] Exchange Rule 906C currently requires reporting of every account holding an index option position in excess of 200 contracts. However, the Exchange will require a second reporting requirement for XMI and XII index options and FLEX options on those indexes for positions in excess of 100,000 contracts which will require member organizations to submit information to the Exchange concerning the extent to which such positions are hedged.

[7] *See* Amendment No. 1 for a discussion of additional changes to the rule filing.

[8] *See* Exchange Act Release No. 30463, 57 FR 9284 (March 17, 1992) (order approving File Nos. SR–Amex–90–25 and SR–Amex–91–01; establishing a 25,000 position and exercise limit for Eurotop index options). The present rule filling seeks only to codify this limit in Amex's rules language.

[9] The new reporting requirement will be for accounts holding positions in excess of 100,000 contracts on the same side of the market and will include, if applicable, information concerning the extent to which such positions are hedged.

[10] The base limits for XMI and XII are 34,000 and 200,000 contracts, respectively. *See* Amex Rule 904C(b).

[11] Exchange Act Release No. 39032 (September 9, 1997), 62 FR 48683 (September 16, 1997).

will allow the listed options markets to better compete with the OTC market.

[T]he elimination of position and exercise limits for FLEX equity options allows the Exchanges to better compete with the growing OTC market in customized equity options, thereby encouraging fair competition among brokers and exchange markets. The attributes of the Exchanges' options markets versus an OTC market include, but are not limited to, a centralized market center, an auction market with posted transparent market quotations and transaction reporting, parameters and procedures for clearance and settlement, and the guarantee of the OCC for all contracts traded on the Exchanges.[12]

Reporting requirements. The Exchange will require that each member or member organization that maintains a position on the same side of the market in excess of 100,000 contracts in XMI, XII options or FLEX options on those indexes, for its own account or for the account of a customer report certain information. This data would include, but would not be limited to, the option position, whether such position is hedged and if so, a description of the hedge and if applicable, the collateral used to carry the position. Exchange market-makers would continue to be exempt from this reporting requirement as market-maker information can be accessed through the Exchange's market surveillance systems. The Exchange proposes to establish the reporting level for XMI and FLEX options on the XMI and XII at 100,000 contracts and to increase the reporting level to 100,000 contracts [13] from the current reporting level of 45,000 for XII for the following reasons. Imposing a uniform reporting requirement for XII, XMI and FLEX options on those indexes will eliminate confusion. The Amex believes that an increase in the reporting level to 100,000 contracts for XII will result in the collection of more meaningful information. In addition, the general reporting requirement for customer accounts that maintain a position in excess of 200 contracts will remain at this level for broad based index options.[14] Last, it is important to note that the proposed 100,000 contract reporting requirement is above and beyond what is currently required in the OTC market. NASD member firms are only required to report index option positions in excess of 200 contracts and are not required to report any related hedging information.

Eurotop 100 Index options position limit. The Exchange proposes to add text to Rule 904C to include the current position limit for Eurotop 100 Index options. Although the current position limit (25,000 contracts on the same side of the market with no more than 15,000 of such contracts in series with the nearest expirations) was approved in a previously submitted rule change,[15] this limit was not included in the text of Exchange Rule 904C. Accordingly, the Exchange is now adding text to Rule 904C to include the existing position limit for Eurotop 100 Index options. The Exchange believes the additional text will clarify Rule 904C and make it inclusive of and uniform for all Exchange traded indices.

2. Statutory Basis

The basis under the Act for the proposed rule change is the requirement under Section 6(b)(5)[16] that an Exchange have rules that are designed to promote just and equitable principles of trade, to remove impediments to, and perfect the mechanism of a free and open market and, in general, to protect investors and the public interest.

B. Self-Regulatory Organization's Statement on Burden on Competition

The proposed rule change will impose no 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. 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 at the Commission's Public Reference Room, located at the above address. Copies of such filing will also be available for inspection and copying at the principal office of the Exchange. All submissions should refer to File No. SR–Amex–98–38 and should be submitted by March 2, 1999.

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 requirements of the Act and the rules and regulations thereunder applicable to a national securities exchange, and, in particular, with the requirements of Section 6 of the Act.[17] Specifically, the Commission believes the proposed rule change is designed to prevent fraudulent and manipulative acts and practices, to promote just and equitable principles of trade, to foster cooperation and coordination with persons engaged in facilitating transactions in securities, and to remove impediments to and perfect the mechanism of a free and open market and a national market system.

Position limits serve as a regulatory tool designed to address potential manipulative schemes and adverse market impact surrounding the use of options. In the past, the Commission has stated that:

Since the inception of standardized options trading, the options exchanges have had rules imposing limits on the aggregate number of options contracts that a member or customer could hold or exercise. These rules are intended to prevent the establishment of options positions that can be used or might create incentives to manipulate or disrupt the underlying market so as to benefit the options position. In particular, position and exercise limits are designed to minimize the potential for mini-manipulations and for corners or squeezes of the underlying market. In addition such limits serve to reduce the possibility for disruption of the options market itself, especially in illiquid options classes.[18]

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[12] *Id.* at 48685. The Commission notes that approval of the elimination of position and exercise limits for FLEX equity options was for a two-year pilot period and was based on several other factors including, in large part, additional safeguards adopted by the exchanges to allow them to monitor larger options positions.

[13] Currently, only the XII is subject to reporting requirements beyond those required by Exchange Rule 906C. The Exchange would expand this revised reporting requirement to XMI and FLEX options on the XII and XMI.

[14] *See* Exchange Rule 904C, Commentary .03, XII Reporting Requirement.

[15] *See* Exchange Act Release No. 30463, 57 FR 9284 (March 17, 1992).

[16] 15 U.S.C. 78f(b)(5).

[17] *See* 15 U.S.C. 78f(b). In approving this rule change, the Commission notes that it has considered the proposal's impact on efficiency, competition, and capital formation, consistent with Section 3 of the Act. *Id* at 78c(f).

[18] Exchange Act Release Nos. 31330 (October 16, 1992), 57 FR 48408 (October 23, 1992) (SR–Amex–92–13) (order approving an increase in XII position and exercise limits); 39489 (December 24, 1997), 63 FR 276 (January 5, 1998) (SR–CBOE–97–11) (order approving an increase in OEX position and exercise limits).

In general, the Commission has taken a gradual, evolutionary approach toward expansion of position and exercise limits.[19] The Commission has been careful to balance two competing concerns when considering the appropriate level at which to set option position and exercise limits. The Commission has recognized that the limits must be sufficient to prevent investors from disrupting the market in the component securities comprising the indexes. At the same time, the Commission has determined that limits must not be established at levels that are so low as to discourage participation in the options market by institutions and other investors with substantial hedging needs or to prevent specialists and market-makers from adequately meeting their obligations to maintain a fair and orderly market.[20]

The Commission has carefully considered the Amex's proposal. At the outset, the Commission notes that it still believes that the fundamental purposes of position and exercise limits are being served by their existence. Nevertheless, the Commission believes that the current experience with the trading of index options as well as the surveillance capabilities of the Amex have made it permissible to consider other, less prophylactic alternatives to regulating the index options market while still ensuring that large positions in such index options will not unduly disrupt the options or underlying cash markets. At this time, the Commission believes that it is appropriate to allow for an elimination of position and exercise limits for certain broad-based index options on a two-year pilot basis.

The Commission believes that an elimination of position and exercise limits for certain broad-based index options on a pilot basis is appropriate for several reasons. Overall, the Commission believes that the pilot will allow Amex to allocate certain of its surveillance resources differently, focusing on enhanced reporting and surveillance of trading to detect potential manipulation and risky positions that may unduly affect the cash market, rather than focusing on the strict enforcement of position limits. Although this regulatory approach deviates from the current structure that has been in place since the beginning of index options trading, the Commission believes that the enhanced reporting and surveillance Amex is providing, as well as the fact that the pilot is limited to two of Amex's most highly capitalized and actively traded index options, provides a sound basis for approving a two year pilot program eliminating position and exercise limits.

The Commission notes first that the proposal is limited to options on two broad-based indexes, the XMI and XII, and FLEX options on those indexes. The Commission believes that the enormous capitalization of and deep, liquid markets for the underlying securities contained in these indexes significantly reduces concerns regarding market manipulation or disruption in the underlying market.[21] Removing position and exercise limits for these index options may also bring additional depth and liquidity, in terms of both volume and open interest, to the affected index options classes without significantly increasing concerns regarding intermarket manipulations or disruptions of the options or the underlying securities.

Second, eliminating position and exercise limits for these specified indexes should better serve the hedging needs of institutions that engage in trading strategies different from those covered under the index hedge exemption policy (*e.g.*, delta hedges, OTC vs. listed hedges). Furthermore, eliminating position and exercise limits for the XMI and XII index options will alleviate the regulatory burdens related to the current index hedge exemption, which involves a daily monitoring of positions and reports to the Exchange at the current levels.

Third, the Commission believes that financial requirements imposed by Amex and by the Commission adequately address concerns that an Amex member or its customer may try to maintain an inordinately large unhedged position in a broad-based index option. Current margin and risk-based haircut methodologies serve to limit the size of positions maintained by any one account by increasing the margin and/or capital that a member must maintain for a large position held by itself or by its customer.[22] Amex also has the authority under its rules to impose a higher margin requirement upon the member or member organization when it determines a higher requirement is warranted.[23] The Commission believes that deleting the proposed margin review threshold of 100,000 contracts for XMI, XII and FLEX option on those indexes is appropriate to avoid a possible misinterpretation that the Exchange may only impose additional margin under Amex Rule 462 when this threshold is reached.[24] Monitoring accounts maintaining large positions should provide the Exchange with the information necessary to determine whether to impose additional margin and/or whether to assess capital charges upon a member organization carrying the account. In addition, the Commission's net capital rule, Rule 15c3–1 under the Exchange Act, imposes a capital charge on members to the extent of any margin deficiency resulting from the higher margin requirement. The significant increases in unhedged options capital charges resulting from the September 1997 adoption of risk-based haircuts and Amex's margin requirements applicable to these products under Exchange rules serves as an additional form of protection.[25] The Commission also notes that the OCC will serve as the counter-party guarantor in every exchange-traded transaction.

Fourth, the Commission notes that the index options and other types of index-based derivatives (*e.g.*, forwards and swaps) are not subject to position and exercise limits in the OTC market. The Commission believes that eliminating position and exercise limits for the XMI and XII options on a two-year pilot basis will better allow Amex to compete with the OTC market.

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[19] This gradual approach to increasing position limits is evident with both the XMI and XII. *See* Exchange Act Release Nos. 29534 (August 8, 1991), 56 FR 40449 (August 15, 1991) (order approving SR–Amex–91–18; increasing position limits for the XMI from 17,000 to 34,000 contracts); 38313 (November 7, 1997), 62 FR 61418 (November 17, 1997) (order approving SR–Amex–97–44; increasing position limits for the XII from 45,000 to 100,000 contracts).

[20] *See* H.R. Rep. No. IFC–3, 96th Cong., 1st Sess. At 189–91 (Comm. Print 1978).

[21] XMI includes 20 of the largest, most widely-held stocks across all major sectors of the U.S. market. As of January 26, 1999, the total market capitalization for XMI was $1.9 trillion. XII is adjusted quarterly to comprise the 75 stocks held in greatest dollar amount among all publicly traded issues in institutional portfolios larger than $100 million. As of January 26, 1999, the total market capitalization for XII was $6.4 trillion.

In addition, the average daily trading volume for the underlying components of these indexes for the six months preceding January 26, 1999, demonstrates the substantial liquidity of the index components as a group. The average daily trading share volume underlying the XMI is 3.2 million shares. The average daily trading share volume underlying the XII is 4.4 million shares.

[22] Exchange Act Rule 15c3–1 requires a capital charge equal to the maximum potential loss on a broker-dealer's aggregate index position over a +(−) 10% market move. Exchange margin rules require margin on naked index options which are in or at-the-money equal to a 15% move in the underlying index; and a minimum 10% charge for naked out-of-the money contracts. At an index value of 9,000 this approximates to a $135,000 to $90,000 requirement per each unhedged contract.

[23] *See* Amendment No. 1, and Amex Rules 462 and 904C, Commentary .03.

[24] Amendment No. 1 clarifies that the Exchange may impose additional margin as it deems necessary.

[25] *See* Exchange Act Release No. 38248 (February 6, 1997), 62 FR 6474 (February 12, 1997) (adopting Risk Based Haircuts); and Amex Rule 462(d)(2)(K).

Fifth, the Commission believes that Amex has adopted important enhanced surveillance and reporting safeguards that will allow it to detect and deter trading abuses arising from the elimination of position and exercise limits for XMI and XII, and FLEX options on those indexes. These safeguards will also allow Amex to monitor large positions in order to identify instances of potential risk and to assess additional margin and/or capital charges, if deemed necessary. Specifically, Amex will subject XMI and XII, and FLEX options on those indexes to a 100,000 contract hedge reporting requirement.[26] Each member or member organization that maintains a position on the same side of the market in excess of these contract thresholds for its own account or for the account of a customer must file a report that includes, but is not limited to, data related to the option position, whether such position is hedged and if so, a description of the hedge. If applicable, the report must contain information concerning collateral used to carry the position. Exchange market makers would continue to be exempt from this reporting requirement. Although the new reporting threshold is higher for XII, the new level will enable Amex to allocate its surveillance resources on those accounts maintaining larger, potentially riskier, positions. Amex has submitted to the Commission a detailed description of enhanced surveillance procedures the Exchange will implement in order to monitor accounts maintaining large positions. The Commission also believes that Amex's new surveillance procedures should enable the Exchange to assess and respond to market concerns at an early stage. Although it is inappropriate to discuss the details of Amex's enhanced surveillance program, the Commission notes that these enhanced procedures were critical in its determination to approve the proposed rule change.[27]

Finally, the Commission notes the lack of any discernible problems at existing levels. Although it is difficult to compare a market with position limits and one without, the Commission notes that the lack of any significant problems at existing levels, which are relatively high for these two index options compared to other similar products, does provide some basis for going forward with Amex's proposal. The Commission further believes that, if problems were to occur during the pilot period, the enhanced market surveillance of large positions should help Amex to take the appropriate action in order to avoid any manipulation or market risk concerns.

With regard to the eliminating of position and exercise limits for FLEX options on the XMI and XII, the Commission believes that, given the size and sophisticated nature of the FLEX options market for these indexes, along with the reporting requirements, eliminating position and exercise limits for FLEX options on the XMI and XII for a two-year pilot period should not substantially increase manipulative concerns.

Notwithstanding the protections that have been built into Amex's proposal, the Commission believes a prudent approach is warranted with respect to the elimination of position limits for these indexes. In this regard, the Commission cannot rule out the potential for adverse effects on the securities markets for the component securities underlying the effected broad-based indexes. To address this concern, the Commission is approving the proposal for a two-year pilot period and limiting the proposal to XMI and XII options, and FLEX options on those indexes.[28] Furthermore, three months prior to the end of the pilot program, Amex will provide the Commission with a report detailing the size and different types of strategies employed with respect to positions established in those classes not subject to position limits. In addition, the report will note whether any problems resulted due to the no limit approach and any other information that may be useful in evaluating the effectiveness of the pilot program.[29] The Commission expects that Amex will take prompt action, including timely communication with the Commission and other marketplace self-regulatory organizations responsible for oversight of trading in component stocks, should any unanticipated adverse market effects develop.

The Commission also believes that approval of the text being added to Amex Rule 904C to state the current position limit for Eurotop 100 Index options is appropriate given that this change is technical in nature.[30]

The Commission finds good cause to approve the proposed rule filing prior to the thirtieth day after the date of publication of notice of filing thereof in the **Federal Register**. Approval of the proposed rule change may bring additional depth and liquidity, in terms of both volume and open interest, to the affected index options classes without significantly increasing concerns regarding intermarket manipulations or disruptions of the options or the underlying securities. Further, the proposal is limited to a two year pilot and Amex has addressed the regulatory concerns by adopting enhanced reporting and surveillance requirements, as discussed above. The Commission also notes that it recently approved a similar proposed rule change from the Chicago Board Options Exchange (''CBOE''), CBOE's proposed rule change eliminated position and exercise limits for SPX, OEX, DJX options and FLEX options on those indexes on a two year pilot basis.[31] CBOE's original proposal, which was broader in that it proposed to eliminate position and exercise limits for all broad-based index options, was published for the entire twenty-one day comment period and generated only one response favorable to the proposal. Although CBOE's SPX, OEX and DJX options are not identical to Amex's XMI and XII options, these indexes are all highly capitalized board-based indexes that have been regulated in the same manner. Accordingly, the Commission believes that good cause exists, consistent with Sections 6(b)(5) and 19(b) of the Act to approve Amex's proposed rule change, as amended, on an accelerated basis.

V. Conclusion

It is therefore ordered, pursuant to Section 19(b)(2) of the Act,[32] that the proposed rule change (SR–Amex–98–38) is approved, as amended, on a two year pilot basis until February 1, 2001.

For the Commission, by the Division of Market Regulation, pursuant to delegated authority.[33]

Margaret H. McFarland,

Deputy Secretary.

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[26] The current hedge reporting threshold for XII is 45,000 contracts. There is currently no reporting requirement for XMI.

[27] Disclosure of specific surveillance procedures could provide market participants with information that could aid potential attempts at avoiding regulatory detection of inappropriate trading activity.

[28] *Cf.* Exchange Act Release No. 30932 (September 9, 1997), 62 FR 48683 (September 16, 1997) (order approving the elimination of position and exercise limits for FLEX equity options on a two year pilot basis).

[29] *See* Amendment No. 1.

[30] *See* Exchange Release No. 30463, 57 FR 9284 (March 17, 1992) (order approving Eurotop 100 index).

[31] *See* Exchange Release No. 40969, (January 22, 1999), 64 FR 4911 (February 1, 1999).

[32] 15 U.S.C. 78s(b)(2).

[33] 17 CFR 200.30–3(a)(12).

SECURITIES AND EXCHANGE COMMISSION

[Release No. 34–41009; File No. SR–CBOE–98–49]

Self-Regulatory Organizations; Chicago Board Options Exchange, Incorporated; Order Granting Approval to Proposed Rule Change and Notice of Filing and Order Granting Accelerated Approval of Amendment No. 1 to Proposed Rule Change Relating to Trading and Listing Options on the Dow Jones Equity REIT Index

February 1, 1999.

I. Introduction

On November 5, 1998 the Chicago Board Options Exchange, Incorporated (''CBOE'' or ''Exchange'') submitted to the Securities and Exchange Commission (''Commission'' or ''SEC''), pursuant to Section 19(b)(1) of the Securities Exchange Act of 1934 (''Act'')[1] and Rule 19b-4 thereunder,[2] a proposed rule change to provide for the listing and trading of options on the Dow Jones Equity Real Estate Investment Trust Index (''Index'' or ''REITS Index''). The Commission published the proposed rule change for comment in the **Federal Register** on December 22, 1998.[3] No comments were received.

On January 28, 1999, the CBOE submitted Amendment No. 1 to the proposed rule change.[4] This order approves the proposed rule change, and also approves Amendment No. 1 on an accelerated basis.

II. Description of the Proposal

A. Index Design

The proposed rule change would permit the Exchange to list and trade cash-settled, European-style,[5] A.M.-settled stock index options. The Index is a broad-based, capitalization-weighted index currently composed of 116 equity real estate investment trusts (''REITs'').[6] The Index was designed by Dow Jones & Company. The Index has been designed to measure the performance of REITs that comprise 95% of the market capitalization of the domestic equity REIT investable universe, which includes equity REITs that are listed on the New York Stock Exchange (''NYSE''), the American Stock Exchange (''Amex'') and the Nasdaq National Market (''NNM'').

The Index components are subject to a screening process that: (1) eliminates REITs that have more than 10 no-trading days over the past quarter; (2) eliminates REITs that comprise the bottom 1% of the aggregate REIT market capitalization; and (3) eliminates REITs that comprise the bottom 0.01% of the average dollar-trading volume. All of the component REITs are ''reported securities,'' as that term is defined in Rule 11Aa3-1 under the Act.[7] All but one REIT in the Index are eligible for options trading.

On October 20, 1998, the 116 components ranged in capitalization from $207 million to $6.13 billion. The largest component accounted for 5.08% of the total weighting of the Index, while the smallest accounted for 0.17%. The total capitalization of the REITs in the Index was $120.4 billion. The average capitalization was $1.04 billion, and the median capitalization was $655 million. Also, as of October 20, 1998, the Index components represented eleven distinct property classifications: office property (21.01%), apartments (19.31%), shopping centers (12.27%), hotels/restaurants (9.33%), regional malls (9.17%), diversified (8.56%), warehouses/industrial (7.53%), healthcare (5.35%), self-storage (4.99%), manufactured homes (1.65%) and outlet centers (0.83%). In addition, the Index components are diversified by geographic region, representing real estate investments throughout much of the United States.

B. Index Value Calculation

The methodology used to calculate the value of the Index is similar to the methodology used to calculate the value of other well-known broad-based indices. The level of the Index reflects the total market value of the component REITs relative to a particular base period. The Index base date is January 2, 1990, when the Index value was set to 100. The Index had a closing value of 131.44 on October 19, 1998. The daily calculation of the Index is computed by dividing the total market value of the companies in the Index by the Index divisor. The divisor keeps the Index comparable over time and is adjusted periodically to maintain the Index. The values of the Index will be calculated by Dow Jones & Company, Inc. or its designee and disseminated at 15-second intervals during regular CBOE trading hours to market information vendors via the Options Price Reporting Authority (''OPRA'').

C. Index Maintenance

Dow Jones or its designee is responsible for the maintenance of the Index. Index maintenance includes monitoring and completing the adjustments for company additions and deletions, share changes, stock splits, stock dividends (other than an ordinary cash dividend), and stock price adjustments due to company restructuring or spin-offs. Some corporate actions, such as stock splits and stock dividends, require simple changes in the common shares outstanding and the stock prices of the companies in the Index. Other corporate actions, such as share issuances or component changes, may change the market value of the Index and require an index divisor adjustment as well.

The Index is reviewed on a quarterly basis by adding or deleting REITs using end-of-quarter market capitalization values. If any component REIT fails to meet the targeted threshold or the investable universe cutoff rules, it will be deleted from the Index. Non-component REITs that become eligible for inclusion are added, largest to smallest, until the 95% threshold is attained. In order to preserve the continuity of the Index, the actual threshold may be slightly higher or lower than the targeted 95%. An annual review is performed to update any changes in an issue's investment structure and/or property type. As a result of these periodic reviews, over time the number of component REITs in the Index may change.

The Exchange will notify the Commission if the number of securities in the Index drops by 40 or more. In addition, the Exchange will notify the Commission if any of the following occurs: 10% or more of the weight of the

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[1] 15 U.S.C. 78s(b)(1).

[2] 17 CFR 240.19b–4.

[3] Securities Exchange Act Release No. 40794 (December 15, 1998), 63 FR 70816.

[4] *See* letter, dated January 27, 1999, from Eileen Smith, Director, Product Development, CBOE, to Marianne Duffy, Special Counsel, Division of Market Regulation, Commission (''Amendment No. 1''). Among other things, Amendment No. 1 clarified that the Dow Jones' internal surveillance procedures apply to the Index as well, included the full list of the Index components, amended Rule 24.4.01(e) to include a hedge exemption of 625,000 contracts on the Index and clarified that the maintenance standard of 80% is by weight.

[5] A European-style option is one that may be exercised only during a limited period of time prior to expiration of the option.

[6] REITs, created by the U.S. Congress to facilitate small investor participation in real estate on a wholesale scale, pool capital from multiple investors like mutual funds.

[7] *See* 17 CFR 240.11Aa3–1. A ''reported security'' is defined as ''any security or class of securities for which transaction reports are collected, processed and made available pursuant to an effective transaction reporting plan.'' A ''transaction reporting plan'' is in turn defined in paragraph (a)(2) of this rule as ''any plan for collecting, processing, making available or disseminating transaction reports with respect to transactions in reported securities filed with the Commission pursuant to, and meeting the requirements of this section.''

Index is represented by component REITs having a market value less than $75 million; less than 80% of the weight of the Index is represented by component REITs that are eligible for options trading; 10% or more of the weight of the Index is represented by component REITs trading less than 20,000 shares per day; the largest component REIT accounts for more than 15% of the weight of the Index or the largest five components in the aggregate account for more than 50% of the weight of the Index.

D. Index Option Trading

In addition to regular Index options, the Exchange may provide for the listing of long-term index option series (''LEAPs'') and reduced-value LEAPS on the Index. For reduced-value LEAPs, the underlying value would be computed at one-tenth of the Index level. The current and closing index value of any such reduced-value LEAP will, after such initial computation, be rounded to the nearest one-hundredth.

Strike prices will be set to bracket the Index in 2½ point increments for strikes below 200 and 5 point increments above 200. The minimum tick size for series trading below $3 will be 1/16th and for series trading above $3 the minimum tick will be 1/8th. The trading hours for options on the Index will be from 8:30 a.m. to 3:02 p.m. (Chicago time).

E. Exercise and Settlement

The proposed options on the Index will expire on the Saturday following the third Friday of the expiration month. Trading in the expiring contract month will normally cease at 3:02 p.m. (Chicago time) on the business day preceding the last day of trading in the component securities of the Index (ordinarily the Thursday before expiration Saturday, unless there is an intervening holiday). The exercise settlement value of the Index at option expiration will be calculated by Dow Jones or its' designee based on the opening prices of the component securities on the business day prior to expiration. If a REIT fails to open for trading, the last available price will be used in the calculation of the Index, as is done for currently listed indices.[8] When the last trading day is moved because of Exchange holidays (such as when the CBOE is closed on the Friday before expiration), the last trading day for expiring options will be Wednesday and the exercise settlement value of Index options at expiration will be determined at the opening of regular Thursday trading.

F. Surveillance and Position Limits

The Exchange will use the same surveillance procedures currently utilized for each of the Exchanges' other index options to monitor trading on options and LEAPs on the Index. For surveillance purposes, the Exchange will have complete access to information regarding trading activity in the underlying securities.

The Exchange proposes to establish position limits for options on the Index at 250,000 contracts on either side of the market. These limits are roughly equivalent, in dollar terms, to the limits applicable to options on other indices.

G. Exchange Rules Applicable

As modified by this proposal, the Rules in Chapter XXIV will be applicable to the Index options. Broad-based margin rules will apply to the Index. In addition, the Index will have a broad-based index hedge exemption of 625,000 contracts. CBOE is proposing to amend Rule 24.14 in order to include specific reference to Dow Jones & Company, Inc. as being entitled to the benefit of the disclaimer of liability in respect of the Index.

H. Systems Capacity

CBOE believes it has the necessary systems capacity to support new series that would result from the introduction of the Index options. CBOE also has been assured that the OPRA has the capacity to support the new series.

III. Discussion

The Commission finds that the proposed rule change is consistent with the requirements of the Act and the rules and regulations thereunder applicable to a national securities exchange, and, in particular, with the requirements of Section 6(b)(5).[9] Specifically, the Commission finds that the trading of options on the REIT Index, including LEAPs and reduced-value LEAPs, will serve to promote the public interest as well as to help remove impediments to a free and open securities market. The Commission also believes that the trading of options on the Index will allow investors holding positions in some or all of the securities underlying the Index to hedge the risks associated with their portfolios. Accordingly, the Commission believes that the Index options will provide investors with an important trading and hedging mechanism.[10] By broadening the hedging and investment opportunities of investors, the Commission believes that the trading of options on the REIT Index will serve to protect investors, promote the public interest, and contribute to the maintenance of fair and orderly markets.[11]

Nevertheless, the trading of options on the REIT Index raises several issues related to the design and structure of the Index, customer protection, surveillance, and market impact. The Commission believes, however, for the reasons discussed below, that the CBOE has adequately addressed these issues.[12]

A. Index Design and Structure

The Commission believes that it is appropriate for the Exchange to designate the Index as a broad-based index for purposes of index option trading because the REIT segment of the U.S. equities market constitutes a substantial segment of the overall public U.S. equities market and the Index reflects the REIT market.[13] First, the

[8] The Commission notes that pursuant to Article XVII, Section 4 of the by-laws of the Options Clearing Corporation (''OCC''), OCC is empowered to fix an exercise settlement amount in the event it determines a current index value is unreported or otherwise unavailable. Further, OCC has the authority to fix an exercise settlement amount whenever the primary market for the securities representing a substantial part of the value of an underlying index is not open for trading at the time when the current index value (i.e., the value used for exercise settlement purposes) ordinarily would be determined. *See* Securities Exchange Act Release No. 37315 (June 17, 1996), 61 FR 42671 (Commission order approving SR–OCC–95–19).

[9] 15 U.S.C. 78f(b)(5).

[10] Pursuant to Section 6(b)(5) of the Act, the Commission must predicate approval of any new securities product upon a finding that the introduction of such product is in the public interest. Such a finding would be difficult with respect to a product that served no hedging or other economic function, because any benefits that might be derived by market participants likely would be outweighed by the potential for manipulation, diminished public confidence in the integrity of the markets, and other valid regulatory concerns. In this regard, the trading of listed Index options will provide investors with a hedging vehicle that should reflect the overall market of stocks representing a substantial segment of the U.S. securities market.

[11] In approving this proposed rule change, the Commission notes that is has considered the proposed rule's impact on efficiency, competition, and capital formation. 15 U.S.C. 78c(f).

[12] The Commission notes that it did not object to the designation of the Chicago Mercantile Exchange as a contract market to trade futures and futures options on the Standard and Poor's REIT Composite Index. *See* letter, dated November 23, 1998, from Richard R. Lindsey, Director, Division of Market Regulation, Commission, to Steven Manaster, Director, Division of Economic Analysis, Commodity Futures Trading Commission. This index consisted of 105 REIT stocks, most of which also are the components of the Index, and had a similar market capitalization.

[13] The REIT segment is recognized as a discernible, unique segment of the overall market that operates, in part, as a vehicle for equity market participants to hold indirect interests in real estate. During this decade, the REIT segment of the U.S. equities market has grown to 210 REITs with a market capitalization of approximately $140 billion

Continued

Index consists of 116 component REITs, and incorporates approximately 95% of the REIT industry measured by capitalization. These 116 securities are diverse, representing a broad cross-section of the REIT segment of the U.S. market. Second, all of the component REITs are reported securities, and all but one REIT in the Index are eligible for options trading.[14] Third, no stock or group of stocks dominates the Index. Specifically, no single REIT accounted for more than 5.08% of the total weighting of the Index, and the five highest weighted securities accounted for 19.02%. Accordingly, the Commission believes that it is appropriate for the Exchange to classify the Index as broad-based and apply its rules governing broad-based index options.

B. Potential for Manipulation

The Commission also believes that the large number of components, the capitalization and weighting methodology of the Index, and the depth and liquidity of the securities comprising the Index significantly minimize the potential for manipulation of the Index. First, the Commission notes that the REIT Index is composed of 116 securities which represent a broad cross-section of the REIT segment of the U.S. market. Second, the Commission notes that the Index is a capitalization-weighted index whose value is more difficult to affect than that of a price-weighted index. Third, CBOE has represented that it will notify the Commission when: (1) the number of securities in the Index drops by 40 or more; (2) 10% or more of the weight of the Index is represented by component REITs having a market value less than $75 million; (3) less than 80% of the weight of the Index is represented by component REITs that are eligible for options trading; (4) 10% or more of the weight of the Index is represented by component REITs trading less than 20,000 shares per day; or (5) the largest component REIT accounts for more than 15% of the weight of the Index or the largest five components in the aggregate account for more than 50% of the weight of the Index.[15] Fourth, the Exchange has proposed reasonable position and exercise limits for the Index options that will serve to minimize potential manipulation and other market impact concerns. Accordingly, the Commission believes that these factors minimize the potential for manipulation because it is unlikely that attempted manipulations of the prices of the Index components would affect significantly the Index's value. Moreover, the surveillance procedures discussed below should detect as well as deter potential manipulation and other trading abuses.

C. Customer Protection

The Commission believes that a regulatory system designed to protect public customers must be in place before the trading of sophisticated financial instruments, such as options on the Index including LEAPS and reduced-value LEAPs, can commence on a national securities exchange. The Commission notes that the trading of standardized, exchange-traded options occurs in an environment that is designed to ensure, among other things, that: (1) the special risks of options are disclosed to public customers; (2) only investors capable of evaluating and bearing the risks of options trading are engaged in such trading; and (3) special compliance procedures are applicable to options accounts. Accordingly, because the Index options, including LEAPS, will be subject to the same regulatory regime as the other standardized options currently traded on the CBOE, the Commission believes that adequate safeguards are in place to ensure the protection of investors in options on the Index.

D. Surveillance

The Commission generally believes that a surveillance sharing agreement between an exchange proposing to list a stock index derivative and the exchange(s) trading the stocks underlying the derivative product is an important measure for the surveillance of the derivatives and underlying securities markets. Such agreements ensure the availability of information necessary to detect and to deter potential manipulations and other trading abuses, thereby making the stock index product less readily susceptible to manipulation.[16] In this regard, the markets upon which all of the Index component stocks trade, the NYSE, Amex and NNM, are members of the ISG. In addition, the Exchange will apply the same surveillance procedures as those used for existing broad-based index option trading on the CBOE. Furthermore, Dow Jones & Company also has a policy in place to prevent the potential misuse of material, non-public information by members of the Wall Street Journal managerial and editorial staff in connection with the maintenance of the Index.[17]

E. Market Impact

The commission believes that the listing and trading of options, including LEAPS and reduced-value LEAPs, on the Index will not adversely affect the underlying securities markets.[18] First, as described above, the Index is broad-based and constituted of 116 REIT stocks, with no one stock dominating the Index. Second, the position limit of 250,000 contracts on either side of the market and exercise limit of 250,000 contracts based on the value of the Index will serve to minimize potential manipulation and market impact concerns. Third, currently all components except one REIT comprising the Index are options eligible and CBOE will notify the Commission if less than 80% of the Index continues to be eligible for options trading. Fourth, the risk to investors of contra-party one-performance will be minimized because the Index options and LEAPS will be issued and guaranteed by the OCC, similar to all other standardized options traded in the United States. Lastly, the Commission believes that settling expiring Index options based on the opening prices of component securities is reasonable and consistent with the Act. As noted in other contexts, valuing options for exercise settlement on expiration based on opening prices rather than on closing prices may help reduce adverse effects on markets for

as of October 30, 1998. *See* National Association of Real Estate Investment Trusts (http://www.nareit.com). The REIT segment has also evolved into a diverse segment, with numerous REITs holding a variety of investments including healthcare, office, residential, retail, self-storage, hotel/restaurants, shopping centers and diversified use properties.

[14] The Exchange's option listing standards, which are uniform among the options exchanges, provide that a security underlying an option must, among other things, meet the following requirements: (1) the public float must be at least 7 million shares; (2) there must be a minimum of 2,000 stockholders; (3) trading volume must have been at least 2.4 million shares over the preceding twelve months; and (4) the market price per share must have been at least $7.50 for a majority of business days during the preceding three calendar months. *See* Interpretations and Policies .01 to Exchange Rule 5.3.

[15] If the composition of the Index was to substantially change, the Commission may reevaluate its decision regarding the appropriateness of the Index's current maintenance standards and may consider whether additional approval under Section 19(b) of the Act is necessary to continue to trade the Index options.

[16] *See e.g.*, Securities Exchange Act Release No. 31243 (September 28, 1992), 57 FR 45849 (October 5, 1992) (order approving the listing of options on the CBOE Biotech Index).

[17] *See* Amendment No. 1, *supra* note 4.

[18] In addition, the CBOE has represented that it and OPRA have the necessary systems capacity to support those new series of index options that would result from the introduction of Index options.

stocks underlying options on the Index.[19]

F. Accelerated Approval of Amendment No. 1

The Commission finds good cause to approve Amendment No. 1 to the proposed rule change prior to the thirtieth day after the date of publication of notice of filing thereof in the **Federal Register**. The Commission notes that Amendment No. 1 does not change, but rather clarifies, the proposed rule change, and thus does not raise any new regulatory issues. Specifically, among other things, Amendment No. 1 clarified that the Dow Jones' internal surveillance procedures apply to the Index as well, included the full list of the Index components, amended Rule 24.4.01(e) to include a hedge exemption of 625,000 contracts on the Index, and clarified that the maintenance standard of 80% is by weight. In addition, the Commission notes that no comments were received on the original CBOE proposal, which was subject to the full 21-day notice and comment period. Accordingly, the Commission believes that it is consistent with Sections 6(b)(5) and 19(b)(2) of the Act to approve Amendment No. 1 to the proposal on an accelerated basis.

IV. Solicitation of Comments

Interested persons are invited to submit written data, views, and arguments concerning Amendment No. 1 to the rule proposal. Persons making written submissions should file six copies thereof with the Secretary, Securities and Exchange Commission, 450 Fifth Street, N.W., Washington, D.C. 20549. Copies of the submission, all subsequent amendments, all written statements with respect to the proposed rule change that are filed with the Commission, and all written communications relating to the proposed rule change between the Commission and any person other than those that may be withheld from the public in accordance with the provisions 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. All submissions should refer to File No. SR–CBOE–98–49 and should be submitted by March 2, 1999.

[19] *See e.g.*, Securities Exchange Act Release No. 30944 (July 21, 1992), 57 FR 33376 (July 28, 1992) (order approving position limits for European-style Standard & Poor's 500 Stock Index options settled based on the opening prices of component securities).

V. Conclusion

It is therefore ordered, pursuant to Section 19(b)(2) of the Act,[20] that the proposed rule change (SR–CBOE–98–49), including Amendment No. 1, is approved.

For the Commission, by the Division of Market Regulation, pursuant to delegated authority.[21]

Margaret H. McFarland,

Deputy Secretary.

[FR Doc. 99–3031 Filed 2–8–99; 8:45 am]

BILLING CODE 8010–01–M

[20] 15 U.S.C. 78s(b)(2).

[21] 17 CFR 200.30–3(a)(12).

SECURITIES AND EXCHANGE COMMISSION

[Release No. 34–40982; File No. SR–CSE–99–01]

Self-Regulatory Organizations; Notice of Filing and Order Granting Accelerated Approval of Proposed Rule Change by the Cincinnati Stock Exchange, Inc., Relating to Mandatory Year 2000 Testing

January 26, 1999.

Pursuant to Section 19(b)(1) of the Securities Exchange Act of 1934,[1] and Rule 19b–4 thereunder,[2] notice is hereby given that on January 26, 1999 the Cincinnati Stock Exchange, Incorporated (''CSE'' 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 CSE. The Commission is publishing this notice to solicit comments on the proposed rule change from interested persons and to approve the proposal on an accelerated basis.

I. Self-Regulatory Organization's Statement of the Terms of Substance of the Proposed Rule Change

The Exchange proposes to adopt new Rule 4.5, *Mandatory Year 2000 Testing,* that would require member firms to participate in testing of computer systems designed to prepare for Year 2000 and to file reports regarding the testing with the Exchange.

The text of the proposed rule change is below. Proposed new language is italicized.

* * * * *

CHAPTER IV

Books and Records

Rule 4.5 Mandatory Year 2000 Testing

This rule will expire automatically on January 1, 2001.

(a) Point-to-Point Testing. Each member that has an electronic interface with the Exchange shall participate in point-to-point testing with the Exchange of its computer systems designed to ascertain Year 2000 compatibility of those computer systems, in a manner and frequency as prescribed by the Exchange. A member that has its electronic interface through a service provider need not participate in point-to-point testing if, by a time designated by the Exchange, (i) the service provider conducts successful tests with the Exchange on behalf of the firms it serves, (ii) the member conducts successful point-on-point testing with the service provider, and (iii) the Exchange agrees that further testing is not necessary.

(b) Industry-Wide Testing. The Exchange may require certain of its members to participate in industry-wide testing of computer systems for Year 2000 compatibility. The Exchange may require any member who will participate in industry-wide testing to also participate in any tests necessary to ensure preparedness to participate in industry-wide testing.

(c) Reports. Members participating in point-to-point testing (whether between the firm and the Exchange, between the firm and its service provider, or between the firm's service provider and the Exchange) or industry-wide testing shall file reports with the Exchange concerning the required tests in the manner and frequency required by the Exchange. The Exchange may require reports before the testing is begun to ensure that the member or its service provider is prepared to participate in the tests.[3]

II. Self-Regulatory Organization's Statement of the Purpose of, and Statutory Basis for, the Proposed Rule Change

In its filing with the Commission, CSE 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 place specified in Item IV below. The CSE has prepared

[1] 15 U.S.C. 78s(b)(1).

[2] 17 CFR 240.19b–4.

[3] Technical corrections to the rule language were made during a telephone conversation between Robert Ackerman, Vice President Regulatory Services, CSE, and Joshua Kans, Attorney, Division of Market Regulation, Commission, January 26, 1999.

summaries, set forth in Sections A, B, and C below, of the most significant aspects of such statements.

A. Self-Regulatory Organization's Statement of the Purpose of, and Statutory Basis for, the Proposed Rule Change

(1) Purpose

On January 1, 2000, the internal date in computers throughout the world will change from ''12/31/99'' to ''01/01/00.'' Absent the necessary changes to the computers' codes, a number of errors could occur in even the most routine processing as the computers may read the two digit ''00'' year code as 1900 instead of as 2000. This ''Year 2000'' problem could have disastrous consequences for a number of businesses, including the securities industry, if businesses do not make the necessary changes and perform the necessary testing prior to the Year 2000. The constituents of the securities industry will need to coordinate extensive testing to ensure there are not widespread problems.

The CSE, in cooperation with the SEC and other self regulatory organizations (''SROs''), has been working to raise awareness of the Year 2000 problem in the industry. The proposed rule, Rule 4.5, would require CSE members to participate in testing of computer systems and file reports with the Exchange regarding the testing, in a manner and frequency prescribed by the Exchange. Other SROs, including NASD Regulation, the New York Stock Exchange, the Chicago Board Options Exchange and the American Stock Exchange, already have rules to require mandatory Year 2000 testing by their members. The Exchange is proposing that the rule expire automatically on January 1, 2001.

Proposed Rule 4.5(a) requires any firm with an electronic interface with the Exchange to conduct point-to-point testing with the Exchange. Point-to-point testing means testing between two entities, in this case between the member with the electronic interface and the Exchange. The Rule allows for exemptions if certain conditions are met by the member.

Additionally, to ensure that the securities industry is adequately prepared to meet the ''Year 2000'' problem, the Securities Industry Association (''SIA'') has undertaken to coordinate industry wide testing. Testing will include, among others, exchanges, registered clearing corporations, data processors and broker-dealers. The first test is scheduled for March 6, 1999. Proposed Rule 4.5(b) will require certain CSE members to participate in these tests. Proposed Rule 4.5(c) would also require members to file reports with the CSE concerning the required tests in the manner and frequency required by the Exchange.

A member that is subject to the Rule and fails to participate in the tests or fails to file any required reports may be subject to disciplinary action pursuant to Chapter VIII of the Exchange's Rules.

(2) Basis

By helping to ensure the participation of Exchange members in important industry testing to prepare for Year 2000, the proposed rule change is consistent with Section 6(b) of the Act [4] in general, and in particular will further the objectives of Section 6(b)(5),[5] which requires that the rules of an exchange be designed to promote just and equitable principles of trade, to foster cooperation and coordination with persons engaged in regulating, clearing, settling, processing information with respect to, and facilitating transactions in securities, to remove impediments to and perfect the mechanism of a free and open market and a national market system and, in general, to protect investors and the public interest.

B. Self-Regulatory Organization's Statement on Burden on Competition

The CSE does not believe the proposed rule change will impose any burden on competition that is not necessary or appropriate in furtherance of the Act.

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. Commission's Findings and Order Granting Accelerated Approval of Proposed Rule Change

After careful consideration, the Commission has concluded, for the reasons set forth below, that the proposed rule change is consistent with the requirements of the Act and the rules and regulations thereunder. Mandating Year 2000 testing and reporting is consistent with Section 6(b)(5) of the Act, which, among other aspects, requires that the rules of an exchange promote just and equitable principles of trade, foster cooperation and coordination with persons engaged in regulating, clearing, settling, processing information with respect to, and facilitating transactions in securities, and remove impediments to and perfect the mechanism of a free and open market and a national market system. The Commission believes that the proposed rule change will facilitate the CSE's and member firms' efforts to ensure the securities markets' continued smooth operation during the period leading up to and beyond January 1, 2000.

The Exchange has requested that the Commission approve the proposed rule change prior to the 30th day after the date of publication of notice of the filing in the **Federal Register** because industry-wide tests will soon begin, and the Exchange wants to ensure that members are able to comply with point-to-point and industry testing schedules and file reports with the Exchange concerning the required tests, and meet the deadline for correcting Year 2000 problems. The Commission finds good cause for approving the proposed rule change prior to the 30th day after the date of publication of notice of the filing in the **Federal Register**. It is vital that SROs such as the CSE have the authority to mandate that their member firms participate in Year 2000 testing and that they report test results (and other Year 2000 information) to the SROs. The proposed rule change will help the CSE participate in coordinating Year 2000 testing, including industry-wide testing, and in remediating any potential Year 2000 problems. This, in turn, will help ensure that the industry-wide tests and the CSE's Year 2000 efforts are successful. The proposed rule change will also help the CSE work with its member firms, the SIA, and other SROs to minimize any possible disruptions the Year 2000 may cause.

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, 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

[4] 15 U.S.C. 78f(b).

[5] 15 U.S.C. 78f(b)(5).

provisions of 5 U.S.C. 552, will be available for inspection and copying in the Commission's Public Reference Section, 450 Fifth Street, Washington, D.C. Copies of such filing will also be available for inspection and copying at the principal office of CSE. All submissions should refer to File No. SR–CSE–99–01 and should be submitted by March 2, 1999.

V. Conclusion

It is therefore ordered, pursuant to Section 19(b)(2) of the Act [6] that the proposed rule change (SR–CSE–99–01) is hereby approved on an accelerated basis.[7]

For the Commission, by the Division of Market Regulation, pursuant to delegated authority.[8]

Margaret H. McFarland,

Deputy Secretary.

[FR Doc. 99–3029 Filed 2–8–99; 8:45 am]

BILLING CODE 8010–01–M

SECURITIES AND EXCHANGE COMMISSION

[Release No. 34–41015; File No. SR-NASD–99–03]

Self-Regulatory Organizations; Notice of Filing and Immediate Effectiveness of Proposed Rule Change by the National Association of Securities Dealers, Inc. To Eliminate the Aggregation Presumption for SOES Orders Entered Within Five Minutes of Each Other

February 3, 1999.

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 January 14, 1999, the National Association of Securities Dealers, Inc. (''NASD'' or ''Association'') through its wholly owned subsidiary the Nasdaq Stock Market, Inc. (''Nasdaq'') filed with the Securities and Exchange Commission (''Commission'') the proposed rule change as described in Items I, II, and III below, which Items have been prepared by Nasdaq. Nasdaq has designated this proposal as one constituting a stated policy, practice, or interpretation with respect to the meaning, administration or enforcement of an existing rule to take effect upon filing with the Commission pursuant to Section 19(b)(3)(A)(i) of the Act,[3] and Rule 19b-4(e)(1) [4] promulgated thereunder, which renders the rule effective upon the Commission's receipt of this filing. The Commission is publishing this notice to solicit comments on the proposed rule change from interested persons.

I. Self-Regulatory Organization's Statement of the Terms of Substance of the Proposed Rule Change

The proposed rule change would eliminate the single investment decision aggregation presumption for Small Order Execution System (''SOES'') orders entered for accounts under the control of an associated person or public customer within five minutes of each other. This presumption is discussed in NASD Notice To Members (''NTM'') 88–61.

II. Self-Regulatory Organization's Statement of the Purpose of, and Statutory Basis for, the Proposed Rule Change

In its filing with the Commission, Nasdaq 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. Nasdaq 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

Nasdaq is proposing to eliminate the presumption, contained in NASD NTM 88–61, that any two or more orders entered into Nasdaq's SOES system within any five minute period are part of a single investment decision and thus subject to aggregation for purposes of determining if the order as a whole violates the prohibition on the entry or orders in excess of the maximum SOES tier size assigned to a particular security. While eliminating the single investment decision presumption, NTM 88–61's interpretation concerning what constitutes an order from a public customer will remain in effect.

The proposal responds to recent Nasdaq rule changes that now allow market makers to display the actual size of their trading interest rather than a required minimum size. Nasdaq believes that the removal of these artificial mandatory minimum quote increments, and the resulting increased ability of market makers to manage their exposure to automatic order execution, reduces the concerns about inappropriate splitting of orders too large for SOES into smaller, SOES-eligible amounts that served as the basis for the establishment of the aggregation presumption. Nasdaq notes that the prohibition on splitting up larger orders to obtain SOES access contained in NASD Rule 4730(c)(3) remains in effect and, if violated, may still serve as the basis for disciplinary action by NASD Regulation, Inc.

Based on the above, Nasdaq believes that the proposed rule change is consistent with the provisions of section 15A(b)(6) of the Act [5] in that the proposal is designed to prevent fraudulent and manipulative acts and practices, promote just and equitable principles of trade, and to facilitate transactions in securities.

(B) Self-Regulatory Organization's Statement on Burden on Competition

Nasdaq 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 Effectiveness of the Proposed Rule Change and Timing for Commission Action

The foregoing rule change has become immediately effective pursuant to Section 19(b)(3)(A)(i) of the Act,[6] and Rule 19b–4(e)(1) [7] thereunder, in that it constitutes a stated policy, practice, or interpretation with respect to the meaning, administration or enforcement of an existing rule. At any time within 60 days of the filing of a rule change pursuant to Section 19(b)(3)(A) of the Act,[8] the Commission may summarily abrogate the 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

[6] 15 U.S.C. 78s(b)(2).

[7] In approving the proposal, the Commission has considered the rule's impact on efficiency, competition and capital formation. 15 U.S.C. 78c(f).

[8] 17 CFR 200.30–3(a)(12).

[1] 15 U.S.C. 78s(b)(1).

[2] 17 CFR 240.19b-4.

[3] 15 U.S.C. 78s(b)(3)(A)(i).

[4] 17 CFR 240.19b-4(e)(1).

[5] 15 U.S.C. 78*o*–3(b)(6).

[6] 15 U.S.C. 78s(b)(3)(A)(i).

[7] 17 CFR 249.19b–4(e)(1).

[8] 15 U.S.C. 78s(b)(3)(A).

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. Copies of such filing will also be available for inspection and copying at the principal office of the NASD. All submissions should refer to SR–NASD–99–03 and should be submitted by March 2, 1999.

For the Commission, by the Division of Market Regulation, pursuant to delegated authority.[9]

Margaret H. McFarland,

Deputy Secretary.

[FR Doc. 99–3100 Filed 2–8–99; 8:45 am]

BILLING CODE 8010–01–M

DEPARTMENT OF TRANSPORTATION

Office of the Secretary

Reports, Forms and Recordkeeping Requirements; Agency Information Collection Activity Under OMB Review

AGENCY: Office of the Secretary, DOT.

ACTION: Notice and request for comments.

SUMMARY: In compliance with the Paperwork Reduction Act of 1995 (44 U.S.C. 3501 *et seq.*), this notice announces that the Information Collection (ICR) abstracted below has been forwarded to the Office of Management and Budget (OMB) for review and comment. The ICR describes the nature of the information collection and its expected burden. The **Federal Register** Notice with a 60-day comment period soliciting comments on the following collection of information was published on November 10, 1998, [63 FR 63105].

DATES: Comments must be submitted on or before March 11, 1999.

FOR FURTHER INFORMATION CONTACT: Joe Strassburg, Chief, Division of Marine Insurance, Office of Subsidy and Insurance, Maritime Administration, MAR–575, Room 8117, 400 Seventh Street, S.W., Washington, D.C. 20590. Telephone 202–366–4161 or FAX 202–366–7901. Copies of this collection can also be obtained from that office.

SUPPLEMENTARY INFORMATION:

Maritime Administration (MARAD)

Title: War Risk Insurance.

OMB Control Number: 2133–0011.

Type of Request: Extension of currently approved collection.

Affected Public: Vessel(s) owner or charterer interested in participation in MARAD's war risk insurance program.

*Form(s):*MA–355; MA–528; MA–742; MA–828; and, MA–942.

Abstract: As authorized by Section 1202, Title XII, Merchant Marine Act, 1936, as amended, (46 App. U.S.C. 1282), the Secretary of the U.S. Department of Transportation may provide war risk insurance adequate for the needs of the waterborne commerce of the United States if such insurance cannot be obtained on reasonable terms from qualified insurance companies operating in the United States. This collection is required for the program. It consists of forms MA–355; MA–528; MA–742; MA–828; and MA–942.

Need and Use of the Information: The collected information is necessary to determine the eligibility of the applicant and the vessel(s) for participation in the war risk insurance program.

Annual Estimated Burden Hours: The current burden is estimated at 930 hours.

Addressee: Send comments to the Office of Information and Regulatory Affairs, Office of Management and Budget, 725–17th Street, NW., Washington, DC 20503, Attention MARAD Desk Officer.

Comments are Invited on: whether the proposed collection of information is necessary for the proper performance of the functions of the Department, including whether the information will have practical utility; the accuracy of the Department's estimate of the burden of the proposed information collection; ways to enhance the quality, utility and clarity of the information to be collected; and ways to minimize the burden of the collection of information on respondents, including the use of automated collection techniques or other forms of information technology.

A comment to OMB is best assured of having its full effect if OMB receives it within 30 days of publication.

Issued in Washington, D.C. on January 27, 1999.

Phillip A. Leach,

Clearance Officer, Department of Transportation.

[FR Doc. 99–3140 Filed 2–8–99; 8:45 am]

BILLING CODE 4910–81–P

DEPARTMENT OF TRANSPORTATION

Federal Aviation Administration

Proposed Advisory Circular 25.803–1A, Emergency Evacuation Demonstrations

AGENCY: Federal Aviation Administration, DOT.

ACTION: Notice of availability of proposed Advisory Circular (AC) 25.803–1A and request for comments; reopening of comment period.

SUMMARY: This notice announces the reopening of the comment period for Notice of availability of proposed Advisory Circular (AC) 25.803–1A, and request for comments, which was published in the **Federal Register** on October 20, 1998 (63 FR 56059), and closed on December 21, 1998. In that notice, the FAA invited public comment on a proposed AC which provides guidance on a means, but not the only means, of compliance with the Federal Aviation Regulations (FAR) concerning (1) conduct of full-scale emergency evacuation demonstrations, and (2) use of analysis and tests in lieu of conducting an actual demonstration. This reopening of the comment period is necessary to give all interested persons an opportunity to present their views on the proposed AC.

DATES: Comments must be received on or before May 7, 1999.

ADDRESSES: Send all comments on proposed AC to: Federal Aviation Administration, Attention: Terry Rees, Airframe and Cabin Safety Branch, ANM–115, Transport Airplane Directorate, Aircraft Certification Service, 1601 Lind Avenue SW, Renton, WA 98055–4056. Comments may be inspected at the above address between 7:30 a.m. and 4:00 p.m. weekdays, except Federal holidays.

FOR FURTHER INFORMATION CONTACT: Katherine Burks, Transport Standards Staff, at the address above, telephone (206) 227–2114.

SUPPLEMENTARY INFORMATION:

Comments Invited

A copy of the draft AC may be obtained by contacting the person named above under **FOR FURTHER INFORMATION CONTACT**. Interested

[9] 17 CFR 200.30–3(a)(12).

persons are invited to comment on the proposed AC by submitting such written data, views, or arguments as they may desire. Commenters should identify AC 25.803–1A and submit comments, in duplicate, to the address specified above. All communications received on or before the closing date for comments will be considered by the Transport Standards Staff before issuing the final AC.

Background

On October 20, 1998, the FAA published a Notice of availability of proposed AC 25.803–1A, and request for comments. In that notice, the FAA invited public comment on a proposed advisory circular (AC) which provides guidance on a means, but not the only means, of compliance with the Federal Aviation Regulations (FAR) concerning (1) conduct of full-scale emergency evacuation demonstrations, and (2) use of analysis and tests in lieu of conducting an actual demonstration.

Section 25.803(c) requires that for airplanes with a passenger seating capacity of more than 44 passengers, it must be shown that the passengers and required crewmembers can be evacuated to the ground in 90 seconds under simulated emergency conditions. Compliance can be shown by conducting a full-scale emergency evacuation demonstration under the test conditions specified in Appendix J of part 25 or a combination of analysis and testing found acceptable by the FAA. Advisory Circular 25.803–1, issued on November 13, 1989, provided guidance on how to conduct a full-scale emergency evacuation demonstration and the use of analysis and testing in lieu of conducting a full-scale demonstration. This proposed revision to the AC provides additional guidance on how to conduct a full-scale demonstration, including information on the test start signal, briefing of test participants, obtaining informed consent, and flight attendant training. In addition, the proposed revision expands the discussion on the determination on whether a combination of analysis and testing may be used in lieu of the full-scale demonstration, including the types of testing which may be necessary to support an analysis. Finally, additional guidance is provided on what and how information and test data should be provided in an analysis.

Since publication of that notice, the FAA has received a request that the comment period for the notice be extended past its original closing date of December 21, 1998, to allow more time in which to study the proposal and to prepare comments on this very important issue.

Reopening of Comment Period

The FAA has reviewed the request for consideration of an additional amount of time to comment on proposed AC 25.803–1A, and has determined that reopening the comment period would be in the public interest and that good cause exists for taking this action. Accordingly, the comment period of Notice of availability of proposed AC 25.803–1A, and request for comments, is reopened until May 7, 1999.

Issued in Renton, Washington, on February 1, 1999.

John J. Hickey,

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

[FR Doc. 99–3136 Filed 2–8–99; 8:45 am]

BILLING CODE 4910–13–M

DEPARTMENT OF TRANSPORTATION

Surface Transportation Board

[STB Ex Parte No. 627]

Market Dominance Determinations—Product and Geographic Competition

AGENCY: Surface Transportation Board.

ACTION: Notice of Policy Statement.

SUMMARY: On December 21, 1998, the Surface Transportation Board (Board) served a decision changing its policy with respect to market dominance by eliminating product and geographic competition as factors in market dominance determinations in railroad rate proceedings.

EFFECTIVE DATE: January 17, 1999.

FOR FURTHER INFORMATION CONTACT: Thomas J. Stilling, (202) 565–1558. [TDD for the hearing impaired: (202) 565–1695.]

SUPPLEMENTARY INFORMATION: In *Market Dominance Determinations—Product and Geographic Competition,* STB Ex Parte No. 627 (served Dec. 21, 1998), the Board revised the guidelines used to determine whether a rail carrier has market dominance. Market dominance ''means an absence of effective competition from other rail carriers or modes of transportation for the transportation to which a rate applies,'' 49 U.S.C. 10707(a), and is a prerequisite to the Board's jurisdiction to review the reasonableness of a challenged rail rate, 49 U.S.C. 10701(d)(1), 10707(b), (c). In assessing whether a railroad has market dominance, the Board concluded that it was no longer practical to consider whether product competition (i.e., the ability of the complaining shipper to avoid using the defendant railroad by shipping or receiving a substitute product) or geographic competition (i.e., the ability of the complaining shipper to avoid using the defendant railroad by obtaining the same product from a different source, or by shipping the same product to a different destination) effectively constrained the railroad's rates. Rather, the Board decided to limit market dominance evidence to only evidence of direct intramodal competition (i.e., whether the complaining shipper can use other railroads to transport the same commodity between the same points) and intermodal competition (i.e., whether the complaining shipper can use other transportation modes, such as trucks or barges, to transport the same commodity between the same points).

Prior to 1976, all rail rates were subject to government oversight to enforce the statutory requirement that rates be ''just and reasonable.'' In Section 202(b) of the Railroad Revitalization and Regulatory Reform Act of 1976 (4R Act), Congress limited regulatory jurisdiction over the reasonableness of railroad rates to those instances where the railroad involved has market dominance. The 4R Act delegated to the Board's predecessor—the Interstate Commerce Commission (ICC)—the task of establishing standards and procedures for determining market dominance in rate cases, but expressly directed that those standards and procedures be ''designed to provide for a practical determination without administrative delay.''

In 1976, the ICC adopted market dominance procedures that declined to consider the effects of product or geographic competition on a railroad's ability to set its rates, out of concern that the introduction of such considerations would require extensive fact-finding and produce lengthy antitrust-type litigation. However, in 1979 the ICC changed its approach regarding product and geographic competition. Believing that consideration of product and geographic competition evidence would not necessarily conflict with the statutory directive to make practical market dominance determinations without administrative delay, the agency sanctioned the introduction of such evidence to show that effective competition exists.

Based on many years of experience processing rate complaint cases under the expanded approach to market dominance and the record developed in this rulemaking, the Board concluded that consideration of product and

geographic competition significantly impedes the efficient processing of such cases. Accordingly, to comply with both the recent legislative directive to process rate complaints more expeditiously and the long-standing Congressional intent that market dominance be a practical determination made without delay, the Board limited the evidence that would be considered to only that required by the statute, i.e., competition ''for the transportation to which a rate applies.''

The Board's decision is available on the Board's web site at www.stb.dot.gov. Copies of the decision also may be purchased from DC NEWS & DATA, INC. by phoning (202) 289–4357.

Dated: February 2, 1999.

Vernon A. Williams,

Secretary.

[FR Doc. 99–3120 Filed 2–8–99; 8:45 am]

BILLING CODE 4915–00–P

DEPARTMENT OF THE TREASURY

[Treasury Directive Number 15–12]

Delegation of Authority to the Director, Bureau of Alcohol, Tobacco and Firearms, To Investigate Violations of 18 U.S.C. 1956 and 1957

Dated: January 25, 1999.

1. Purpose

This Directive delegates to the Director, Bureau of Alcohol, Tobacco and Firearms (ATF), authority to investigate violations of 18 U.S.C. 1956 and 1957.

2. Delegation

By virtue of the authority vested in the Secretary of the Treasury by 18 U.S.C. 981, 1956(e) and 1957(e) and the authority delegated to the Under Secretary (Enforcement) by Treasury Order (TO) 101–05, there is hereby delegated to the Director, ATF:

a. investigatory authority over violations of 18 U.S.C. 1956 or 1957 involving: 18 U.S.C. 2341–2346 (trafficking in contraband cigarettes); § 38 of the Arms Export Control Act, 22 U.S.C. 2778 (relating to the importation of items on the U.S. Munitions Import List, except violations relating to exportation, in transit, temporary import, or temporary export transactions); 18 U.S.C. 1952 (relating to traveling in interstate commerce, with respect to liquor on which Federal excise tax has not been paid); or any act or activity constituting an offense listed in 18 U.S.C. 1961(1), with respect to any act or threat involving arson, which is chargeable under State law and punishable for more than one year imprisonment; and

b. seizure and forfeiture authority and related authority under 18 U.S.C. 981 relating to violations of 18 U.S.C. 1956 or 1957 within the investigatory jurisdiction of ATF under paragraph 2.a., and seizure authority under 18 U.S.C. 981 relating to any other violation of 18 U.S.C. 1956 or 1957 if the bureau with investigatory authority is not present to make the seizure. Property seized under 18 U.S.C. 981 where investigatory jurisdiction is with another bureau not present at the time of the seizure shall be turned over to that bureau.

3. Forfeiture Remission

The Director, ATF, is authorized to remit or mitigate forfeitures of property valued at not more than $500,000 seized pursuant to paragraph 2.b.

4. Redelegation

The authority delegated by this Directive may be redelegated.

5. Coordination

a. If at any time during an investigation of a violation of 18 U.S.C. 1956 or 1957, the Director, ATF, discovers evidence of a matter within the jurisdiction of another Treasury bureau, the Director, ATF, shall immediately notify that bureau of the investigation and invite that bureau to participate in the investigation. The Director, ATF, shall attempt to resolve disputes over investigatory jurisdiction with other Treasury bureaus at the field level.

b. The Under Secretary (Enforcement) shall settle disputes that cannot be resolved by the bureaus. The Under Secretary (Enforcement) shall settle disputes over investigatory jurisdiction with the Internal Revenue Service in consultation with the Commissioner, Internal Revenue Service.

c. With respect to matters discovered within the investigatory jurisdiction of a Department of Justice bureau or the Postal Service, the Director, ATF, shall adhere to the provisions on notice and coordination in the ''Memorandum of Understanding Among the Secretary of the Treasury, the Attorney General and the Postmaster General Regarding Money Laundering Investigations,'' dated August 16, 1990, or any such subsequent memorandum of understanding entered pursuant to 18 U.S.C. 1956(e) or 1957(e).

d. With respect to seizure and forfeiture operations and activities within its investigative jurisdiction, ATF shall comply with the policy, procedures, and directives developed and maintained by the Treasury Executive Office for Asset Forfeiture. Compliance shall include adhering to the oversight, reporting, and administrative requirements relating to seizure and forfeiture contained in such policy, procedures, and directives.

6. Authorities

a. 18 U.S.C. 981, 1952, 1956, 1957, 1961, and 2341–2346.

b. 31 U.S.C. 5311–5326 (other than violations of 31 U.S.C. 5316).

c. 22 U.S.C. 2778.

d. TO 101–05, ''Reporting Relationships and Supervision of Officials, Offices and Bureaus, Delegation of Certain Authority, and Order of Succession in the Department of the Treasury,'' dated May 4, 1995.

e. TO 102–14, ''Delegation of Authority with Respect to the Treasury Forfeiture Fund Act of 1992,'' dated January 10, 1995.

7. Cancellation

Treasury Directive 15–12, ''Delegation of Authority to the Director, Bureau of Alcohol, Tobacco and Firearms to Investigate Violations of 18 U.S.C. 1956 and 1957,'' dated September 11, 1995, is superseded.

8. Expiration Date

This Directive shall expire three years from the date of issuance unless superseded or canceled prior to that date.

9. Office of Primary Interest

Office of the Under Secretary (Enforcement).

James E. Johnson,

Under Secretary (Enforcement).

[FR Doc. 99–3118 Filed 2–8–99; 8:45 am]

BILLING CODE 4810–25–P

DEPARTMENT OF THE TREASURY

Office of the Comptroller of the Currency

Proposed Renewal of Information Collection; Comment Request

AGENCY: Office of the Comptroller of the Currency (OCC), Treasury.

ACTION: Notice and request for comment.

SUMMARY: The OCC, as part of its continuing effort to reduce paperwork and respondent burden, invites the general public and other Federal agencies to take this opportunity to comment on a continuing information collection, as required by the Paperwork Reduction Act of 1995. Currently, the OCC is soliciting comment concerning its extension, without change, of an

information collection titled, ''Release of Non-Public Information—12 CFR 4.''

DATES: You should submit written comments by April 12, 1999.

ADDRESSES: You should direct all written comments to the Communications Division, Attention: 1557–0200, Third Floor, Office of the Comptroller of the Currency, 250 E Street, SW, Washington, DC 20219. In addition, you may send comments by facsimile transmission to (202) 874–5274, or by electronic mail to regs.comments@occ.treas.gov.

FOR FURTHER INFORMATION CONTACT: You can request additional information or a copy of the collection from Jessie Gates or Camille Dickerson, (202) 874–5090, Legislative and Regulatory Activities Division (1557–L299), Office of the Comptroller of the Currency, 250 E Street, SW, Washington, DC 20219. You can inspect and photocopy the comments at the OCC's Public Reference Room, 250 E Street, SW, Washington, DC, between 9:00am and 5:00pm on business days. You can make an appointment to inspect the comments by calling (202) 874–5043.

SUPPLEMENTARY INFORMATION: The OCC is proposing to extend OMB approval of the following information collection:

Title: Release of Non-Public Information—12 CFR 4.

OMB Number: 1557–0200.

Form Number: None.

Abstract: This submission covers an existing regulation and involves no change to the regulation or to the information collections embodied in the regulation. The OCC requests only that OMB renew its approval of the information collections in the current regulation.

The information collection is required to protect non-public OCC information from unnecessary disclosure in order to ensure that national banks and the OCC engage in a candid dialogue during the bank examination process. Individuals who request non-public OCC information are required to provide the OCC with information regarding the requester's legal grounds for the request. Inappropriate release of information would inhibit open consultation between a bank and the OCC.

The information requirements in 12 CFR part 4 are located as follows:

12 CFR 4.33: Request for non-public OCC records or testimony.

12 CFR 4.35(b)(3): Third parties requesting testimony.

12 CFR 4.36(a)(2): OCC former employee notifying OCC of subpoena.

12 CFR 4.37 (a) and (b): Agreement to limit dissemination of released information.

12 CFR 4.38(d): Request for authenticated records or certificate of nonexistence of records.

The OCC uses the information to process requests for non-public OCC information and to determine if sufficient grounds exist for the OCC to release the requested information or provide testimony. This information collection makes the mechanism for processing requests more efficient and facilitates and expedites the OCC's release of non-public information and testimony to the requester.

Type of Review: Extension, without change, of a currently approved collection.

Affected Public: Businesses or other for-profit; individuals.

Number of Respondents: 180.

Total Annual Responses: 505.

Frequency of Response: On occasion.

Total Annual Burden: 894 hours.

Comments

Comments submitted in response to this notice will be summarized and included in the request for OMB approval. All comments will become a matter of public record. Comments are invited on:

(a) Whether the collection of information is necessary for the proper performance of the functions of the agency, including whether the information has practical utility;

(b) The accuracy of the agency's estimate of the burden of the collection of information;

(c) Ways to enhance the quality, utility, and clarity of the information to be collected;

(d) Ways to minimize the burden of the collection on respondents, including through the use of automated collection techniques or other forms of information technology; and

(e) Estimates of capital or startup costs and costs of operation, maintenance, and purchase of services to provide information.

Dated: February 3, 1999.

Stuart Feldstein,

Assistant Director, Legislative & Regulatory Activities Division.

[FR Doc. 99–3045 Filed 2–8–99; 8:45 am]

BILLING CODE 4810–33–P

Federal Register

Tuesday
February 9, 1999

Part II

Department of the Interior

Bureau of Land Management

43 CFR Part 3800

Mining Claims Under the General Mining Laws: Surface Management; Proposed Rule

DEPARTMENT OF THE INTERIOR

Bureau of Land Management

43 CFR Part 3800

[WO–300–1990–00]

RIN 1004–AD22

Mining Claims Under the General Mining Laws; Surface Management

AGENCY: Bureau of Land Management, Interior.

ACTION: Proposed rule.

SUMMARY: The Bureau of Land Management (BLM) proposes to revise its regulations governing mining operations involving metallic and some other minerals on public lands administered by BLM. BLM is revising the regulations to improve their clarity and organization, address technical advances in mining, incorporate policies developed after the previous regulations were promulgated, and better protect natural resources and our Nation's natural heritage lands from the adverse impacts of mining. The regulations are intended to prevent unnecessary or undue degradation of BLM-administered lands by mining operations authorized by the mining laws.

DATES: *Comments.* Send your comments to reach BLM on or before May 10, 1999.

Public Hearings. BLM plans to hold public hearings in conjunction with this proposed rule. The dates and times of the hearings are in the **SUPPLEMENTARY INFORMATION** section under *Public Hearings.*

ADDRESSES: *Comments.* You may mail comments to Bureau of Land Management, Administrative Record, Nevada State Office, P.O. Box 12000; Reno, Nevada 89520–0006. You may hand deliver comments to BLM at 850 Harvard Way, Reno, Nevada. Submit electronic comments and other data to WOComment@wo.blm.gov. For other information about filing comments electronically, see the **SUPPLEMENTARY INFORMATION** section under ''Electronic access and filing address.''

Public Hearings. The locations of the public hearings that BLM is holding in conjunction with this proposed rule are in the **SUPPLEMENTARY INFORMATION** section under *Public Hearings.*

FOR FURTHER INFORMATION CONTACT: Robert M. Anderson, (202) 208–4201; or Michael Schwartz, (202) 452–5198. Individuals who use a telecommunications device for the deaf (TDD) may contact Mr. Anderson or Mr. Schwartz by calling the Federal Information Relay Service at 1–800–877–8339 between 8:00 a.m. and 4:00 p.m. Eastern time, Monday through Friday, excluding Federal holidays.

SUPPLEMENTARY INFORMATION:

I. How Can I Comment on this Proposal?
II. What is the Background of this Rulemaking?
III. What are the Contents of the Proposal?
IV. How did BLM Meet its Procedural Obligations?

I. How Can I Comment on this Proposal?

Electronic Access and Filing Address

You may view an electronic version of this proposed rule at BLM's Internet home page: www.blm.gov. You may also comment via the Internet to: WOComment@wo.blm.gov. Please also include ''Attention: RIN 1004–AD22'' and your name and return address in your Internet message. If you do not receive a confirmation from the system that we have received your Internet message, contact us directly at (202) 452–5030. BLM is working to set up a system that would allow commenters to send comments via the Internet and to view already submitted comments. When this system is available, we will publish a notice in the **Federal Register**.

Written Comments

Your written comments on the proposed rule should be specific, confined to issues pertinent to the proposed rule, and should explain the reason for any recommended change. Where possible, you should reference the specific section or paragraph of the proposal that you are addressing. BLM may not necessarily consider or include in the Administrative Record for the final rule comments that BLM receives after the close of the comment period (see **DATES**) or comments delivered to an address other than those listed above (see **ADDRESSES**).

BLM will make comments, including names, street addresses, and other contact information of respondents, available for public review at this address during regular business hours (8:00 a.m. to 4:00 p.m.), Monday through Friday, except Federal holidays. BLM will also post all comments on its Internet home page (www.blm.gov) at the end of the comment period. Individual respondents may request confidentiality. If you wish to request that BLM consider withholding your name, street address, and other contact information (such as: Internet address, FAX or phone number) from public review or from disclosure under the Freedom of Information Act, you must state this prominently at the beginning of your comment. BLM will honor requests for confidentiality on a case-by-case basis to the extent allowed by law. BLM will make available for public inspection in their entirety all submissions from organizations or businesses, and from individuals identifying themselves as representatives or officials of organizations or businesses.

Public Hearings

BLM will hold public hearings at the following locations on the dates and local times specified.

Alaska
- Fairbanks—March 30, 1999—Carlson Center, 2010 Second Avenue; 1:00 p.m. and 7:00 p.m.

Arizona
- Phoenix—March 30, 1999—Sheraton Hotel, 2620 Dunlap Avenue; 1:00 p.m. and 6:00 p.m.

California
- San Francisco—April 20, 1999—Holiday Inn Civic Center, 50 Eighth Street; 1:00 p.m. and 6:00 p.m.
- Ontario—April 21, 1999—Doubletree Hotel; times to be determined.
- Sacramento—April 22, 1999—Red Lion Inn, 1401 Arden Way; 1:00 p.m. and 6:00 p.m.

Colorado
- Lakewood—March 30, 1999—Sheraton Denver West Hotel and Conference Center, 360 Union Blvd., Golden Room; 1:00 p.m. and 7:00 p.m.

Washington, D.C.
- April 14, 1999—Washington Plaza Hotel, 10 Thomas Circle, NW, Monroe Room; 12:30 p.m.

Idaho
- Boise—April 27, 1999—BLM State Office, 1387 S. Vinnell Way, Sagebrush-Ponderosa Conference Room; 6:00 p.m.

Montana
- Helena—April 14, 1999—Colonial Inn, 2301 Colonial Drive; 1:30 p.m. and 7:00 p.m.

New Mexico
- Socorro—March 31, 1999—Macey Center, 801 Leroy, Galina Room; 3:00 p.m.

Nevada
- Reno—March 23, 1999—Silver Legacy Hotel; 2:00 p.m. and 7:00 p.m.
- Elko—March 24, 1999—Convention Center; 1:00 p.m. and 6:00 p.m.

Oregon
- Eugene—April 22, 1999—BLM District Office, 2890 Chad Street, Conference Room; times to be determined.

Utah
- Salt Lake City—April 7, 1999—Department of Natural Resources, 1594 West North Temple, Rooms 1040/50, 1:00 p.m. and 6:00 p.m.

Washington

Spokane—April 20, 1999—Doubletree Inn; times to be determined.

Wyoming

Casper—March 31, 1999—Casper Parkway Plaza Inn, 123 West E Street; 2:00 p.m. and 7:00 p.m.

In order to assist the transcriber and to ensure an accurate record, BLM requests that persons who testify at a hearing give the transcriber a copy of their testimony. The meeting sites are accessible to individuals with disabilities. An individual with a disability who will need an auxiliary aid or service to participate in the hearing, such as interpreting service, assistive listening device, or materials in an alternate format, must notify the person listed under **FOR FURTHER INFORMATION CONTACT** two weeks before the scheduled hearing date. Although BLM will attempt to meet a request received after that date, the requested auxiliary aid or service may not be available because of insufficient time to arrange it.

II. What is the Background of this Rulemaking?

Under the Constitution, Congress has the authority and responsibility to manage public land. See U.S. Const. art. IV, § 3, cl. 2. Through statute, Congress has delegated this authority to agencies such as the Bureau of Land Management (BLM). The Federal Land Policy and Management Act of 1976 (FLPMA) directs the Secretary of the Interior, by regulation or otherwise, to take any action necessary to prevent unnecessary or undue degradation of the public lands. See 43 U.S.C. 1732(b). FLPMA also directs the Secretary of the Interior, with respect to public lands, to promulgate rules and regulations to carry out the purposes of FLPMA and of other laws applicable to the public lands. See 43 U.S.C. 1740. ''Public lands'' are defined in FLPMA (in pertinent part) as ''any land and interest in land owned by the United States . . . and administered by the Secretary of the Interior through the Bureau of Land Management. . . .'' See 43 U.S.C. 1702. The law gives the Secretary of Agriculture responsibility for promulgating rules and regulations applicable to lands within the National Forest System. For this reason, none of the regulatory changes discussed in this proposal would apply to the National Forests. See 36 CFR part 228 for regulations governing mining operations on National Forests. These proposed regulations are also authorized by 30 U.S.C. 22, the portion of the mining laws that opens public lands to exploration and purchase ''under regulations prescribed by law.''

Under this statutory authority, BLM issued regulations in 1980 to ensure that public lands are protected from unnecessary or undue degradation and that areas disturbed during the search for and extraction of mineral resources are reclaimed. See 45 FR 78902–78915, November 26, 1980. These regulations were BLM's first specific regulations to govern surface-disturbing activities on public lands resulting from operations under the mining laws. The basic framework established by the 1980 regulations separates mining activities into three distinct categories based on increasing levels of disturbance, casual use, notice-level operations, and plan-level operations—each with a correspondingly increasing level of BLM involvement.

In recognition of the fact that the 1980 regulations were a first attempt at regulating mining activities on public lands, BLM acknowledged that implementation of the regulations would involve monitoring and a cooperative effort by BLM, the States, the mining industry, and the public. BLM pledged to reassess the regulations and amend them at the end of two years, as necessary to ensure that they protect public lands from unnecessary or undue degradation (45 FR 78903).

Subsequently, a series of developments occurred that collectively had the effect of focusing increased attention on Federal minerals management under the mining laws and on mining law reform in general. One of the most important developments was the widespread use of cyanide leaching technology to extract gold from relatively low-grade ores. According to the U.S. Geological Survey, in 1980 about two-thirds of the 960,000 troy ounces of gold mined in the U.S. was produced using cyanide technology. In 1997, virtually all the 10 million troy ounces of U.S. gold production came through the use of cyanide technology. See *Minerals Information—Gold,* U.S.G.S. (various years) and *Minerals Commodities Summaries—Gold,* U.S.G.S. (Jan. 1988). The mining operations using this technology process relatively large quantities of ore and often disturb large areas, create large pits, require large spoil and waste rock depositories, and utilize a significant amount of water. At the same time, there was concern over migratory birds and other wildlife being killed through contact with cyanide-containing solutions in ponds and impoundments. There was also public concern about the possible effects on human health of the use of cyanide by mining operations. The General Accounting Office issues a series of reports highlighting, among other things, abuses from hardrock mining, the need for bonding of mining operations, and the need for better reclamation. See GAO/RCED 86–48, GAO/RCED 87–157, GAO/RCED 88–21, and GAO/RCED 88–123BR. As a result, in January 1989, the Director of BLM established a task force to recommend ways to address the issues that had been raised. See also GAO/RCED 91–145.

In late 1989, the task force recommended that BLM (1) expand its bonding policy for exploration and mining, (2) develop a cyanide management program, (3) review current reclamation practices, and (4) address pre-1981 mining operations that have been abandoned. BLM took a number of steps to implement these recommendations, including development of a cyanide policy (BLM Instruction Memorandum 90–566, August 6, 1990, amended November 1, 1990); issuance of a proposed rule to revise the bonding regulations (56 FR 31602, July 11, 1991); and completion of the Solid Minerals Reclamation Handbook (BLM Manual Handbook H–3042–1, February 7, 1992, as amended). However, BLM had not yet conducted a comprehensive review of the 1980 regulations, and the Director decided in July 1991 that the time had come.

Thus, on October 23, 1991, BLM published a notice of intent to propose rulemaking. See 56 FR 54815–54816. The notice solicited comments on a number of issues, including—

- Whether the five-acre threshold for notices should be modified or eliminated,
- Whether the definition of ''unnecessary or undue degradation'' should be revised,
- Whether the regulations should specify prohibited acts subject to civil and criminal enforcement,
- Whether time frames for review of plans and processing of notices should be specified,
- Whether additional environmental and reclamation requirements should be added to the regulations,
- Whether the regulations should clarify or elaborate the activities authorized under casual use, and
- Whether the regulations should provide for improved coordination and cooperation with States.

As a part of the review, BLM conducted four public workshops in December 1991, in Anchorage, Alaska; Spokane, Washington; Denver, Colorado; and Reno, Nevada. BLM received about 140 written comments, along with petitions containing about 250 signatures. About 250 people attended the four workshops. Following the close of the comment period on

January 3, 1992, a task force of BLM employees began work on proposed revisions to the 1980 regulations. The task force completed its work and presented its recommendations to the Director of BLM in April 1992. The recommendations included changing the five-acre threshold to give BLM greater management control over special areas, sensitive resource values, processing operations, and reclamation and adding enforcement provisions to the regulations.

However, BLM put the initiative on hold due to the legislative proposals for mining law reform then under consideration by the Congress. The legislative changes would have superseded any changes to the 1980 regulations. Ultimately, neither the 103rd (1993/1994) nor the 104th (1995/1996) Congress produced legislative changes. In the meantime, BLM moved forward to complete and implement other proposals that stemmed from initiatives begun earlier, including:

- An acid mine drainage policy to ensure uniform consideration of this issue in plans of operations (BLM Instruction Memorandum 96–79, April 2, 1996);
- A final rule tightening standards and strengthening enforcement against improper use and occupancy of mining claims (61 FR 37116, July 16, 1996); and
- A final rule to strengthen bonding requirements (62 FR 9093, February 28, 1997).

On January 6, 1997, the Secretary of the Interior, expressing the view that, ''It is plainly no longer in the public interest to wait for Congress to enact legislation that corrects the remaining shortcomings of the 3809 regulations,'' directed BLM to restart the rulemaking process. The Secretary identified several regulatory revisions that should be proposed for public comment, including:

- Rewriting the definition of ''unnecessary or undue degradation;''
- Developing performance standards for the conduct of mining and reclamation;
- Proposing alternative ways of addressing the issue of notice-level operations; and
- Coordinating with State regulatory programs to minimize duplication and promote cooperation.

On April 4, 1997, BLM issued a notice informing the public of the agency's intent to prepare an environmental impact statement (EIS) for the revision of the 3809 regulations and requesting comments on the scope of the EIS. See 62 FR 16177. To collect a wide range of comments, BLM held public meetings at 11 locations throughout the Western United States. BLM also held a public meeting in Washington, D.C. Over 1,000 people attended the public meetings. In addition to the verbal comments collected at the public meetings, BLM also received more than 1,800 comment letters from individuals and representatives of State and local governments, the mining industry, and citizens' groups.

As highlighted earlier in this discussion, BLM revised the financial guarantee requirements of the 1980 regulations in a final rule issued on February 28, 1997. See 62 FR 9093. The changes included requiring financial guarantees for all plan-level operations, requiring certification of the existence of financial guarantee for all notice-level operations, requiring third-party certification of reclamation cost estimates, setting minimum per-acre financial guarantee amounts, and expanding the kinds of financial instruments that can be used as financial guarantees. The 1997 financial guarantee changes were challenged by an industry association. On May 13, 1998, a Federal Court remanded the revised regulations on procedural grounds. *See Northwest Mining Association* v. *Babbitt*, No. 97–1013 (D.D.C. May 13, 1998). This action reinstated the regulations that were in place prior to the 1997 final rule. A significant aspect of this rulemaking is to respond to the remand by re-promulgating strengthened financial guarantee provisions. See the discussion of the proposed financial guarantee regulations in the section-by-section description of the proposed regulations later in this preamble.

Despite the foregoing history and developments related to subpart 3809 which would justify a rulemaking to update subpart 3809, it has been asserted that BLM has not demonstrated a need to revise subpart 3809 in light of improvements in State regulation of locatable minerals mining since 1980. BLM disagrees. Both the authority and the need exist for this rulemaking. This rulemaking is based upon BLM's non-delegable and independent responsibility under FLPMA to manage the public lands to prevent unnecessary or undue degradation of the public lands, and a recognition that BLM's current rules may not be adequate to assure this result. In enacting FLPMA, Congress intended that the Secretary of the Interior determine what constitutes unnecessary or undue degradation and not that the States would do so on a State-by-State basis. Sections 302(b), 303(a), and 310 of FLPMA reflect this responsibility. This rulemaking, therefore, reflects the Secretary's judgment of the regulations required to prevent unnecessary or undue degradation.

BLM recognizes that many of the States have upgraded their regulation of locatable minerals mining since 1980. It is clear, however, the Federal rules need upgrading, regardless of State law. Areas where the existing rules require upgrading include financial guarantees (to require financial guarantees for all operations greater than casual use, thereby ensuring the availability of resources for the completion of reclamation); enforcement (to implement section 302(c) of FLPMA and provide administrative enforcement tools and penalties); threshold for notice operations (to require plans of operations for operations more likely to pollute the land and those in sensitive areas); withdrawn areas (to require validity exams before allowing plans of operations to be approved in such areas); casual use (to clarify which activities do or do not constitute casual use); performance standards and the definition of unnecessary or undue degradation (to establish objective standards to reflect current mining technology); and others. As mentioned earlier in this preamble, many of these shortcomings have been pointed out since 1986 in a series of Congressional hearings, General Accounting Office reports, and Departmental Inspector General reports. See the Secretary's January 6, 1997 memorandum.

To the extent an overlap with State regulations would exist, BLM is proposing a general set of standards that is intended to set a national floor, but in a manner that will accommodate most State standards. Thus, for the most part, these proposed rules would not mandate specific designs or contain numeric standards. This has been done intentionally so as not to unnecessarily interfere with the current regulation of mining operations in situations where it is working successfully. Also, BLM is proposing a procedure under which BLM would be able to defer in large part to State regulation of locatable minerals mining.

In the development of this proposed rule, BLM engaged in a comprehensive consultation process with the States. BLM recognizes that the States are its primary partners in regulating mining activities on public lands. Throughout the process, BLM has solicited the States' views, both collectively and individually, on how best to avoid duplication and encourage cooperation. BLM met with the representatives of State agencies under the auspices of the Western Governors Association in April

1997, February 1998, and September 1998.

BLM also met with representatives of the Environmental Protection Agency and the Small Business Administration. We also posted two successive drafts of regulatory provisions on the Internet for public information purposes in February and August 1998. We received and considered many comments from a variety of interested parties, including States, as a result of those Internet postings. We also had a series of meetings to receive comments from constituent groups, such as industry representatives and citizens and environmental groups. BLM made many revisions in response to the consultations with States and the informal comments received from constituents. In this preamble, we do not respond to every comment we received. To do so would result in an unnecessarily long and complicated document. In the preamble to the final rule, BLM will respond only to substantive comments received during the comment period on this proposed rule.

III. What are the Contents of the Proposal?

Organization and Format

Using the principles of plain language, BLM is proposing to reorganize and rewrite the surface management regulations to make information easier to find and, once found, easier to understand. From an organizational standpoint, we have arranged the information in the proposed subpart in sequence from the general to the specific and from the less complex to the more complex. Thus, the subpart would first provide general information, including the definitions of terms (proposed § 3809.5) and the circumstances under which an operator must submit either a notice or a plan of operations (proposed § 3809.11). Following that, there are four ''200'' series sections (proposed §§ 3809.201 through 3809.204) that would address agreements between BLM and the States concerning regulation of mining. In the ''300'' series of sections (proposed §§ 3809.300 through 3809.336), the subpart would address operations conducted under notices. The proposed regulations governing notice-level operations are arranged sequentially so that a person interested in conducting a notice-level operation would first encounter information related to initiating operations, followed by information related to conducting, modifying, and closing operations.

The ''400'' series of sections of the proposed rule addresses operations conducted under a plan of operations and is divided into two parts. The first part (proposed §§ 3809.400 to 3809.424) would sequentially cover topics related to initiating, conducting, and closing plan-level operations. The second part (proposed §§ 3809.430 to 435) would cover topics related to modifying a plan of operations. The ''500'' series (proposed §§ 3809.500 through 3809.599) covers financial guarantees and is arranged sequentially from the various kinds of acceptable financial guarantees and how to obtain them through modifying, releasing, and forfeiting a financial guarantee. Finally, in the ''600,'' ''700,'' and ''800'' series, we have placed provisions that would govern inspection and enforcement, penalties, and appeals respectively.

Underneath the series described above, we propose to divide the information into smaller ''bites.'' The reader will notice that the proposal contains many more sections than the existing regulations. The purpose of this is to make the table of contents and the section headings themselves more informative so that the reader will be able to more easily locate specific information without having to read a great deal of non-pertinent text.

Another aspect of the proposal that readers will quickly notice is that the section headings are phrased as questions that readers might ask themselves, complete with first-person personal pronouns. For example, the heading of proposed § 3809.430 is ''May I modify my plan of operations?'' The text of each section contains the answer to the question posed in the heading. Frequently, the answer is stated in terms of what ''you'' (the reader) must do. For example, the answer to ''May I modify my plan of operations?'' is, ''Yes. You may request a modification of the plan at any time during operations under an approved plan of operations.'' We propose to use this format because we believe that the regulations are more effective when they speak directly to the reader. Within the text of each section, we are proposing to favor clear and simple language at the expense of jargon and to use active voice in preference to passive voice, among other things, all of which we believe will make the regulations easier to understand. We specifically invite your comments on the organization and format of the proposed rule.

As a result of the reorganization of the subpart, we are proposing to move many of the provisions of the existing regulations. To assist the reader to understand the changes we are proposing, we have prepared the following table that shows the proposed counterpart to each existing provision down to the paragraph level.

Existing regulations	Proposed regulations
§ 3809.0–1	§ 3809.1.
§ 3809.0–2	§ 3809.1.
§ 3809.0–3	Authority citation.
§ 3809.0–5	§ 3809.5.
§ 3809.0–6	§ 3809.1.
§ 3809.1–1	§§ 3809.11(a) and 3809.415.
§ 3809.1–2	§ 3809.11(a).
§ 3809.1–3(a)	§§ 3809.11(b) and 3809.301(a).
§ 3809.1–3(b)	§§ 3809.312 and 3809.313(c).
§ 3809.1–3(c)	§§ 3809.301(b) and 3809.313(c).
§ 3809.1–3(d)	§§ 3809.320 and 3809.420.
§ 3809.1–3(e)	§ 3809.600(a).
§ 3809.1–3(f)	§ 3809.601(a).
§ 3809.1–4(a)	§ 3809.11(c).
§ 3809.1–4(b) and (c)	§ 3809.11(d) and (k).
§ 3809.1–5	§ 3809.401.
§ 3809.1–6(a), (b), and (c)	§ 3809.411(a).
§ 3809.1–6(d)	§ 3809.411(b).
§ 3809.1–6(e)	§ 3809.593.
§ 3809.1–7(a)	§§ 3809.430 and 3809.431(a).
§ 3809.1–7(b) and (c)	§ 3809.432.

Existing regulations	Proposed regulations
§ 3809.1–8	§§ 3809.300 and 3809.400.
§ 3809.1–9(a)	§ 3809.500(a).
§ 3809.1–9(b)	§§ 3809.500(b), 3809.551(a) and (c), § 3809.552(a), and § 3809.570.
§ 3809.1–9(c)	§ 3809.555.
§ 3809.1–9(d)	§§ 3809.551(b) and 3809.560.
§ 3809.1–9(e)	§ 3809.580.
§ 3809.1–9(f)	§ 3809.590.
§ 3809.1–9(g)	§ 3809.594.
§ 3809.2–1	None.
§ 3809.2–2(a)	§ 3809.420(b)(1).
§ 3809.2–2(b)	§ 3809.420(b)(2).
§ 3809.2–2(c)	§ 3809.420(c)(8).
§ 3809.2–2(d)	§ 3809.420(b)(6).
§ 3809.2–2(e)	§ 3809.420(b)(7).
§ 3809.2–2(f)	§ 3809.420(c)(11).
§ 3809.3–1(a)	§ 3809.3.
§ 3809.3–1(b)	None.
§ 3809.3–1(c)	§ 3809.201.
§ 3809.3–2	§§ 3809.601, 3809.603, and 3809.604.
§ 3809.3–3(a)	None.
§ 3809.3–3(b)	§§ 3809.301(b)(2), 3809.401(b)(2), and 3809.420(c)(1).
§ 3809.3–4	§ 3809.420(c)(9).
§ 3809.3–5	§ 3809.420(c)(10).
§ 3809.3–6	§ 3809.600.
§ 3809.3–7	§§ 3809.334 and 3809.424.
§ 3809.4	§ 3809.800.
§ 3809.5	§ 3809.111.
§ 3809.6	§ 3809.2.

Readers should note that the above table does not include provisions we promulgated in 1997 that were remanded on procedural grounds. Also, the proposal contains many new provisions that are not present in the existing regulations. The following section of the preamble describes both the new provisions and changes to existing regulations. We use the terms ''BLM'' and ''we'' interchangeably in this preamble to refer to the Bureau of Land Management.

General Information

This portion of the proposed rule (§§ 3809.1 through 3809.116) would provide the reader with general information, including what activities the regulations apply to, how to handle conflicts with State laws, definitions of certain terms, and when you must submit a notice or plan of operations. Consistent with the Secretary of the Interior's January 6, 1997, memorandum, the proposed rule offers two alternatives for regulating mining operations on BLM lands. See the two sections numbered 3809.11. The first alternative preserves BLM's existing scheme of classifying operations according to the scale of their impacts as casual use, notice-level, or requiring a plan of operations. The second alternative incorporates the approach used by the Forest Service to regulate mining operations on National Forests and other lands it manages. Both alternatives are described more fully below. This portion of the proposal also includes two new sections that would address mining operations on segregated or withdrawn lands (proposed § 3809.100) and situations where it is not clear whether the minerals sought are locatable or common variety (proposed § 3809.101).

Section 3809.1 What Are the Purposes of This Subpart?

This proposed section combines language from existing §§ 3809.0–1, 3809.0-2, and 3809.0–6. We have edited the wording for brevity and clarity. The purposes of the subpart would continue to be to prevent unnecessary or undue degradation of the public lands and to coordinate with responsible State agencies to avoid duplication of efforts.

We considered, but decided not to propose an idea that was suggested by many commenters in the development of this proposal: The regulations should prevent or preclude mining where it would conflict with other uses or resources. The mining laws, which consist of the 1872 Mining Law, as amended and interpreted (30 U.S.C. 22 *et seq.*), provide (in part) that all valuable mineral deposits in lands belonging to the United States shall be free and open to exploration and purchase, unless otherwise provided. BLM does not have the authority to issue a regulation that would nullify or modify the mining laws. For that reason, the proposed regulations focus on managing the impacts of mining operations. The regulations would not address the question of whether a particular area or class of areas is considered, as a zoning matter, to be suitable or unsuitable for hardrock mining. That is a matter that can be addressed through other means, such as withdrawal and the BLM land-use planning process.

We also considered whether to carry over from existing § 3809.0–6 the expression of Departmental policy to encourage development of Federal mineral resources and reclamation of disturbed lands. For the purposes of simplicity and clarity, we decided not to include this policy statement in this proposal. We are limiting proposed subpart 3809 to operational regulatory provisions.

Section 3809.2 What is the Scope of This Subpart?

This proposed section combines language from the existing definition of ''Federal lands'' at § 3809.0–5 and existing § 3809.6. Proposed paragraph (a) would apply this subpart to all operations under the mining laws on public lands, including Stock Raising Homestead Lands, as provided in § 3809.11(i), where the mineral interest is reserved to the United States. This provision would allow BLM to approve the use or occupancy, without a millsite, of non-mineral land for milling,

processing, beneficiation, or other operations in support of mining. BLM would approve the use or occupancy of such areas through a plan of operations and only to the extent the activities would support operations on public lands. The mining laws and section 302(b) of FLPMA, 43 U.S.C. 1732(b), allow this type of authorization. We mention it because of a recent legal opinion by the Department of the Interior Solicitor (Limitations on Patenting Millsites under the Mining Law of 1872, M–36988, Nov. 7, 1997) interpreting limits in the millsite provision of the mining laws, 30 U.S.C. 42. BLM's existing policy guidance on this issue may be found in BLM's Instruction Memorandum No. 98–154, dated Aug. 17, 1998, which is posted on BLM's Internet website at www.blm.gov/nhp/efoia/wo/fy98/im98-154.html.

One substantive change we are proposing is to apply the subpart to all operations under the mining laws on Stock Raising Homestead Act lands where the mineral interest is reserved to the United States, subject to proposed § 3809.11(i), discussed below. On these lands, the surface is privately owned, and the minerals are owned by the United States. Applying this subpart to those lands would enable BLM, in cases where surface owner consent is not obtained, to manage surface impacts. This would be in accord with recent amendments to the Stock Raising Homestead Act (Pub. L. 103–23). See 43 U.S.C. 299.

Proposed paragraph (c) would incorporate existing § 3809.6, which applies the surface management regulations to operations on all patents issued on mining claims located in the California Desert Conservation Area (CDCA) after the enactment of FLPMA. We are proposing to modify this existing provision by incorporating the concept of valid existing rights from section 601(f) of FLPMA (43 U.S.C. 1781(f)). That is, this subpart would not apply to operations on any patent issued after October 21, 1976, for which a right to the patent vested before that date.

Despite the urging of certain commenters, BLM is not proposing additional regulations to implement the ''undue impairment'' standard of section 601(f) of FLPMA. BLM has tentatively concluded that the standards of proposed subpart 3809, plus the specific reference in the definition of ''unnecessary or undue degradation'' to the stated level of protection for the CDCA, would provide BLM sufficient authority and flexibility to achieve the statutory level of protection.

Proposed paragraph (d) would inform the general reader about the kinds of minerals that are regulated under this subpart. The subpart would apply to minerals that can be ''located'' under the mining laws. These ''locatable'' minerals are sometimes referred to as ''hardrock'' minerals. This section would direct the reader to other parts of BLM's regulations for ''leasable'' and ''salable'' minerals. This is an informational section that has no regulatory content, but simply helps the reader understand the scope of the subpart.

Section 3809.3 What Rules Must I Follow if State Law Conflicts With This Subpart?

This proposed section corresponds to existing § 3809.3–1(a), which provides that this subpart shall not be construed to effect a pre-emption of State laws or regulations relating to the conduct of mining operations. BLM recognizes that States may apply their laws to operations on public lands. This proposed section addresses situations where State and Federal law conflict. In the proposal, we are changing the wording to clarify that if State laws or regulations conflict with this subpart, an operator would have to follow the requirements of this subpart. If State laws or regulations require a higher standard of protection for public lands than this subpart provides, then there would be no conflict. The proposed language is in accord with the preamble to the existing regulations, where BLM stated that, ''It has been the view of the Department of the Interior that under section 3 of the 1872 Mining Law (30 U.S.C. 26), the States may assert jurisdiction over mining activities on Federal lands in connection with their own State laws. This may be done as long as the laws of the State are not in conflict or inconsistent with Federal law.'' (45 FR 78908, November 26, 1980)

In developing the proposed language, we have been guided by the Supreme Court's pre-emption analysis, as expressed in the Granite Rock case, which provides that State law can be pre-empted in either of two general ways. If Congress evidences an intent to occupy a given field, any State law falling within that field is pre-empted. If Congress has not entirely displaced State regulation over the matter in question (such as in the case of the mining laws), State law is pre-empted to the extent it actually conflicts with Federal law. A conflict occurs when it is impossible to comply with both State and Federal law, or where the State law stands as an obstacle to the accomplishment of the full purposes and objectives of Congress. See *California Coastal Commission, et al.* v. *Granite Rock Co.,* 480 U.S. 572, 581 (1987). The Supreme Court urged agencies to include their position regarding pre-emption in their regulations. For that reason, BLM proposes to incorporate the 1980 final rule preamble position into the text of subpart 3809.

Section 3809.5 How Does BLM Define Certain Terms Used in This Subpart?

We propose to eliminate the following existing definitions: ''Authorized officer,'' ''Federal lands,'' and ''King Range Conservation Area.'' We propose to change some existing definitions and add the following new definitions, as discussed below: ''Minimize,'' ''Mitigation,'' ''Most appropriate technology and practices,'' ''Public lands,'' ''Riparian area,'' and ''Tribe.''

Casual use. This proposed definition is based on the existing definition. To address situations that have arisen since the 1980 regulations came out, we propose to add examples of activities that are generally considered ''casual use,'' including collection of mineral specimens using hand tools, hand panning, and non-motorized sluicing. We also propose to expand the list of examples of activities that are not generally considered ''casual use'' by adding use of truck-mounted drilling equipment, portable suction dredges, and chemicals; ''occupancy'' as defined in 43 CFR 3715.0–5; and hobby or recreational mining in areas where the cumulative effects of the activities result in more than negligible disturbance. These activities normally would result in greater-than-negligible disturbance and should not be considered ''casual use.''

Minimize. We are proposing to define the term ''minimize'' as it is used in a number of the performance standards in proposed § 3809.420 as reducing the adverse impact of an operation to the lowest practical level. During BLM's review of proposed operations, either notice- or plan-level, BLM may determine that ''minimize'' means to avoid or eliminate specific impacts. BLM would determine the lowest practical level of a particular impact (or whether it should be avoided or eliminated) on a case-by-case basis.

Mitigation. We propose to incorporate with minor editing the Council on Environmental Quality's (CEQ) government-wide definition of ''mitigation'' as it appears in 40 CFR 1508.20. An operator who must ''mitigate'' damage to wetlands or riparian areas (See proposed § 3809.420(b)(3).) or who must take

appropriate ''mitigation'' measures for a pit or other disturbance that is not backfilled (See proposed § 3809.420(c)(7).), would have to take mitigation measures, which may include the measures listed in the proposed definition. BLM does not intend any portion of this definition, including ''avoiding the impact altogether by not taking a certain action,'' to preclude or prevent mining. However, an operator may have to avoid locating certain facilities in sensitive areas to avoid unnecessary impacts. Under the CEQ definition, compensating for an impact by replacing, or providing substitute, resources or environments is an acceptable form of mitigation. We specifically solicit comments on when compensation would be appropriate, how best to evaluate the amount of compensation, and whether compensation should be voluntary or mandatory.

Most appropriate technology and practices (MATP). We propose to define MATP as equipment, devices, or methods that have demonstrable feasibility, success, and practicality in meeting the standards of this subpart. MATP would include the use of equipment and procedures that are either proven or reasonably expected to be effective in a particular region or location. MATP would not necessarily require the use of the most expensive technology or practice. BLM would determine whether the requirement to use MATP is met on a case-by-case basis during its review of a notice or plan of operations. We developed this concept in response to the Secretary of the Interior's direction that the rules should more clearly require the use of ''best available technology and practices'' or other similar technology-based standards (January 7, 1997 memorandum). However, we received many comments during public meetings asserting that BLM could not successfully apply a best available technology standard on the national level to an industry that is active in a variety of regions and uses a variety of mining techniques. In response, we developed MATP, which would be applied on a case-by-case basis.

Proposed § 3809.420(a)(2) would require an operator to use MATP to meet the standards of this subpart. We developed the concept of MATP in an attempt to allow operators flexibility in deciding how to carry out operations while assuring that the methods that operators employ have reasonable probability of effectiveness and success. We do not expect that the concept of MATP will adversely affect operators' ability to meet the outcome-based performance standards of proposed § 3809.420.

Operator. This proposed definition is based on the existing definition, but we propose to extend it to include a parent entity or an affiliate who materially participates in the management, direction, or conduct of operations at a project area. This is in accord with the Supreme Court's recent decision explaining the term ''operator'' in the Best Foods case (*U.S.* v. *Best Foods et al.,* 118 S.Ct. 1876, 141 L.Ed. 2d 43). In discussing the concept of direct parental liability for a facility, the court said that, ''The question is not whether the parent operates the subsidiary, but rather whether it operates the facility, and that operation is evidenced by participation in the activities of the facility, not the subsidiary.''

Project area. We are proposing to revise the existing definition to eliminate the idea that a ''project area'' is a *single tract of land* upon which an operator conducts operations (Emphasis added.). Based on comments from BLM field staff, we believe that limiting a project area to a single tract of land creates an increase in the amount of notices without any concomitant benefits to lands or resources.

Public lands. The proposed definition of ''public lands'' would replace the existing definition of ''Federal lands.'' We are proposing to use the definition of ''public lands'' found in FLPMA throughout this subpart for the sake of consistency and clarity.

Reclamation. We are proposing to change the existing definition of ''reclamation'' to mean measures required by this subpart following disturbance of public lands caused by operations to meet applicable performance standards and achieve conditions at the conclusion of operations required by BLM. The definition would also provide a list of some of the components of reclamation. Finally, the proposed definition would advise that a separate definition of ''reclamation'' exists for operations conducted under the mining laws on Stock Raising Homestead Act lands. This latter definition is part of another rulemaking that BLM is currently working on.

Riparian area. We are proposing to add a definition of ''riparian area'' to this subpart. The proposed definition would identify riparian areas as a form of wetland transition between permanently saturated wetlands and upland areas that exhibit vegetation or characteristics reflective of permanent surface or subsurface water influence. The proposed definition would give some examples of riparian areas and would exclude ephemeral streams or washes that do not exhibit the presence of vegetation dependent upon free water in the soil. Proposed § 3809.420(b)(3) would require an operator to avoid locating operations in riparian areas, where possible; minimize unavoidable impacts; and mitigate damage to riparian areas. It would also require an operator to return riparian areas to proper functioning condition and to take appropriate mitigation measures, if an operation causes loss of riparian areas or diminishment of their proper functioning condition. This definition is currently part of the BLM Manual (BLM 1737, Dec. 10, 1992), and we are proposing to include it in this subpart for the convenience of the public.

Tribe. We are proposing to define ''tribe'' or ''tribal'' as referring to a Federally recognized Indian tribe.

Unnecessary or undue degradation (UUD). We are proposing a revised definition of UUD that eliminates the current reference to the ''prudent operator'' standard because we believe it is too vague and subjective, and it may not be sufficient to prevent UUD, as required by section 302(b) of FLPMA. Instead, the proposed definition would define UUD in terms of failure to comply with the performance standards of this subpart (proposed § 3809.420), the terms and conditions of an approved plan of operations, the operations described in a complete notice, and other Federal and State laws related to environmental protection and protection of cultural resources. UUD would also mean activities that are not ''reasonably incident to prospecting, mining, or processing operations as defined in existing 43 CFR 3715.0–5. We believe the proposed definition is more straightforward and easily measured than the ''prudent operator'' standard.

BLM wishes to emphasize one conceptual difference between the existing and proposed definitions of UUD. The existing definition assumes that a valid operation exists at a location, and the impacts may not exceed those that would be caused by a prudent operator. The proposed definition would recognize that FLPMA amended the mining laws, subject to valid existing rights, by limiting the right to develop locatable minerals to those operations that prevent UUD. Our inclusion of the proposed performance standards in the proposed definition of UUD means that in some situations, BLM could disapprove operations that would fail to satisfy the performance standards. An operator does not have an unfettered right under the mining laws

to develop locatable minerals regardless of the level of surface disturbance.

One commenter on an early draft of this proposed rule that we made publicly available on the Internet objected to the definition of UUD. The commenter asserted that in using the term UUD in section 302(b) of FLPMA, Congress was referring to surface disturbances caused by mining and did not authorize BLM to regulate impacts of mining operations on surface- or ground-water quality. The commenter cited section 603(c) of FLPMA, which deals with lands recommended for designation as wilderness areas, as supporting the assertion. Section 603(c) provides (in part) that the Secretary may take any action to prevent [UUD] of the lands and their resources *or to afford environmental protection*. (Emphasis added.) The commenter interpreted this language to mean that Congress was consciously not giving BLM environmental authority over mining operations on public lands not recommended for designation as wilderness areas. Since FLPMA was enacted, BLM has not ever agreed with with the commenter's view, and does not agree with it now. Section 603(c) establishes a non-impairment standard for wilderness study areas. This is a more environmentally protective standard than UUD. The cited language relates to managing existing uses under the non-impairment standard and providing additional protection to preserve wilderness values. BLM agrees that a non-impairment standard for preserving wilderness values is different from a UUD standard, but does not agree that a UUD standard contains no elements of environmental protection.

Section 3809.10 How Does BLM Classify Operations?

This is a new section that would simply inform the reader of BLM's existing scheme for classifying operations in three categories: casual use, notice-level, and plan-level. For casual use, an operator generally need not notify BLM before initiating operations. For notice-level, an operation must submit a notice to BLM before beginning operations, except for certain suction-dredging operations covered by proposed § 3809.11(h). For plan-level, an operator must submit a plan of operations and obtain BLM's approval before beginning operations.

Section 3809.11 When Does BLM Require That I Submit a Notice or a Plan of Operations?

Proposed § 3809.11 is in the form of a table that would clarify when an operator would need to submit a notice or a plan of operations to BLM. The table also would provide informative references to other applicable sections of BLM's regulations. We propose to use tables throughout this subpart to reduce complexity and to make it easier for the reader to understand proposed requirements. This proposed section preserves BLM's three distinct levels of involvement dependent on the level of mining activity the operator proposes to conduct: casual use, notice-level, and plan-level.

Proposed § 3809.11(b) would continue the existing five-acre threshold for notice-level operations. See existing § 3809.1–3(a). We are proposing two changes that would clarify exactly how the five-acre threshold would work. First, the threshold would be ''unreclaimed surface disturbance of 5 acres or less of public lands.'' This would clarify some diverse interpretations of the existing threshold wherein some believe that *any* disturbance greater than five acres, even if it is reclaimed, requires a plan of operations. Other BLM offices have interpreted the existing threshold to mean that once a disturbance within the 5 acres is properly reclaimed, the operator can ''roll over'' that area and disturb an equivalent area without getting a new notice. BLM believes that the latter interpretation is correct, as long as any disturbance is reclaimed to the standards of this subpart, including the appropriate period of time for establishment of vegetation.

We are also proposing to change the amount of advance notice that an operator planning to conduct notice-level operations must give BLM from 15 ''calendar'' days to 15 ''business'' days before the operator plans to start operations. We are proposing this change to allow BLM field staff more time to review notices.

This proposed section also includes several new concepts as follows.

Proposed § 3809.11(e) would require the representative of a recreational mining group to contact the local BLM office with jurisdiction over the lands involved at least 15 business days before initiating activities to find out if the group must submit a notice or plan of operations. This would address situations where there are concentrations of recreational mining activities on public lands with resultant surface disturbances. Recreational mining tends to concentrate surface disturbance in areas popular for gold panning and other uses that, on an individual basis, are generally considered casual use. However, BLM is concerned that sustained or aggregated use in certain areas could cause cumulative impacts greater than casual use. Therefore, the intent of 3809.11(e) is for recreational mining groups to consult with BLM before conducting operations within a project area to ensure that any necessary steps are taken to reclaim impacts of the groups' activities. Under the proposal, the recreational mining group would not have to consult with BLM if it submitted a notice or plan of operations.

Proposed § 3809.11(f) would require an operator to submit a plan of operations for an operation involving any leaching or storage, addition, or use of chemicals in milling, processing, beneficiation, or concentrating activities, regardless of the amount of acreage that the operation would disturb. This would not include chemicals used for fuel or as lubricants for equipment. The potential impacts associated with use of leaching processes and chemicals are greater than the impacts that would be associated with operations that do not involve leaching or chemical use. Some of the chemicals used in leaching and processing, such as cyanide and mercury, are highly toxic. For this reason, BLM believes that the greater scrutiny given to plans of operations is warranted.

Proposed § 3809.11(h) would not require an operator to submit a notice or a plan of operations, if—

- The operations involve use of a portable suction dredge with an intake diameter of 4 inches or less,
- The State in which the operations occur requires authorization for its use, and
- BLM and the State have an agreement under proposed § 3809.201 addressing suction dredging.

This provision would be an exception to the general rule that all use of suction dredges requires either a notice or plan of operations, whichever is applicable. See also the definition of ''casual use'' in proposed § 3809.5. The impacts of use of the smallest suction dredges (under 4 inches intake diameter) under a State permit and within the parameters of a BLM/State agreement under proposed § 3809.201 would be controlled to the extent that BLM need not also regulate each operation. BLM believes that to also require a notice or plan of operations would be unnecessarily duplicative of State permitting requirements. We specifically request comments on the adequacy of State permitting requirements for suction dredges.

Proposed § 3809.11(i) would cross-reference regulations that BLM plans to promulgate under 43 CFR part 3810, subpart 3814, for operations proposed

on lands where the surface was patented under the Stock Raising Homestead Act and the minerals were reserved to the United States. Under FLPMA, such split-estate lands are ''public lands'' and are subject to BLM management. If an operator does not have written surface owner consent to conduct mineral activities, the operator would have to submit a plan of operations to BLM. This proposed addition reflects the requirements of the Stock Raising Homestead Amendments Act (Pub. L. 103–23, 43 U.S.C. 299, as amended) which became effective after the effective date of the existing 3809 regulations.

Proposed § 3809.11(j) corresponds to existing § 3809.1–4 and lists special status areas where BLM would require a plan of operations for all operations greater than casual use. We are proposing the following additions: areas specifically identified in BLM land-use or activity plans where a plan of operations would be required to allow a more detailed review of the effects of proposed operations on values listed in the section (proposed § 3809.11(j)(6)); National Monuments and National Conservation Areas administered by BLM (proposed § 3809.11(j)(7)); and all lands segregated in anticipation of a mineral withdrawal or withdrawn from operations under the mining laws (proposed § 3809.11(j)(8)). These areas have officially recognized special values, such as wildlife habitat and cultural resources, where BLM believes it is appropriate to take a closer look at the potential effects of proposed operations in these areas and not to allow operations to begin before BLM approval.

Section 3809.11 ''Forest Service'' alternative) When Does BLM Require that I Submit a Notice or a Plan of Operations?

Proposed § 3809.11 is an alternative to the one discussed immediately above. Under this alternative, an operator would have to submit to BLM a complete notice of intention to operate 15 days before planned start-up if activities would be greater than those described in paragraph (a) of the table. After reviewing the notice of intention to operate, BLM would determine if proposed operations would be likely to cause significant surface disturbance. If so, the operator would have to submit a plan of operations and obtain BLM approval prior to commencing operations. This alternative would closely align procedures in subpart 3809 with Forest Service mining claim regulations, thereby providing a more consistent regulatory frame work for the public in the area of mining law surface management. See existing Forest Service regulations in 36 CFR part 211.

We specifically request public comments on the pros and cons of selecting this alternative in lieu of the first one. One advantage we perceive is that adoption of the Forest Service alternative would make BLM's and the Forest Service's mining regulations correspond more closely and require an operator to be familiar with only one, rather than two, sets of threshold regulations. It could also simplify a situation where a mining claim overlaps the boundary between land administered by BLM and a National Forest. One disadvantage we perceive is that adoption of the Forest Service alternative could result in an increase in BLM's workload. The increase could come from having to review notices of intention for each proposed operation and possibly from an increased number of plans of operations based on determinations of significant disturbance.

Section 3809.100 What Special Provisions Apply to Operations on Segregated or Withdrawn Lands?

We are proposing to add a new § 3809.100 to govern proposed operations on pre-existing claims on segregated or withdrawn lands. Currently, BLM does not have any regulations to address this topic directly. The proposal would enable BLM to deal with operations on lands where additional protection has been deemed necessary through segregations or withdrawals. We would suspend the time frames for BLM approval of a plan of operations until we complete a validity examination report. Segregations or withdrawals would close lands to operation of the mining laws, subject to valid existing rights. The purpose of this provision is to ensure that BLM approves only mining operations based on valid claims in segregated or withdrawn areas. This furthers the purpose of the segregation or withdrawal in closing the land under the mining laws and prevents disturbance from occurring on claims subsequently determined to be invalid. Preparation of a mineral examination report would be discretionary for segregated lands because some segregations, for example, those in advance of a realty action, occur for purposes other than environmental protection.

If BLM has not completed the mineral examination report, if the mineral examination report for proposed operations concludes that a mining claim is invalid, or if there is a pending contest proceeding for the mining claim, BLM would only approve a plan of operations for the purpose of sampling to corroborate discovery points or to comply with assessment work requirements. We considered an alternative approach that would allow BLM the option to approve a plan of operations pending the outcome of a validity determination. We decided not to propose this option because of the potential for unnecessary disturbance of segregated or withdrawn public lands.

Section 3809.101 What Special Provisions Apply to Minerals That May be Common Variety Minerals, Such as Sand, Gravel, and Building Stone?

Proposed § 3809.101 would address the long-standing issue of proposed mining of ''common variety minerals'' as defined in 3711.1(b) of this title, under the mining laws. Common variety minerals are not locatable under the mining laws and are normally sold at fair market value by BLM to an operator under 43 CFR part 3600. New language would prohibit operations for minerals that may be common variety until BLM has prepared a mineral examination report on the mining claims involved. This new requirement for a mineral report before allowing operations for minerals that may be common varieties would help ensure the public interest and the Federal treasury are protected because it would avoid giving away for free what the law on common varieties says must be disposed of for fair market value. See 30 U.S.C. 601 and 611 and 43 CFR part 3600.

If the report were to conclude that the minerals are common variety, the operator would either relinquish the mining claims, or BLM would initiate contest proceedings. Until BLM prepares a mineral examination report, interim operations could be authorized for sampling, performing minimum necessary annual assessment work, or for mining if an acceptable escrow account was established to cover the fair market value of the common variety mineral. We are proposing that BLM have the authority to dispose of common variety minerals from unpatented mining claims with a written waiver from the mining claimant. This proposal would require that 43 CFR 3601.1–1, concerning mineral material sales on mining claims, be amended to allow disposal. If we adopt this proposed provision, we will make conforming changes to 43 CFR part 3600.

Section 3809.116 As a Mining Claimant or Operator, What are my Responsibilities Under This Subpart for my Project Area?

This is a new section that would set forth clearly the responsibilities under subpart 3809 of mining claimants and operators for their project areas. We are adding this section in response to comments we received during development of this proposal that suggested that there is confusion as to exactly what responsibility mining claimants and operators have for their project areas under subpart 3809, particularly when a project area has been abandoned. Absent a clear assignment of responsibility, society as a whole could have to bear the cost of any problems associated with abandoned operations. Proposed paragraph (a) would establish the principle that mining claimants and operators have joint and several liability for obligations under this subpart that accrued while they held their interests. This means that all mining claimants and operators would be responsible together and individually for obligations, such as reclaiming the project area. In the event obligations are not met, BLM would have the ability to take any action authorized under this subpart against either the mining claimant(s) or the operator(s), or both.

We do not intend proposed § 3809.116 to address or affect in any way obligations established under laws other than FLPMA and the mining laws.

Under proposed paragraphs (b) and (c), we discuss how relinquishment, forfeiture, or abandonment of a mining claim or transfer of a mining claim or operations would affect the liability set forth in proposed paragraph (a). Relinquishment, forfeiture, or abandonment would not relieve a mining claimant's or an operator's responsibility for obligations or conditions created while the mining claimant or operator was responsible for operations on a mining claim or in a project area. Transfer of a mining claim or operation would relieve responsibility if the transferee accepts responsibility and BLM accepts adequate replacement financial guarantee. The parties to the transfer would have to send to BLM documentation that the transferee accepts responsibility. This documentation could take the form of a copy of the transfer agreement.

Federal/State Agreements

This portion of the proposed rule (§§ 3809.201 through 3809.204) would set forth the types of agreements that BLM and a State may enter to prevent administrative delay and avoid duplication of effort. It would also establish the procedure for setting up an agreement under which BLM would defer to State regulation of mining operations, the limitations on that type of agreement, and the effect of this subpart on existing agreements.

Section 3809.201 What Kinds of Agreements may BLM and a State Make Under This Subpart?

This section would allow BLM and a State to make two kinds of agreements, one for a joint Federal/State program and one under which BLM would defer to State administration of the requirements of this subpart, subject to the limitations in proposed § 3809.203. This section would incorporate existing § 3809.3–1(c), which provides for setting up joint Federal/State programs.

The authority for BLM to defer to State administration of their surface management provisions relating to the regulation of operations derives from section 303(d) of FLPMA, 43 U.S.C. 1733(d). Under that section, BLM may allow States to assist in the ''administration and regulation of use and occupancy of the public lands.'' In connection with the administration and regulation of the use of the public lands, Section 303(d) authorizes the Secretary to cooperate with States' regulatory and law enforcement officials in the enforcement of State law.

Under proposed § 3809.202, States would provide the assistance envisioned in FLPMA by regulating mining operations on public lands under their laws and regulations in lieu of BLM administration of subpart 3809. Despite such deferrals to States, BLM would not delegate its public land management responsibility under FLPMA and would retain certain responsibilities and authorities. These would include concurrence on approval of each plan of operations, concurrence on the approval and release of financial guarantees, and retention of necessary enforcement authority. This cooperative approach would provide meaningful responsibilities to the States, yet maintain both case-by-case and, under proposed § 3809.203(e), programmatic oversight by BLM.

State officials have inquired as to the availability of Federal funding for their activities if they were to enter into agreements under proposed § 3809.202. Although section 303(d) of FLPMA authorizes the Secretary to reimburse States for expenditures incurred by them in connection with activities which assist in the administration and regulation of use and occupancy of the public lands, no such reimbursement could occur without Congressional appropriation.

SECTION 3809.202 Under What Condition Will BLM Defer to State Regulation of Operations?

This is a new section that sets forth the procedure for a State to request and BLM to approve an agreement under which BLM would defer to State regulation of operations. A State would request an agreement from the BLM State Director. The State Director would provide an opportunity for public comment and would review the request to determine if the State's requirements are consistent with the requirements of this subpart. In determining consistency, the State Director would look at whether non-numerical State standards are functionally equivalent to BLM's counterparts; and whether numerical State standards, such as the five-acre threshold for plans of operations, are the same as corresponding BLM standards, except that State review and approval time frames do not have to be the same as the corresponding Federal time frames. The State Director would consider a State environmental protection standard that exceeds a corresponding Federal standard to be consistent with the requirements of this subpart. The State Director would make a written decision that could be appealed to the Assistant Secretary for Land and Minerals Management, Department of the Interior.

Section 3809.203 What are the Limitations on BLM Deferral to State Regulation of Operations?

This is a new section that would establish limitations on deferral agreements. Even if BLM deferred to State regulation, BLM would have to concur with each State decision approving a plan of operations. This would enable BLM to fulfill its responsibility to assure compliance with this subpart and the National Environmental Policy Act. In comments on an earlier draft, States urged that, in an effort to reduce duplication of effort, BLM base its concurrence on any written findings the State may have prepared to support the State's decision approving a plan of operations. We specifically solicit comments as to whether this would be appropriate.

BLM would continue to be responsible for all land-use planning on public lands and for implementing other Federal laws relating to the public lands for which BLM is responsible. BLM would continue to have the ability to

take any authorized action to enforce the requirements of this subpart or any term, condition, or limitation of a notice or an approved plan of operations. However, BLM would generally avoid subjecting an operator to Federal enforcement action for a violation where a State has already issued an enforcement action for the violation. The amount of the financial guarantee would be calculated based on the completion of both Federal and State reclamation requirements, but could be held as one instrument. If the financial guarantee is held as one instrument, it would have to be redeemable by both the Secretary and the State. BLM would have to concur in the approval and release of a financial guarantee for public lands. If BLM determined that a State was not in compliance with all or part of its Federal/State agreement, BLM would notify the State and provide a reasonable time for the State to comply. If a State does not comply, BLM would take appropriate action, which could include termination of all or part of the agreement. BLM anticipates that it would not look at isolated incidents in determining that a State is not in compliance with a Federal/State agreement. We would consider patterns, trends and programmatic issues more important indicators of State performance than isolated incidents. A State could terminate an agreement by notifying BLM 60 days in advance.

Section 3809.204 Does This Subpart Cancel an Existing Agreement Between BLM and a State?

This is a new section that would allow existing joint program agreements to continue while BLM and a State perform a review to determine whether revisions are required under this subpart. The time frame for completing the review and making any necessary revisions to an agreement would be one year from the effective date of the final rule. We specifically request comments on whether the time frame is too long, too short, about right, or whether there should be a provision for extension of the one-year period. We also request comments on whether, and to what extent, there should be public participation in the review of existing agreements.

Operations Conducted Under Notices

This portion of the proposal (proposed §§ 3809.300 through 3809.336) would govern operations conducted under notices. It is based primarily on existing § 3809.1–3. We are proposing to use two tables: One would cover applicability of this subpart to existing notice-level operations (See proposed § 3809.300.). This is a transition section to address notices in existence when a final rule becomes effective. The other table would govern when an operator may begin operations after submitting a notice (See proposed § 3809.313.). For the sake of simplicity, we are not proposing a separate set of performance standards applicable only to notices. Instead, proposed § 3809.320 simply references the plan-level performance standards of proposed § 3809.420, where applicable. In many cases, some of the performance standards will not be applicable to notice-level operations. See the discussion of the performance standards of proposed § 3809.420 later in this preamble. Notices would have two-year expiration dates, unless extended. This would significantly reduce the number of outstanding notices where operations have either never occurred or where reclamation has been completed to BLM's satisfaction, but the notice has not been formally closed by BLM.

Section 3809.300 Does This Subpart Apply to My Existing Notice-Level Operations?

Proposed § 3809.300 would allow operators identified in an existing notice already on file with BLM to continue operations for two years. After 2 years, the notice could be extended under proposed § 3809.333. New operators would have to conduct operations under this subpart. If a notice has expired, the operator would have to immediately reclaim the project area or promptly submit a new notice under this subpart.

Section 3809.301 Where Do I File My Notice and What Information Must I Include in It?

Proposed § 3809.301 would replace the notice-content requirements of existing § 3809.1–3. If the required information were not incorporated in the notice, BLM would not consider it to be complete and operations could not commence (See also proposed § 3809.312.). Requirements for information about the operator would clarify the need for one individual point of contact if a corporation is named as the operator. The proposal would require a description of proposed operations, schedule of activities, and a map, as are generally found in existing section 3809.1–3. However, we are proposing several new requirements. The operator would have to describe measures to be taken to prevent unnecessary or undue degradation during operations. In contrast, existing section 3809.1–3(c)(4) requires only a statement that reclamation will be completed to the required standards, and that reasonable measures will be taken to prevent unnecessary or undue degradation during operations. The operator would have to submit a reclamation plan, not as a separate plan, but as part of the notice. The operator would have to describe how reclamation would be completed to the standards outlined in proposed § 3809.420, as applicable. In addition, the operator would have to submit an estimate of the cost to implement the reclamation as planned. Also, the operator would have to notify BLM within 30 days of either a change of operator, point of contact or mailing address. These requirements are the minimum information needed by BLM to identify who will be conducting operations on the site, what activities are planned, and how reclamation will be accomplished.

Section 3809.311 What Action Does BLM Take When It Receives My Notice?

Proposed § 3809.311 would outline actions BLM would take when it receives a notice. BLM would have 15 ''business'' days from the time that we receive a notice to review it, compared to the existing 15-calendar day time frame (See existing § 3809.1–3(a).). If BLM were to determine that a submitted notice is incomplete, we would inform the operator of what additional information would be needed to comply with proposed § 3809.301. A new 15-business day review period would commence upon receipt of each re-submittal of a notice, although where feasible, BLM would try to perform its review of the revised notice in a shorter time frame.

Section 3809.312 When May I Begin Operations After My Notice is Complete?

Proposed § 3809.312 would specify that an operator would be able to commence operations 15 business days after BLM receives a complete notice from that operator, or earlier if BLM informs the operator that it has completed its review, and after the operator provides a financial guarantee that meets the requirements of this subpart. This proposed would also alert the operator that operations may be subject to approval under 43 CFR part 3710, subpart 3715, which governs occupancy of public lands.

Section 3809.313 Under What Circumstances May I not Begin Operations 15 Business Days After Filing my Notice?

Proposed § 3809.313 would outline, in table format, cases in which BLM may extend the time to process a notice. Under proposed paragraph (a), if BLM

needs additional time to complete it review of a notice, we would notify the operator of the additional period, not to exceed 15 business days, needed for completing our review. We are proposing to add this provision allowing extension of the notice review period in recognition of the fact that BLM occasionally has difficulty in performing its review within the current 15-day review time period. These cases typically have been due to the complexity of the proposed operations, the proposed location, or the fact that BLM staff specialists needed for the review were not available during the review period.

Under proposed paragraph (b), we would clarify that BLM may require an operator to modify a notice before commencing operations if we believe the operations would likely cause unnecessary or undue degradation. We believe that an express reference to BLM's ability to require changes in notices will avoid administrative processing delays.

Under proposed paragraph (d), BLM could notify an operator that operations may not start until BLM visits the site, and agency concerns about prevention of unnecessary or undue degradation arising from the visit are satisfied. We make an attempt to visit the site of any notice submitted for review to gather information and to consider whether any site-specific factors are present that should be taken into account during review of a notice. Sometimes, due to weather conditions that limit access or scheduling problems, we are unable to conduct the site visit within the 15-day review period. On the theory that an ounce of prevention is worth a pound of cure, we believe that any costs associated with delaying notice-level operations to conduct a site visit would be offset by the benefits of identifying and dealing with site-related problems before they occur.

Section 3809.320 Which Performance Standards Apply to My Notice-Level Operations?

Proposed § 3809.320 would require that notice-level operations meet all applicable performance standards listed in proposed § 3809.420. See the discussion of performance standards later in this preamble under proposed § 3809.420.

Section 3809.330 May I Modify My Notice?

Proposed § 3809.330 is a new provision that would clarify that an operator may modify an existing notice to reflect proposed changes in operations. BLM would review the modification under the same time frames proposed in §§ 3809.311 and 3809.313. This provision addresses confusion over whether a notice may be modified. The existing regulations are silent on this topic.

Section 3809.331 Under What Conditions Must I Modify My Notice?

Proposed § 3809.331 would require that an operator modify a notice if BLM requires such modification to prevent unnecessary or undue degradation, or if the operator plans to make material changes in the operations. We would interpret material changes to be changes that would disturb areas not described in the existing notice, or result in impacts of a different kind, degree or extent than those described in the existing notice. Where an operator plans to make material changes, the operator would have to submit the modification 15 business days before making the changes. While BLM is reviewing the modification, the operator could halt operations or continue operating under the existing (unmodified) notice. However, BLM could require an operator to proceed with modified operations before the 15-day period has elapsed to prevent unnecessary or undue degradation.

Section 3809.332 How Long Does My Notice Remain in Effect?

Proposed § 3809.332 would provide for an effective period of 2 years for a notice, unless extended under proposed section 3809.333 or unless the operator were to complete reclamation beforehand to the satisfaction of BLM, in which case BLM would notify an operator that the notice is terminated. We are proposing this new provision to address the situation where notices with no expiration dates remain ''active'' on BLM records even if no operations are being conducted. An operator's obligation to meet all applicable performance standards, including reclamation, would not terminate until the operator has in fact satisfied the obligation.

Section 3809.333 May I Extend My Notice, and, if so, How?

Section 3809.333 would contain a new provision to allow notices to be extended beyond the 2-year effective period outlined in proposed section 3809.332. This provision would accommodate notice-level operations that cannot be completed within 2 years. We are specifically requesting comments on whether the 2-year period is too long, too short, or about right.

Section 3809.334 What if I Temporarily Stop Conducting Operations Under a Notice?

Proposed § 3809.334 would expand existing § 3809.3–7, which addresses periods of non-operation. The proposal would clarify that during such periods, the operator must take all steps necessary to prevent unnecessary or undue degradation as well as maintain an adequate financial guarantee. BLM would require in writing that the operator take such steps if the agency determines that unnecessary or undue degradation would be likely to occur.

Section 3809.335 What Happens When My Notice Expires?

Proposed § 3809.335 is a new provision that tells what must occur when a notice expires and is not extended. The operator would have to cease operations, except reclamation, and promptly complete reclamation as described in the notice. The operator's responsibility to complete reclamation would continue beyond notice expiration, until such responsibilities are satisfied. This provision would help address the problem of abandoned operations by clearly establishing the operator's responsibilities.

Section 3809.336 What if I Abandon My Notice-Level Operations?

Proposed § 3809.336 is a new provision that would outline what characteristics BLM would use to determine if it considers an operation to be abandoned. The section would also specify that BLM may, upon a determination that operations have been abandoned, initiate forfeiture of an operator's financial guarantee. BLM could complete reclamation if the financial guarantee were found to be inadequate, with the operator and all other responsible persons liable for the cost of reclamation. We intend that this provision will also address the problem of abandoned operations by clarifying the steps BLM could take to reclaim abandoned project areas.

Operations Conducted Under Plans of Operations

This portion of the proposed rule (§§ 3809.400 through 3809.424) contains regulations that would govern operations conducted under plans of operations.

Section 3809.400 Does This Subpart Apply to My Existing or Pending Plan of Operations?

In developing this proposed rule, BLM has been mindful of the difficulty inherent in applying new rules to existing operations, particularly the type

of long-term, large scale operations that make up a significant portion of today's mining on public lands. Accordingly, in proposed § 3809.400 and other proposed sections discussed later in this preamble, BLM would apply the performance standards and information collection requirements of this subpart to new operations and modifications and would limit the circumstances where they would apply to pending applications for operations and modifications. The first of these transition sections is in the form of a table that explains how this subpart would affect plans of operations that (1) BLM approved before this subpart becomes effective, or (2) are pending at the time this subpart becomes effective. For plans of operations already approved, these regulations would not change the applicable performance standards. This approach would prevent operators from having to make potentially costly changes in existing facilities and operations. The remaining provisions of this proposed subpart, such as those related to inspection and enforcement, would apply to existing operations.

Similar transition provisions applicable to modifications of plan of operations would be set forth at proposed §§ 3809.433–435. A transition period for financial guarantees for existing operations would be set forth at proposed § 3809.505.

Where an operator has submitted a plan of operations for BLM review, but BLM has not yet approved it when these regulations go into effect, we are proposing a cutoff date under § 3809.400 after which the plan content requirements and performance standards of this subpart would apply to the pending plan of operations. If BLM has already made available to the public an environmental assessment (EA) or draft environmental impact statement (EIS) by the effective date of the final rule, a plan of operations would not be subject to the new content requirements or performance standards since the operator and BLM would have already committed considerable time and resources towards developing the plan under the existing regulations. If BLM had not processed a pending plan of operations to the point where it has made an EA or draft EIS available by that date to the public, then the plan would be subject to all provisions of the proposed regulations.

We considered proposing an 18-month cutoff for pending plans, that is, if BLM had been reviewing a plan for 18 months or more when this subpart becomes effective, the plan would not be subject to the plan content requirements or performance standards of this subpart. However, we believe that a process milestone (the EA or EIS publication date) is less arbitrary than a fixed amount of time. A process milestone takes into account the specific circumstances of each plan review in a way that a fixed amount of time cannot.

Section 3809.401 Where do I File My Plan of Operations and What Information Must I Include With it?

This section is the counterpart of existing § 3809.1–5 and would tell operators what to include in a plan of operations and what supporting information BLM may also require to conduct its review of a plan. Based on our experience since 1980, the existing regulations do not require enough information about what an operator must submit. As a result, operators frequently do not initially submit the information BLM needs to review the anticipated impacts of a proposed operation, and time and resources are wasted on both sides in an effort to obtain the necessary information. Further, we believe that more specific information requirements will help to ensure that the information submitted in a proposed plan of operations is consistent from State to State. The proposal would require operator information; a description of proposed operations, including a map and a schedule of activities; and a reclamation plan, as are generally found in existing section 3809.1–5. However, we are proposing several new requirements, discussed below.

The introductory language of proposed paragraph (b) would require an operator or mining claimant to demonstrate that the proposed operations would not result in unnecessary or undue degradation of public lands. We intend this provision to place the responsibility for showing no unnecessary or undue degradation on those who are seeking to conduct operations. This provision does not appear in the existing regulations, and some have taken the position that BLM must approve a plan unless BLM can prove the plan will cause unnecessary or undue degradation. The proposal would clarify that the burden is on the operator or mining claimant to make an acceptable demonstration. If the operator or mining claimant fails to do so, BLM would require submittal of additional information, submittal of a modified proposal, or would disapprove the plan.

Proposed paragraph (b)(1) would add to the information that BLM requires to identify an operator the requirement to submit the social security number or corporate identification number of the operator(s), the BLM serial numbers of any unpatented mining claim(s) where disturbance would occur, and a corporate point of contact. This information is necessary to identify the operator(s), identify and locate the claim(s) involved, and enable contact with the operator. This proposed paragraph would also require the operator to notify BLM in writing within 30 days of any change in the operator, the corporate point of contact, or their addresses. This requirement will allow BLM to maintain an accurate list of contacts.

Proposed paragraph (b)(2) would specify the types of plans that an operator must submit to adequately describe proposed operations, including water management plans, rock handling plans, quality assurance plans, and spill contingency plans, among other things. These plans and the other items listed in this paragraph are necessary for BLM to review and approve a plan of operations. We intend that the information submitted in response to these requirements will be sufficient to fully describe the proposed operations. At the same time, we recognize that in the initial phase of developing a mining operation, complete, detailed designs and plans are not always available. If we adopt this proposal, we would encourage anyone planning to submit a plan of operations for review to contact the local BLM office beforehand to discuss the level of detail that would be responsive to these information requirements.

Proposed paragraph (b)(3) incorporates and expands existing § 3809.1–5(c)(5), which requires measures to prevent unnecessary or undue degradation and to reclaim disturbed areas. We are proposing to add a list of items that the reclamation plan must address, where applicable, including drill-hole plugging, regrading, mine reclamation, riparian mitigation, and wildlife habitat rehabilitation, among other things. This list is not all-inclusive. It is intended to be used as a checklist by the operator to ensure that reclamation activities are adequately described. Depending on the nature of the proposed operations, the reclamation plan might also contain information related to other topics.

Proposed paragraph (b)(4) would require an operator to submit a plan for monitoring the effect of operations. Under this provision, BLM could expressly require an operator to collect data to detect potential adverse impacts before they cause extensive or irreversible damage. Because the existing regulations do not specifically

and explicitly require a monitoring plan, some BLM offices have been reluctant to ask for, and some operators have been reluctant to provide, this type of information, thereby foregoing an important tool for preventing unnecessary or undue degradation. This requirement should benefit both the operator and the Nation as a whole since it is far less costly to remedy a problem when it is detected early.

Proposed paragraph (c) would require an operator to submit certain operational and baseline environmental information to enable BLM to analyze potential environmental impacts as required by the National Environmental Policy Act (NEPA). There is no counterpart to this provision in the existing regulations. BLM must collect this information to fulfill its NEPA responsibilities, as well as to analyze a proposed plan of operations. For the most part, BLM currently collects this information, but this proposed provision would clarify BLM's authority. This proposed provision would also clarify BLM's authority to collect information concerning impacts and activities on non-public lands if BLM needs the information to analyze a plan of operations. This provision is not included in the existing regulations and would clarify the extent of BLM's authority with regard to non-public lands. This provision is not intended to extend BLM's regulatory authority to non-public lands. However, BLM may need information concerning non-public lands that are adjacent to or near proposed operations on public lands to analyze the impact of the operations and the operations' potential for unnecessary or undue degradation of public lands.

The existing financial guarantee regulations do not specify who prepares the financial guarantee calculations, though in many cases the operator has been providing the initial estimate. Proposed paragraph (d) would address any confusion by clearly putting the burden of preparing the initial reclamation cost estimate on the operator. The estimate would be subject to BLM review and acceptance as provided in proposed § 3809.554(b). Because the reclamation cost estimate would likely depend on mitigation measures developed in the NEPA compliance process, the operator would not have to submit the estimate with the initial plan of operations. BLM would tell the operator when to submit the reclamation cost estimate.

Section 3809.411 What Action will BLM Take When it Receives My Plan of Operations?

Proposed § 3809.411 would outline the range of actions BLM could take when it receives a proposed plan of operations. This section corresponds to existing § 3809.1–6, which has been reorganized and edited for clarity. In summary, BLM would review the plan of operations within 30 business days and could—

- Approve the plan of operations as submitted;
- Request additional information;
- Approve the plan of operations subject to required changes;
- Delay approving the plan of operations until certain additional steps are completed, for example, NEPA compliance and Endangered Species Act consultation; or
- Disapprove the plan of operations.

The existing regulations provide for approval of a plan of operations within 30 (calendar) days. The proposed regulations would require BLM to review a proposed plan of operations within 30 ''business'' days and would remove the time frame by which BLM previously had to approve plan of operations that required preparation of an environmental impact statement. This is not so much a change in procedures as a recognition of current practices. Due to workload demands, staffing levels, NEPA compliance activities, and the increasing need to consult with outside agencies or Tribal governments, setting a review time limit on plans of operations is no longer practical.

The existing regulations do not say under what circumstances BLM will withhold approval or disapprove a plan of operations. As a result, some BLM staff have assumed, and some prospective operators have asserted, that BLM cannot deny a plan of operations. Proposed paragraph (c) would clarify that BLM has the authority to withhold approval for, or disapprove, a plan of operations under certain circumstances to prevent unnecessary or undue degradation.

We considered a provision that would have required BLM to disapprove a plan of operations if it would have predicted permanent water treatment to meet water quality standards. We provided a draft rule with this provision to State and Federal agencies and posted the draft on the Internet on BLM's web page. This provision generated much public interest; many commenters opposed inclusion of it.

We decided not to propose it for a number of reasons. It is often difficult to determine in advance when permanent treatment will be necessary. If an unanticipated need for permanent treatment becomes apparent during the course of operations, it is too late to disapprove the plan of operations. Precluding operations involving permanent treatment could have the unintended effect of encouraging prospective operators to claim that permanent treatment would not be necessary when, in fact, it would. We concluded that it would make more sense to discuss the nature of required treatment and assurances that it would continue than to argue over whether treatment would be permanent. Under a permanent treatment prohibition, if BLM approves the plan of operations based on a finding that no permanent treatment would be necessary, and it later becomes apparent that permanent treatment is necessary, none of the treatment measures and infrastructure would be in place. Where treatment is the only available technology that will achieve compliance with the water quality standards, a trust fund or other long-term funding mechanism effectively ensures permanent treatment requirements are met. Thus, the proposed regulations would emphasize use of source control methods over long-term or permanent treatment and would allow permanent treatment only after source control methods have been fully applied, or as a backup technology, and only with an adequate long-term funding mechanism in place.

Proposed paragraph (d) would require that before BLM approves a plan of operations, BLM will publish the reclamation financial guarantee amount and an explanation of the basis for the amount in a local newspaper of general circulation or in a NEPA document, and accept comments for 30 days. A NEPA document could be an environmental assessment or an environmental impact statement (EIS). This is a new requirement that would increase the level of public participation in the plan approval process by giving the public access to the cost estimating sources and assumptions used to arrive at the reclamation financial guarantee amount. We are proposing this provision because we believe public participation will result in better informed decisions by BLM in its role as manager of public lands. We specifically request comments on—

- Whether, and to what extent, obtaining public comments on the financial guarantee amount should be integrated into the NEPA process;
- Whether, and to what extent, the public would be interested in

commenting on proposed financial guarantee amounts;

- Whether the 30-day comment period is too long or too short;
- Whether the opportunity for public comment should be limited to operations for which an EIS is prepared; and
- Whether there is any benefit to publication of financial guarantee amounts for small exploration operations.

Section 3809.412 When May I Operate Under a Plan of Operations?

Proposed § 3809.412 would specify that BLM must approve a plan of operations, and the operator must provide the required financial guarantee before the operator may begin conducting operations. This provision would clarify the existing regulations, which, while requiring a plan of operations and reclamation financial guarantee, do not specifically prohibit conducting operations until these requirements are met. A small number of operators have assumed they could proceed with operations prior to plan approval or posting of the financial guarantee.

Section 3809.415 How Do I Prevent Unnecessary or Undue Degradation While Conducting Operations on Public Lands?

The existing regulations define the term, ''unnecessary or undue degradation,'' but do not specify what the operator is expected to do in order to prevent it. Proposed § 3809.415 would provide specific guidance to operators in understanding their obligations by tying all of the components of the definition to an enforceable requirement. BLM anticipates that the clarity of this provision, plus the enumeration of performance standards in proposed § 3809.420, will improve compliance.

Section 3809.420 What Performance Standards Apply to My Notice or Plan of Operations?

The existing regulations provide general performance standards in areas such as performing reclamation and complying with all applicable State and Federal environmental requirements. In reviewing the existing regulations, BLM determined that additional detailed standards would assist both operators and BLM in defining and preventing unnecessary or undue degradation. We considered several alternative approaches for developing standards. One alternative was to create standards that would specify the design and operating requirements for exploration, mining, and reclamation components. These requirements would then serve as minimum national requirements that would apply to all operations, specifying how operations had to be designed, constructed, and operated. We rejected this approach as too inflexible and impractical given the range of environmental settings on the public lands and the wide variety of exploration and mining activities.

The approach generally chosen for the proposed regulations is to focus on the outcome or accomplishment that the operator must achieve. These ''outcome-based'' performance standards put minimum emphasis on how the operator conducts the activity so long as the desired outcome is met. This allows the operator maximum flexibility, encourages innovation, and fosters the development of low-cost solutions. In implementing the proposed regulations, BLM would review the notice or proposed plan of operations to determine if it is reasonably likely to meet each outcome-based performance standard, but we would not require any specific design be used.

We are proposing to divide the performance standards in this section of the proposed regulations into three groups:

- General performance standards,
- Environmental performance standards, and
- Operational performance standards.

This would be done to distinguish the broad performance standards such as concurrent reclamation and land use plan conformance from the environmental performance standards that are specific to certain media like air or water; or from the operational standards which describe what operational components of a project must achieve.

General performance standards. Proposed paragraph (a) contains the general performance standards, which would clarify how an operator must conduct overall operations. Proposed paragraph (a)(1) would require an operator to use most appropriate technology and practices (MATP) to meet the standards of this subpart. Commenters on early drafts of this subpart expressed confusion over the relationship between the requirement to use MATP and the requirement to meet the performance standards. We intend that all operations must fully achieve the performance standards. As discussed earlier in this preamble, MATP would be established on a case-by-case basis, which would allow operators to demonstrate that their activities constitute MATP.

Proposed paragraph (a)(2) would require operators to avoid unnecessary impacts by following a reasonable and customary mineral exploration, development, mining, and reclamation sequence. This provision would expand on the ''unnecessary'' part of the existing definition of ''unnecessary or undue degradation.'' There have been past instances where operators have created unnecessary impacts by not following a reasonable and customary sequence. This requirement would prevent activity from being conducted that was substantially out of sequence with reasonable and customary mineral development practices, resulting in unnecessary impacts. We intend that this performance standard would be applied on a large scale as it relates to sequencing. For example, we do not intend it to be used to regulate the precise number of drill holes needed to define an ore deposit, or the size of a leach pad or waste rock disposal area. We intend it to be applied in those extreme cases where an operator intends to construct extensive access, infrastructure systems, or initiate mining, without having first done any exploration activity to determine whether a mineral deposit is present.

Proposed paragraph (a)(3) would require an operator, consistent with the mining laws, to comply with applicable BLM land-use plans and activity plans and with coastal zone management plans, as appropriate, where such plans have been prepared. Land-use plans, including Management Framework Plans, Resource Management Plans and activity plans, are BLM's main guidance documents for multiple use management of the public lands. The existing regulations do not integrate activities conducted under the authority of the mining laws with resource management guidance developed through the land-use planning process. The purpose of this proposed performance standard is to use the resource information and management guidance developed during the planning process to provide for appropriate consideration of other resources.

Mining industry representatives have asserted that land-use planning does not apply to operations under the mining laws because section 302 of FLPMA states that, with certain exceptions (including the UUD prohibition), FLPMA did not amend the mining laws. BLM disagrees to the extent that BLM's land-use planning can be integrated with the subpart 3809 surface management requirements without impairing rights established under the mining laws. For instance, the management guidance or prescriptions

included in land-use plans cannot be so stringent as to deny rights obtained under the mining laws. Other processes, such as a withdrawal action and/or mineral contest, must be used in areas where mining has to be excluded, subject to valid existing rights, to protect other resource values.

Some commentors on early drafts of this proposed subpart expressed confusion about how the performance standards would mesh with BLM's standards and guidelines for grazing administration (43 CFR part 4100, subpart 4180). The rangeland health standards are expressions of physical and biological conditions or degree of function required of healthy sustainable lands. Operations under this subpart would have to comply with the performance standards of proposed § 3809.420. These performance standards will ensure that rangeland health standards can be met. To the extent that the standards and guidelines are incorporated into BLM's land-use plans, they will be reflected in the plans of operations that BLM approves under this subpart. BLM, in its role as manager of the public lands over the long term, will assess lands affected by operations for progress towards achieving rangeland health after reclamation is completed.

Proposed paragraph (a)(4) would require an operator to take mitigation measures specified by BLM to protect public lands. This requirement is not found in the existing regulations, but would recognize current practice. See also the definition of ''mitigation'' at proposed § 3809.5. BLM would determine the required mitigation on a case-by-case basis to minimize the impacts and environmental losses from operations. The measures could be developed through the NEPA process.

Environmental performance standards. Proposed paragraph (b) contains environmental performance standards that would describe the outcome an operation must achieve relative to each environmental resource. Many of the proposed environmental performance standards would incorporate a requirement to comply with other State and Federal laws and regulations. The existing regulations currently use this approach so that BLM does not become involved in setting standards in areas where Congress has authorized other agencies to do so. A few commenters on early drafts of this proposed subpart thought BLM was trying to inappropriately extend its jurisdiction or responsibility. We do not agree, and in certain respects, we are merely carrying over existing language into the proposal. See, for example, existing § 3809.2–2(a), (b), and (c).

For some of the standards, the proposed regulations elaborate on the desired approach to achieve the standard. This is consistent with BLM's authority and responsibility as manager of public lands. In accord with the proposed outcome-based regulatory scheme, however, we generally do not require a particular approach. For example, one standard would require an operator to give preference to the use of pollution prevention technologies (source control) over pollution treatment or remediation, but would not specify what source control techniques the operator must use.

For proposed paragraph (b)(2), the water resources performance standard, we considered an alternative approach that would have established a numeric standard for groundwater affected by operations. Currently, there is no Federal groundwater standard, and some States do not have their own groundwater standards. We decided not to propose a numeric standard because of the difficulty of designing a nationwide numeric standard relevant to the range of groundwater conditions and public-use levels near minesites. We believe the States are better positioned to develop groundwater standards applicable within their borders. Instead, the proposed regulations would adopt a pollution prevention requirement, in preference to treatment or remediation, and rely on applicable State standards for groundwater protection where they are present.

The existing regulations do not have a performance standard for wetlands or riparian areas. We recognize that dredge and fill activities in ''jurisdictional wetlands'' are regulated by the U.S. Army Corps of Engineers (COE). We are not proposing to duplicate the existing COE regulatory scheme under section 404 of the Clean Water Act. However, not all riparian areas contain vegetation dependent on saturated soil that qualifies them as jurisdictional wetlands. The COE regulates activities that occur in or that impact jurisdictional wetlands. BLM, as a land management agency, manages wetlands and riparian areas to maintain their proper functioning condition. This role is different from and not duplicative of the COE responsibility over jurisdictional wetlands.

This standard would govern wetlands and riparian areas that are not considered ''jurisdictional wetlands.'' Wetland and riparian areas are extremely valuable to the ecosystem, especially in the arid west. Wetlands and riparian areas often occur in the topographically low portions of the project area, which are also preferred by mine operators as natural containment basins for waste rock placement or construction of tailings impoundments or leaching facilities, and, of course, placer operations almost exclusively operate in these areas. Proposed paragraph (b)(3) would establish a hierarchy of (1) avoiding locating in, (2) minimizing impacts to, and (3) mitigating damage to wetland and riparian areas. This provision would minimize, to the extent feasible, disturbance in these areas and promote restoration of unavoidable disturbance. In applying this hierarchy, we intend that activities directly involved with ore recovery would not be treated the same as activities associated with access, processing, and waste handling. That is, while ore recovery activities might have to be located in a wetland due to their site-specific nature, we would expect operators to avoid locating other activities, such as roads and waste dumps, in wetlands.

Proposed paragraph (b)(5) would incorporate and expand upon the revegetation requirement in the existing regulations. Since BLM issued the existing regulations in 1980, there has been considerable development in the science of revegetation and an increased awareness as to the importance of achieving successful revegetation. The proposed revegetation performance standard would incorporate the concepts of adequate revegetation diversity and density, use of native species, timeliness of reclamation, and the importance of controlling noxious weed infestations into the reclamation requirements. At the same time, the proposal would recognize that where revegetation is not possible, other techniques must be used to prevent erosion and stabilize disturbed areas.

Proposed paragraph (b)(6) would not materially change existing § 3809.2–2(d), the performance standard for fish and wildlife protection. We considered requiring an operator to ''enhance'' wildlife habitat during reclamation (and included the provision in a draft that we made publicly available). We decided not to propose it because of the subjectivity involved in determining what is an enhancement and because it can be inequitable or impractical to require the operator to improve habitat values above pre-disturbance conditions.

Proposed paragraph (b)(7) would make several changes to existing § 3809.2–2(e) regarding protection of cultural and paleontologic resources. We are proposing to give the same level

of protection to cave resources as the existing regulations give to cultural and paleontological resources. The terms ''cave'' and ''cave resources'' are defined at 43 CFR 37.4. Caves may contain important cultural, biological, and geological resources. These resources should be identified before initiating operations so that mitigating measures can be incorporated into proposed operations. We considered adding a separate performance standard for cave resources, but decided to combine this standard with the cultural and paleontological resources standard due to the similarity in procedures used to consider cave resources, and the overlap between the occurrence of cave resources and cultural or paleontological resources.

Proposed paragraph (b)(7)(i) would clarify and make explicit BLM's interpretation of existing § 3809.2–2(e)(1). The existing paragraph provides that operators shall not knowingly disturb, alter, injure, or destroy any scientifically important paleontologic remains or any historical or archaeological site, structure, building or object on Federal lands. This has been construed to preclude such activities by operators, unless such actions are approved in advance by BLM after appropriate site investigation, and necessary actions to protect, remove, or preserve the resource. This procedure would be codified in the proposed rules.

Proposed paragraph (b)(7)(ii) would change the time frame for action on cultural, paleontologic, and cave resources that are discovered after initiating operations from a mandatory 10 working days to 20 working days, unless otherwise agreed to by the operator and BLM, or unless otherwise provided by law. The time frame at existing § 3809.2–2(e)(2) is not adequate to accomplish the site investigation, data recovery, and consultation required with State and Federal cultural resource agencies, or with interested parties. We considered proposing an open-ended suspension of operations until investigation and data recovery is complete. We decided not to propose this alternative due to the possible adverse impacts an indefinite suspension could have on an operator.

In proposed paragraph (b)(7)(iii), we would change the responsibility for costs associated with investigation, recovery, and preservation of resources discovered during operations from the government to the operator. BLM believes that since the operator is responsible for the disturbance and is generating revenue from the extraction of publicly owned locatable minerals, the operator receives a benefit from the investigation and recovery (the ability to continue to operate) and, thus, generally should be responsible for the costs as a cost of doing business on public lands. If BLM were to incur costs from the investigation, recovery, and preservation of discovered resources, the proposal would provide that BLM will recover the costs as determined on a case-by-case basis after an evaluation of the reasonableness of doing so under the factors set forth in section 304(b) of FLPMA, 43 U.S.C. 1734(b). BLM may decide to recover less than all of the actual costs on a case-by-case basis depending upon the nature of the discovery and the potential benefit to the general public and the other factors specified in section 304(b) of FLPMA .

Operational performance standards. Proposed paragraph (c) contains operational performance standards that describe the outcome that must be achieved by the various project components or facilities associated with mineral exploration and development. Proposed paragraph (c)(1) would incorporate existing § 3809.1–3(d) and a portion of existing § 3809.3–3(b). It would also require an operator to design, construct, and maintain roads and structures to control or prevent erosion, siltation, and air pollution and minimize impacts to resources. Access roads frequently make up the majority of acreage disturbed by exploration and smaller mining operations. For this reason, it is important to control the impacts associated with roads.

Many of the operational performance standards are standard operating practices currently used by the industry. For example, proposed paragraph (c)(2) would require an operator to control drill fluids and cuttings and correctly plug drill holes. This would be a new requirement in the regulations, but one that is already being followed by the majority of operators.

Proposed paragraphs (c)(3) and (4) consist of requirements from BLM's existing acid mine drainage policy (BLM Instruction Memorandum 96–79, April 2, 1996) and cyanide management policy (BLM Instruction Memorandum 90–566, August 6, 1990, amended November 1, 1990), respectively. Incorporating these policies into the proposed regulations will make them more readily available to operators and provide for a more consistent application of the requirements.

While not requiring a specific design, the performance standard for mine components that contain acid-forming, toxic, or other deleterious materials (proposed § 3809.420(c)(3)) requires an operator to make source control and pollution prevention measures the priority consideration in facility design and operations. It is in this one area that the proposed performance standards go beyond a purely outcome-based standard and require a certain technical approach be taken to meet the applicable water quality standards. BLM believes this is justified because of the long-term, and perhaps permanent, commitment of resources that accompanies proposals for the post-reclamation collection and treatment of acidic, toxic, or other deleterious drainage. Several commenters on early drafts of this proposed rule suggested we provide a definition of ''deleterious.'' We note that the word is found in the existing regulations (§ 3809.1–3(d)(2)), which have been in place for nearly two decades. In the interest of brevity, we decided not to propose a definition at this time.

Proposed paragraph (c)(4), the performance standard for leaching operations and impoundments, would include requirements from the existing BLM cyanide management policy. The requirement for leaching systems to contain precipitation from the local 100-year, 24-hour storm event would be modified slightly from the policy to remove the qualifier ''* * * unless otherwise specifically authorized for such facilities under State or Federal law.'' BLM believes modification of the policy requirement is appropriate and that the ability to contain the precipitation of a 100-year, 24-hour storm event is the minimum performance acceptable for use of leaching systems on public lands. There were some early comments on drafts that we made publicly available that because this performance standard contains a number, it is really a design standard. We do not agree. The standard is the ability to contain a certain excess amount of solution that enters the process circuit as precipitation, thus preventing overflow and release to the environment. The standard does not specify how containment is to be accomplished or what design to use, only the performance that must be achieved. The local 100-year, 24-hour storm event is a way to describe the amount of precipitation that must be contained. The actual size of this storm event varies from location to location.

Proposed paragraph (c)(5) would require an operator to locate, design, construct, operate, and reclaim waste rock, tailings, and leach pads to minimize infiltration and contamination of surface water and ground water; achieve stability; and, to the extent feasible, blend with pre-mining, natural topography. This proposed provision

expands upon existing § 3809.1–3(d)(2), which requires prevention of UUD and adherence to applicable laws in disposing tailings, dumps, deleterious materials or substances, and other waste.

Proposed paragraph (c)(6) is the stability, grading, and erosion control performance standard. Under proposed paragraph (c)(6)(1), an operator would have to grade or otherwise engineer all disturbed areas to a stable condition to minimize erosion and facilitate revegetation. This provision is a restatement of existing § 3809.1–3(d)(4)(iv).

Existing § 3809.1–3(d)(3) allows disturbed areas to remain unreclaimed to preserve evidence of mineralization. Proposed paragraph (c)(6)(ii) would modify this provision by stating that disturbed areas may ''temporarily'' remain unreclaimed to preserve evidence of mineralization. We are proposing this change to ensure that disturbed areas are not left unreclaimed indefinitely. There are legitimate reasons that certain areas must remain open to show evidence of mineralization (for example, patenting). However, the operator must reclaim all areas for which the operator is responsible. BLM anticipates that the operator will describe any areas left open to establish mineralization in the reclamation plan, along with a time frame for completion of final reclamation.

The existing regulations do not specify a performance standard for mine pit reclamation, stating only the reclamation measures that must be used ''where reasonably practicable.'' Proposed paragraph (c)(7)(i) would require an operator to backfill mine pits unless the operator demonstrates it is not feasible for economic, environmental, or safety reasons. The proposal would change the assumption from generally regarding backfilling as impractical, to one of assuming it is practical unless demonstrated otherwise. BLM believes that the burden of proof regarding the feasibility of pit backfilling should be on the operator to say why backfilling is not practical. The proposal would ensure that operators consider backfilling options for all operations.

We do not intend the economic feasibility determination anticipated under the proposed pit backfilling requirement to be a detailed review of the project economics, such as rate of return on investment. BLM does not intend to determine what is a reasonable profit margin for mine operators. The fact that an operator could conduct complete backfilling and still show a profit does not automatically mean BLM would require backfilling. Nor does it mean that an operation which appears to be uneconomic, even without any backfilling, is exempt from performing backfilling. When considering the economic feasibility of pit backfilling, BLM would weigh the anticipated environmental benefits in relation to operational economic factors such as: whether the project is a single or multiple pit operation, the distance and grade from mine site to waste rock storage versus backfill location, the direct haul cost versus temporary storage and rehandling cost, and the reclamation costs as a function of disturbance area size.

Proposed paragraph (c)(7)(ii) would require mitigation for pit areas that are not backfilled. The type of mitigation anticipated is not a dollar-for-dollar cost compensation (That is, for every dollar of backfill cost saved, one dollar must be spent on mitigation.) or necessarily an acre-for-acre compensation (For every acre of unreclaimed pit, one acre must be provided as mitigation.). Instead, the intent of the mitigation requirement is to insure that the impacts associated with not backfilling pit areas are mitigated. For example, if leaving a pit highwall creates a safety hazard, required mitigation may include erecting perimeter fencing and posting hazard signs. If the pit area is in critical wildlife habitat that cannot be restored unless backfilled, then the mitigation may require providing replacement habitat at another location.

Proposed paragraphs (c)(8), (9), (10), and (11) are the performance standards for solid waste, fire prevention and control, maintenance and public safety, and protection of survey monuments respectively. We have carried them over from the existing regulations with minor editing. See §§ 3809.2–2(c), 3809.3–4, 3809.3–5, and 3809.2–2(f) respectively.

Section 3809.423 How Long Does My Plan of Operations Remain in Effect?

Proposed § 3809.423 would provide that a plan of operations remains in effect as long as the operator conducts operations, unless BLM suspends or revokes the plan of operations for failure to comply with this subpart. BLM's suspension and revocation provisions are found in proposed §§ 3809.601 and 3809.602, which are discussed later in this preamble. There is no counterpart to this provision in the existing regulations, which has the effect of allowing a plan of operations to remain in effect indefinitely.

Section 3809.424 What Are My Obligations if I Stop Conducting Operations?

Proposed § 3809.424 would establish an operator's obligations if the operator stops conducting operations. This section appears in table format and would incorporate existing § 3809.3–7 with the changes and additions discussed below.

Proposed paragraph (a)(1) would add two requirements to the existing requirement to maintain the site of operations in a safe and clean condition during any non-operating periods. An operator would also have to take all necessary action to prevent unnecessary or undue degradation and would have to maintain an adequate financial guarantee. Action to prevent unnecessary or undue degradation could include providing adequate maintenance, monitoring, and security and detoxifying process solutions, if any. BLM believes these are the minimum measures necessary to stabilize the site and prevent unnecessary or undue degradation. Proposed paragraph (a)(2) incorporates existing § 3809.3–7, with minor editing.

Proposed paragraph (a)(3) would provide that BLM will review an operation after five consecutive years of inactivity to determine if we should terminate the plan of operations and require final reclamation and closure. We are proposing this provision in an effort to clear the books of long-term, inactive plans of operations. These sites require attention and resources that we believe we could more productively direct at sites where operations are active. It is important to note that if BLM terminated a plan based on inactivity, that action would not affect the status of the mining claim, if any; nor would it prevent the operator from submitting a new notice or proposed plan of operations, as appropriate, for the same project area. Terminating a plan of operations would limit an operator's operations to activities designed to fulfill the operator's reclamation obligation, which continues until satisfied. We specifically request comments on whether the 5-consecutive-year period of inactivity, which would be a prerequisite to BLM's review for possible termination, is too long, too short, or about right.

Proposed paragraph (a)(4) describes the process BLM would follow if we determine that an operator has abandoned an operation. Relying on the indicators of abandonment set forth in proposed § 3809.336(a), BLM would take steps to collect any financial guarantee for the operation. If the

collected financial guarantee were insufficient to pay for reclamation, the operator and all other responsible parties would be held liable for the costs of reclamation not covered by the forfeited amount.

Proposed paragraph (b) would establish the policy that an operator's or mining claimant's reclamation and closure obligations continue until satisfied. This provision is not explicitly stated in the existing regulations, but is necessary to clear up confusion about whether the operator or mining claimant has any residual obligations after financial guarantee forfeiture. Some have argued that financial guarantee forfeiture ends the obligation to reclaim, but in cases where the financial guarantee does not cover the costs of reclamation, this position effectively enables an operator to evade full responsibility for reclamation and closure. BLM believes that operators and mining claimants should not be able to pass the costs of reclamation resulting form their activities to the Nation as a whole. We intend this provision to ensure that they do not.

Modifications of Plans of Operations

This portion of the proposal (proposed §§ 3809.430 through 3809.435) contains provisions governing modification of a plan of operations. Most of these proposed sections are derived without substantive change from existing § 3809.1–7. We discuss changes and new material below.

Section 3798,432 What Process Will BLM Follow in Reviewing a Modification of My Plan of Operations?

Proposed § 3809.432 is the counterpart of existing § 3809.1–7(b) and would set forth the processes BLM would use in reviewing a proposed modification of a plan of operations. Under proposed paragraph (a), BLM would review and approve a modification in the same manner as we did for the initial plan, except that we would not solicit public comment on the financial guarantee amount if the modification does not change the financial guarantee amount, or only changes it minimally. We specifically solicit comments on how we should interpret the term ''minimally,'' such as using a dollar threshold. We did not include in this proposed rule the procedures contained in existing § 3809.1–7(c) relating to BLM State Director review of proposed required modifications. These procedures are unnecessarily detailed and cumbersome. The proposal would allow BLM field staff flexibility to streamline the modification review process.

Under proposed paragraph (b), BLM would accept a modification without formal approval if it does not constitute a substantive change and does not require additional analysis under the National Environmental Policy Act. We are proposing this procedure to expedite processing of non-substantive modifications.

Section 3809.433 Does This Subpart Apply to a New Modification of My Plan of Operations?

Proposed § 3809.433 sets forth the guidelines that BLM would use in applying this subpart to a new modification of a plan of operations. This material is not included in the existing regulations, but BLM believes it is necessary to give operators and the public a clear idea of how and under what circumstances this subpart would apply to modified operations. For the purposes of this section, a ''new'' modification is one that an operator submits to BLM after the effective date of this subpart.

Under proposed paragraph (a), for a new modification that proposes to add a discrete new facility to an existing operation, the plan contents requirements (proposed § 3809.401) and performance standards (proposed § 3809.420) of this subpart would apply to the new facility. The facilities and areas already existing would continue to operate under the existing plan of operations. We believe that it would not be unduly burdensome to subject a new facility, such as a waste rock repository, leach pad, impoundment, drill site, or road, to any new requirements contained in this subpart. We specifically request comments on whether we would be creating too much confusion by setting up a situation where one set of regulations governs part of an operation and another set governs another part.

Under proposed paragraph (b), for a new modification that proposes to modify an existing facility, the plan contents requirements (proposed § 3809.401) and performance standards (proposed § 3809.420) of this subpart would apply to the modified facility. However, the operator would have the option of demonstrating to BLM's satisfaction that it is not feasible to apply the plan content requirements and performance standards of this subpart for environmental, safety, or technical reasons. If BLM agrees, then the plan contents requirements and performance standards in effect immediately before the effective date of this subpart would apply to the plan of operations. We are proposing to give an operator this option for a modification of existing facilities, such as expansion of a waste rock repository, leach pad, or impoundment; layback of a mine pit; or widening of a road, because in some cases, it may be burdensome or unnecessarily complicated to apply two sets of regulations to a single facility.

Section 3809.434 Does This Subpart Apply to My Pending Modification for a New Facility?

Proposed § 3809.434 sets forth the guidelines that BLM would use in applying this subpart to a pending modification of a plan of operations to add a new facility. This material is not included in the existing regulations, but BLM believes it is necessary to give operators and the public a clear idea of how and under what circumstances this subpart would apply to modified operations. For the purposes of this section, a pending modification is one that an operator submitted to BLM before the effective date of this subpart, and BLM had not made a final decision by that date.

Under proposed paragraph (a), if an operator submitted a proposed modification of an existing plan of operations to construct a new facility before the effective date of this subpart, and BLM made an environmental assessment (EA) or environmental impact statement (EIS) available to the public before that date, then the new facility would not be subject to the plan content requirements and performance standards of this subpart. In contrast, under proposed paragraph (b), if BLM had not made the EA or EIS publicly available by that date, then the plan content requirements and performance standards of this subpart would apply to the new facility. This is the same cutoff that we propose to apply to pending proposed plans of operations. See the discussion of proposed § 3809.400 earlier in this preamble. The reason for choosing this cutoff date is that by the time an EA or EIS is published, an operator and BLM would have already committed considerable time and resources towards developing the modification under the existing regulations.

Section 3809.435 Does This Subpart Apply to My Pending Modification For an Existing Facility?

Proposed § 3809.435 sets forth the guidelines that BLM would use in applying this subpart to a pending modification of a plan of operations to modify an existing facility. This material is not included in the existing regulations, but BLM believes it is necessary to give operators and the public a clear idea of how and under

what circumstances this subpart would apply to modified operations. For the purposes of this section, a pending modification is one that an operator submitted to BLM before the effective date of this subpart.

Under proposed paragraph (a), if an operator submitted a proposed modification of an existing plan of operations to modify an existing facility before the effective date of this subpart, and BLM made an environmental assessment (EA) or environmental impact statement (EIS) available to the public before that date, then the new facility, when approved, would not be subject to the plan content requirements and performance standards of this subpart. Under proposed paragraph (b), if the EA or EIS had not been published, then the plan content requirements and performance standards of this subpart would apply to the modified facility, unless the operator demonstrates to BLM's satisfaction that it is not feasible to apply it for environmental, safety, or technical reasons.

Financial Guarantee Requirements—General

This proposed rule would establish mandatory provisions for financial guarantees for all activities greater than casual use, expand the types of financial guarantees available, and establish the circumstances and procedures under which BLM would pursue forfeiture of a guarantee. It would also require that financial guarantees be redeemable by the Secretary while allowing BLM to accept financial guarantees posted with the State in which operations take place, provided the level of protection is compatible with this subpart. The rule would also authorize BLM to require the establishment of a trust fund in those circumstances where long term, post-mining water treatment will be necessary. Included in the proposal is a description of when current operations would have to comply with these rules.

On February 27, 1997, BLM published rules affecting financial guarantees under this subpart (62 FR 9093). Those rules were challenged in *Northwest Mining Association* v. *Babbitt,* 5 F. Supp. 2d 9 (D.D.C. May 13, 1998) and remanded on procedural grounds. The effect of the remand is to reinstate the previous financial guarantee regulations. The proposed rules are different from the invalidated rulemaking in several substantial ways:

1. The proposed rule would not differentiate between notice- and plan-level operations.

2. The proposed rule would require all financial guarantees be actual guarantees, rather than certification that the guarantee exists.

3. The proposed rule would eliminate the requirement that a third party professional engineer certify the amount of the financial guarantee.

4. The proposed rule would require that financial guarantees be posted for the actual amount of the estimated reclamation cost. Thus, if the estimated cost is $500 per acre, the financial guarantee to be posted must be $500 times the number of acres disturbed (rounded to the next highest acre). This differs from the remanded requirement that minimum financial guarantee amounts be posted.

5. The rule would also allow for additional types of financial instruments to be used when posting a guarantee.

6. The rule would permit BLM to require the operator to establish a long-term funding mechanism for water treatment and other post-mining maintenance requirements.

7. The rule would establish time frames for existing operations to comply with the financial guarantee requirements.

8. As discussed in the enforcement section of this preamble, BLM would not require a second financial guarantee for operations in non-compliance.

In the section-by-section analysis that follows, we compare the proposal to the regulations in place prior to the remanded 1997 regulations. Readers should note that when we talk about the ''existing'' financial guarantee regulations in this preamble, we are not referring to the financial guarantee regulations in the current (1997) edition of the Code of Federal Regulations (CFR), which contains the remanded rules (§ 3809.1–9(a)–(q)). Instead, we are referring to the financial guarantee regulations in the 1996 edition of the CFR (§ 3809.1–9(a)–(g)).

Section 3809.500 In General, What Are BLM's Financial Guarantee Requirements?

Proposed § 3809.500 would change existing §§ 3809.1–9(a) and 3809.1–9(b) by requiring operators to provide financial guarantees in advance for all operations other than casual use. The existing regulations make the posting of a financial guarantee discretionary for plans of operations and do not address financial guarantee for notice-level operations. BLM believes that a requirement to provide a financial guarantee for notice- and plan-level operations would ensure that operators will reclaim project areas to the standards of this subpart. We recognize that this requirement imposes a cost on those conducting operations on public lands. (We have analyzed the cost of this requirement in the course of complying with Executive Order 12866 and the Regulatory Flexibility Act. See part IV of this preamble which discusses how BLM has met its procedural obligations.) We believe that the cost of this requirement is greatly outweighed by the benefits that it produces, namely avoiding the creation of new sources of land and water pollution on public lands.

Section 3809.503 When Must I Provide a Financial Guarantee for My Notice-Level Operations?

Proposed § 3809.503 is a new section that governs when a notice-level operator must provide a financial guarantee. It would not require a current notice-level operator to provide a financial guarantee unless the notice is modified or extended. This provision would minimize the impact of the financial guarantee requirement on existing notice-level operations as long as they are unchanged. It would also make clear that persons filing notices after the effective date of a final rule must provide the financial guarantee before beginning operations.

Section 3809.505 How Do the Financial Guarantee Requirements of This Subpart Apply to My Existing Plan of Operations?

Proposed § 3809.505 is a new section that would allow those operating under an existing plan of operations 180 days from the effective date of a final rule to comply with the financial guarantee requirements of this rule if they have not already done so. We are proposing the 180-day grace period to ensure an orderly transition to the new requirements. We specifically request comments on whether the 180-day time frame is too long, too short, or about right.

Section 3809.551 What Are My Choices for Providing BLM With a Financial Guarantee?

Proposed § 3809.551 restates the requirements of existing § 3809.1–9(b) and (d) in the form of a table. It would allow an operator to provide an individual financial guarantee for a single notice or plan of operations, a blanket financial guarantee for State-wide or nation-wide operations, or to provide evidence of an existing financial guarantee under State law or regulations.

Individual Financial Guarantee

This portion of the proposed rule (§§ 3809.552 through 3809.556) contains

provisions applicable to financial guarantees that cover the reclamation obligations associated with a single notice or plan of operations.

Section 3809.552 What Must My Individual Financial Guarantee Cover?

Proposed § 3809.552 would require that an individual financial guarantee cover reclamation costs as if BLM were to contract for reclamation with a third party. This clarifies current BLM policy under existing § 3809.1–9(b), which does not expressly address the cost of contracting with a third party for reclamation. We are proposing this clarification because the administrative cost of contracting, including overhead, can be significant and may otherwise have to be subtracted from the funds available for on-the-ground work. This might result in on-the-ground reclamation work being incomplete or substandard. The proposal would also clarify that the financial guarantee covers all reclamation obligations arising from an operation, regardless of the areal extent or depth of activities described in the notice or approved plan of operations.

In light of our recent experience with operators who file for bankruptcy protection, BLM intends that reclamation obligations continue and that BLM could forfeit a financial guarantee and use it to meet reclamation obligations in a bankruptcy situation unless specifically precluded by court order. Likewise, in situations where an operator experiences financial problems short of bankruptcy and is unable to meet ongoing environmental protection obligations, BLM intends that we could forfeit a portion of the financial guarantee to satisfy such obligations. This would include, for instance, partial forfeiture to keep pumps running and prevent overflow of ponds in the event an operator ceases operations. In this context, BLM construes the ongoing maintenance activity intended to prevent unnecessary or undue degradation as a reclamation obligation subject to coverage by the financial guarantee. We specifically request comments on whether BLM should require additional funding mechanisms to meet operational or environmental contingencies.

Proposed paragraph (b) of this section is a new provision that would establish the goal of periodic BLM review of the adequacy of the estimated reclamation cost and the long-term funding mechanism, if any, and require increased coverage, if necessary. The purpose of this review is to ensure that the estimated reclamation cost and amount of financial guarantee remain sufficient throughout the life of the operation. There are many variables inherent in mining operations that can affect the reclamation cost, and we believe there should be a mechanism to take this inherent variability into account and allow appropriate adjustments. We do not want to create the incentive for an operator to forfeit the financial guarantee and walk away from a project area because the reclamation cost has become greater than the financial guarantee amount. We are not proposing a specific frequency for review of the estimated reclamation cost, and by using ''will'' instead of ''must,'' we do not intend to create an obligation for BLM to conduct any particular review. Accomplishing the goal of periodically reviewing reclamation cost estimates is subject to the availability of resources.

Proposed paragraph (c) of this section would authorize BLM to require an operator to establish a trust fund or other funding mechanism to ensure the continuation of long-term water treatment to achieve water quality standards or for other long-term, post-mining maintenance requirements. The funding would have to be adequate to provide for construction, long-term operation, maintenance, or replacement of any treatment facilities and infrastructure, for as long as the treatment and facilities are needed after mine closure. BLM would identify the need for a trust fund or other funding mechanism during plan review or later. This would be a new requirement designed to deal with the situation where an otherwise fully reclaimed mining operation will continue for the foreseeable future to discharge pollutants, such as acid mine drainage, into surface waters. To avoid unnecessary or undue degradation, we believe there must be some mechanism to fund long-term treatment of the discharge. Under this provision, the operator would have to set aside funds that would be invested to produce income sufficient to pay for the ongoing cost of whatever treatment is required to meet applicable water quality standards for as long as the treatment is necessary. We anticipate that any prediction that long-term treatment will be necessary would have to be based on adequate sampling to determine the acid-generating potential of the ore body and surrounding rock. Under this provision and proposed § 3809.401(c), BLM would have the authority to require an operator to collect and analyze enough samples to ensure that any prediction is based on a statistically adequate number of samples. We are particularly interested in commenters' views on how well this mechanism would work and on alternate approaches to address the problem of post-mining acid mine drainage.

Section 3809.553 May I Post a Financial Guarantee for a Part of My Operations?

Proposed § 3809.553(a) would provide that financial guarantees may be provided on an incremental basis to cover only those areas being disturbed. This new provision is intended to address confusion about whether an operator has to provide financial guarantee for the entire area to be affected by operations all at once. We believe that where an operation is large or is of long duration or will be developed in phases, there is no need to require financial guarantee for areas that will not be immediately disturbed. The purpose of the financial guarantee requirement is to ensure reclamation of disturbed surface areas. To the extent that the surface is not disturbed, no financial guarantee is needed. However, at any one time, an operator would have to maintain enough financial guarantee to cover all estimated reclamation costs.

Proposed paragraph (b) of this section would establish BLM's goal of reviewing the financial guarantee for each increment of an operation at least annually. We do not consider this provision as creating an obligation for BLM to review any particular increment annually. The number of reviews we conduct annually is subject to available resources.

Section 3809.554 How Do I Estimate the Cost To Reclaim My Operations?

Proposed § 3809.554 would require an operator to estimate the cost to reclaim an operation as if BLM were hiring a third-party contractor to perform reclamation of the operation after the operator had vacated the project area. The estimate would have to include BLM's cost to administer the reclamation contract. An operator could contact BLM to obtain the administrative cost information. The purpose of this new provision is to ensure that the estimated cost of reclamation, on which the financial guarantee amount is based, is sufficient to pay for successful reclamation if the operator does not complete reclamation. In that event, BLM would most likely have to contract for the reclamation work and would incur administrative costs. If funding were not available in the financial guarantee to pay the administrative costs, the costs would have to come out of the funds available for the on-the-ground reclamation. This

could result in incomplete or substandard reclamation.

Section 3809.555 What Forms of Individual Financial Guarantee Are Acceptable to BLM?

Proposed § 3809.555 would expand the kinds of instruments that are acceptable as financial guarantees under existing § 3809.1–9(c). In addition to surety bonds, cash, and negotiable securities, which are acceptable under the existing regulations, the expanded list of acceptable instruments would include letters of credit, certificates of deposit, State and municipal bonds, and investment-grade rated securities. We believe that expanding the list of acceptable instruments will make it easier for an operator to provide the required financial guarantee. In proposed paragraph (a), we are proposing to change the wording to specify that only non-cancelable surety bonds would be acceptable. The intent of this change is to preclude cancellation of a surety bond without the existence of a replacement financial guarantee.

Section 3809.556 What Special Requirements Apply to Financial Guarantees Described in Section 3809.555(e)?

Proposed § 3809.556 is a new section that we intend to ensure that market fluctuations do not erode the security provided by financial guarantees and other instruments that fluctuate in value. Proposed paragraph (a) would require an operator to provide BLM a statement describing the market value of a financial guarantee which is in the form of traded securities. The operator would have to provide the statement before beginning operations and at the end of each calendar year thereafter. Proposed paragraph (b) would require the operator to review annually the value of the guarantee and to post an additional financial guarantee if the value declines by more than 10 percent or if BLM determines that a greater guarantee is necessary. Proposed paragraph (c) would allow the operator to ask BLM to authorize the release of that portion of an account exceeding 110 percent of the required financial guarantee. BLM would honor the request if the operator is in compliance with the terms and conditions of the operator's notice or approved plan of operations.

Blanket Financial Guarantee

This portion of the proposed rule contains one section (proposed § 3809.560) that addresses blanket financial guarantees. We are proposing to continue the practice of accepting blanket financial guarantees.

Section 3809.560 Under What Circumstances May I Provide a Blanket Financial Guarantee?

Proposed § 3809.560 is identical to existing § 3809.1–9(d), with minor editorial changes, and would permit the operator to provide a blanket guarantee covering state-wide or nation-wide operations. BLM will accept a blanket financial guarantee if we determine that its terms and conditions are sufficient to comply with this subpart. The amount of any blanket financial guarantee would have to be sufficient to cover all of an operator's reclamation obligations.

State-Approved Financial Guarantee

This portion of the proposed rule contains four sections (proposed §§ 3809.570 through 3809.573) that address State-approved financial guarantees. We are proposing to continue the practice of accepting State-approved financial guarantees.

Section 3809.570 Under What Circumstances May I Provide a State-Approved Financial Guarantee?

Proposed § 3809.570 would deem acceptable a State-approved financial guarantee that is redeemable by the Secretary, is held or approved by a State agency for the same operations covered by a notice or plan of operations, and provides at least the same amount of financial guarantee as required by this subpart. We are proposing that any State-approved financial guarantee be redeemable by the Secretary so that, in case of failure to reclaim, we can initiate forfeiture of the financial guarantee to ensure reclamation of public lands. The redeemability requirement would not apply to State financial guarantee pools. See proposed § 3809.571.

Section 3809.571 What Forms of State-Approved Financial Guarantee Are Acceptable to BLM?

Under proposed § 3809.571, BLM would accept a State-approved financial guarantee in any of the forms specified under proposed § 3809.555. BLM would also accept participation in a State financial guarantee pool if the State agrees that, upon BLM's request, the State will use part of the pool to meet reclamation obligations on public lands, and the BLM State Director determines that the pool provides the level of protection required by this subpart. BLM is also proposing to accept a corporate guarantee if it is acceptable to the State, is redeemable by or guaranteed to the Secretary, and the BLM State Director determines that the corporate guarantee provides a level of protection equal to the estimated cost of reclamation, considering the operator's net income, net working capital and intangible net worth, and total liabilities and assets. We specifically request comments or suggestions on what would be an appropriate standard for an acceptable corporate guarantee.

Section 3809.572 What Happens if BLM Rejects a Financial Instrument in My State-Approved Financial Guarantee?

Under proposed § 3809.572, BLM would notify an operator in writing within 30 days of BLM's receipt of evidence of an operator's State-approved financial guarantee whether the guarantee was acceptable. If BLM rejected a financial instrument in an operator's State-approved financial guarantee, the operator would have to provide BLM with a financial guarantee equal to the amount of the financial guarantee rejected.

Section 3809.573 What Happens if the State Makes a Demand Against My Financial Guarantee?

Under proposed § 3809.573, if the State makes a demand against an operator's financial guarantee and reduces the available balance, the operator would have to replace or augment the financial guarantee to cover the remaining reclamation cost.

Modification or Replacement of a Financial Guarantee

This portion of the proposed rule (proposed §§ 3809.580 through 3809.582) addresses modification or replacement of a financial guarantee.

Section 3809.580 What Happens if I Modify My Notice or Approved Plan of Operations?

Proposed § 3809.580 incorporates existing § 3809.1–9(e) and would require an operator to increase the financial guarantee if the operator modifies a plan or a notice and the estimated reclamation cost increases. This section would not preclude an operator from requesting BLM's approval for a decrease in the financial guarantee if the estimated reclamation cost decreases as a result of a modification.

Section 3809.581 Will BLM Accept a Replacement Financial Instrument?

Proposed § 3809.581 covers the procedure for review and approval of a replacement financial instrument. This topic is not addressed in the existing regulations. If an operator wants to replace a financial instrument any time after BLM's approval of the initial

instrument, the operator would request BLM review of the replacement. Within 30 days of the request, BLM would complete its review and, if we reject the request, issue a decision in writing.

Section 3809.582 How Long Must I Maintain My Financial Guarantee?

Proposed § 3809.582 would establish a requirement for maintaining the financial guarantee. This topic is not addressed in the existing regulations. An operator would have to maintain the financial guarantee until the operator, or a new operator, replaces it, or until BLM releases the requirement to maintain the financial guarantee after completion of successful reclamation.

Release of Financial Guarantee

This portion of the proposed rule (§§ 3809.590 through 594) addresses when and how BLM releases a financial guarantee after completion or transfer of operations. As noted below, the proposal would incorporate several portions of the existing regulations. In general, the process for release of financial guarantee described in this portion of the proposal would apply to all operations once this subpart becomes effective. However, for existing operations that are not subject to the performance standards of this subpart (See proposed § 3809.400), the standards for release would be those included in the existing plan of operations.

Section 3809.590 When Will BLM Release or Reduce the Financial Guarantee for My Notice or Plan of Operations?

Proposed § 3809.590 incorporates existing § 3809.1–9(f) with the substantive changes discussed below. When the operator completes all or any portion of the reclamation of an operation according to the notice or approved plan of operations, the operator would notify BLM that the reclamation has occurred and request a reduction in the financial guarantee or BLM approval of the adequacy of the reclamation, or both. BLM will then promptly inspect the reclaimed area. Under the proposal, BLM would encourage the operator to accompany the BLM inspector. Under the existing regulations, BLM is required to inspect the operation with the operator. This change would not preclude the operator from accompanying the BLM inspector and would facilitate final inspections where the operator is unable to be present. Subsequently, BLM would notify the operator, in writing, whether the reclamation is acceptable and whether the operator may reduce the financial guarantee under § 3809.591.

Under proposed paragraph (c), BLM would publish notice of final release of financial guarantee in a local newspaper of general circulation and accept comments for 30 days. This would give the public an opportunity to participate in the financial guarantee release process. BLM believes that this opportunity for public participation could result in information pertinent to financial guarantee release coming to BLM's attention. We specifically request comments on whether the proposed 30-day comment period is too long, too short, or about right.

Section 3809.591 What Are the Limitations on the Amount by Which BLM May Reduce My Financial Guarantee?

Proposed § 3809.591 would govern incremental financial guarantee release, a topic that is not covered by the existing regulations. Proposed paragraph (a) would provide that this section does not apply to any long-term funding mechanism. The financial guarantee release provisions in this section apply only to the financial guarantee.

Under proposed paragraph (b), BLM could reduce the financial guarantee by not more than 60 percent of the total guarantee when the operator completes backfilling, regrading, establishment of drainage control; and stabilization and detoxification of leaching solutions, heaps, tailings, and similar facilities. An operator could apply for financial guarantee release for a portion of the project area. For example, if an operator completed regrading on 50 acres of a 100-acre project area, the operator could seek release of 60 percent of the financial guarantee applicable to the 50 acres.

Under proposed paragraph (c), BLM could release the remainder of the financial guarantee for a portion of the project area when BLM determines that the operator has successfully completed reclamation, including revegetation, and water quality standards have been met for one year without need for further water treatment unless a long-term funding mechanism under proposed § 3809.552(c) has been established. If so, BLM could release the financial guarantee (but not the long-term funding mechanism) when water quality standards have been achieved for one year regardless of whether the discharge is being treated.

Section 3809.592 Does Release of My Financial Guarantee Relieve Me of All Responsibility for My Project Area?

BLM intends proposed § 3809.592 to address the issue of whether a mining claimant or operator has any residual responsibility for a project area after final release of the financial guarantee. This is an issue that is not addressed in the existing regulations and has come up many times since BLM issued them in 1980. Under proposed paragraph (a), an operator's (or mining claimant's) liability would not terminate upon release of the financial guarantee if reclamation should fail to meet the standards of this subpart. We believe that this provision is necessary to cover situations where, for example, a totally regraded and revegetated slope begins to slump or fail. If BLM could not require the operator or mining claimant to come back and fix the problem, unnecessary or undue degradation of public lands caused by the operator's activities would be a likely result. BLM does not anticipate a large number of cases of this type and, in any event, must balance an operator's reasonable expectation of the finality of final financial guarantee release with BLM's responsibility to prevent unnecessary or undue degradation.

In a similar manner, proposed paragraph (b) would provide that release of the financial guarantee under subpart 3809 does not release or waive claims by BLM or other persons under the Comprehensive Environmental Response, Compensation and Liability Act of 1980, as amended, 42 U.S.C. 9601 *et seq.*, or under any other applicable statutes or regulations. We intend this provision to clarify this aspect of the relationship between this subpart and other laws and regulations. Release of an operator's financial guarantee under this subpart does not affect any responsibility that an operator may have under other laws, such as laws governing handling and disposal of hazardous waste. This is not a new concept, but it is an important one that, in BLM's experience, operators sometimes are not aware of.

Section 3809.593 What Happens to My Financial Guarantee if I Transfer My Operations?

Proposed § 3809.593 would incorporate and expand existing § 3809.1–6(e), which provides that in the event of a change of operators involving an approved plan of operations, the new operator shall satisfy the financial guarantee requirements. The existing regulations do not address whether the original

operator or transferee is responsible for obligations created before the transfer, nor at what point after the transfer BLM should release the original financial guarantee. Thus, the proposal would provide that when an operator transfers an operation, the operator remains responsible for obligations or conditions created while that operator conducted operations, unless the transferee accepts responsibility and BLM accepts an adequate replacement financial guarantee. Therefore, the original operator's financial guarantee would remain in effect until BLM determines that the original operator is no longer responsible for all or part of an operation. The proposal would allow for incremental release of the original financial guarantee. The proposal also would provide that the new operator may not begin operations until BLM accepts the new operator's financial guarantee. BLM believes it is important to establish clear responsibility for reclamation of all portions of a transferred operation to ensure that responsible parties carry our their reclamation obligations. Otherwise, the transfer could cause confusion over who is responsible for reclaiming different areas and delays in achieving the necessary reclamation.

Section 3809.594 What Happens to My Financial Guarantee When My Mining Claim Is Patented?

Proposed § 3809.594 incorporates existing § 3809.1–9(g) with minor editorial changes and sets forth the conditions under which BLM would release a financial guarantee when a mining claim is patented.

Forfeiture of Financial Guarantee

This portion of the proposed rule (§§ 3809.595 through 3809.599) addresses when and how BLM carries out forfeiture of a financial guarantee. This topic is not addressed by the existing regulations. This portion of the proposal incorporates the remanded 1997 regulations governing forfeiture. We are incorporating these procedures to ensure a degree of uniformity in the procedures used by various BLM offices to collect and use financial guarantees and to complete the logical sequence of events that encourage reclamation.

Section 3809.595 When Will BLM Initiate Forfeiture of My Financial Guarantee?

Under proposed § 3809.595, BLM would initiate forfeiture of all or part of a financial guarantee for any project area or portion of a project area if the operator refuses or is unable to complete reclamation as provided in the notice or approved plan of operations, if the operator fails to meet the terms of the notice or decision approving the plan of operations, or if the operator defaults on any condition under which the operator obtained the financial guarantee. BLM believes these provisions are the minimum necessary to ensure that BLM initiates forfeiture in appropriate circumstances.

Section 3809.596 How Does BLM Initiate Forfeiture of My Financial Guarantee?

Proposed § 3809.596 describes the process that BLM would follow to initiate forfeiture of a financial guarantee and the contents of the written forfeiture notice BLM would send. The section also explains that once an operator receives a forfeiture notice, the operator could avoid forfeiture by demonstrating, in writing, to BLM that the operator or another person will complete reclamation or by obtaining written permission from BLM for a surety to complete reclamation. BLM believes that sending an operator a forfeiture notice and giving the operator an opportunity to avoid forfeiture balances the need to provide a fair process with BLM's responsibility to quickly obtain funding for necessary reclamation work.

Section 3809.597 What if I Do Not Comply With BLM's Forfeiture Notice?

Under proposed § 3809.597, the next step in the forfeiture process would occur. If an operator fails to meet the requirements of the forfeiture notice, fails to appeal the notice, or if the decision appealed is affirmed, BLM would collect the forfeited amount and use the funds collected to implement the reclamation plan on the area or portion of the area to which the financial guarantee applies. An operator could appeal a forfeiture notice under the procedures outlined in proposed § 3809.800.

Section 3809.598 What if the Amount Forfeited Will Not Cover the Cost of Reclamation?

Under proposed § 3809.598, if the amount of the financial guarantee forfeited is insufficient to pay the full cost of reclamation, the operator(s) and mining claimant(s) would be jointly and severally liable for the remaining costs. As discussed under proposed § 3809.116, joint and several liability means that the mining claimant(s) and operator(s) would be responsible together and individually for the remaining cost of reclamation. BLM would have the ability to take action to recover the remaining reclamation cost against either the mining claimant(s) or the operator(s), or both.

Section 3809.599 What if the Amount Forfeited Exceeds the Cost of Reclamation?

Under proposed § 3809.599, BLM would return the unused portion of a forfeited guarantee to the party from whom we collected it if the reclamation costs are less than the amount forfeited.

Inspection and Enforcement

This portion of the proposed rule (proposed §§ 3809.600 through 3809.604) would set forth BLM's policies applicable to inspection of operations under subpart 3809, including the possibility of allowing members of the public to accompany BLM inspectors to the site of a mining operation. It would also set forth the procedures BLM would use to enforce the subpart, including identifying several types of enforcement orders, specifying how they would be served, and outlining the consequences of noncompliance. The inspection and enforcement rules would apply to all operations on the effective date of the final rule.

Section 3809.600 With What Frequency Will BLM Inspect My Operations?

Proposed § 3809.600 would clarify BLM's authority, as the manager of the public lands under FLPMA and the entity that administers the mining laws, to conduct inspections of mining operations. This section would incorporate existing §§ 3809.1–3(e) and 3809.3–6. Paragraph (a) would provide that at any time, BLM may inspect operations, including all structures, equipment, workings, and uses located on the public lands. The inspection may include verification that the operations comply with this subpart.

BLM is proposing a new provision in paragraph (b) that would allow a member of the public to accompany the BLM inspector if the presence of the public does not materially interfere with the mining operations or with BLM's administration of this subpart, or create safety problems. When BLM authorizes a member of the public to accompany the inspector, the operator would have to provide access to operations. This section would be added to provide a degree of openness to BLM's program and to satisfy the public's interest in the administration of BLM's surface management rules. BLM does not intend this provision to create an obligation for BLM to allow the public to accompany inspectors, nor does BLM intend it to confer on the public the right to accompany an inspector. The decision

to allow the public to accompany a BLM inspector would be at BLM's discretion. The public should be aware that mine sites are frequently located in remote areas and where access is difficult. Once on a mine site, a member of the public may be exposed to dust, noise, vibration, heavy equipment, and rocky or uneven ground. BLM expects that members of the public who accompany BLM inspectors would knowingly and voluntarily assume liability risks associated with their activities. In addition, an operator may ask a member of the public to sign a release of liability for injury and to wear protective equipment.

Proposed paragraph (c) would incorporate existing BLM policy with regard to inspection of those operations at which greater potential hazard exists. See Cyanide Management Policy, Instruction Memorandum 90–566, August 6, 1990, amended November 1, 1990. It would provide that at least 4 times each year, BLM will inspect operations using cyanide or other leachate or where there is significant potential for acid drainage. BLM believes that cyanide and acid-generating operations have the potential for greater adverse impacts to the public lands than other types of operations and should receive a greater quantity of BLM's inspection resources.

Section 3809.601 What Type of Enforcement Action May BLM Take if I Do Not Meet the Requirements of This Subpart?

Proposed § 3809.601 would specify the types of enforcement orders that BLM May issue.

Noncompliance orders. Existing § 3809.3–2, provides for the discretionary issuance of notices of non-compliance for failure to file a notice or plan of operations (§ 3809.3–1(a)) or for a failure to reclaim (§ 3809.3–2(b)). Proposed § 3809.601(a) would provide for the discretionary issuance of noncompliance orders, which are equivalent to notices of noncompliance. Noncompliance orders could be issued for operations that do not comply with any provision of a notice, plan of operations, or any requirement of subpart 3809.

Administrative enforcement—suspension orders. The existing rules do not provide for administrative orders to enforce notices of noncompliance. Existing § 3809.3–2(c) provides for judicial enforcement of notices of noncompliance. Judicial enforcement is not always practical, however. The agency must work with the local United States Attorney to bring judicial actions, which can result in delays, or in some cases no enforcement at all. Administrative enforcement is available to BLM under section 302(c) of FLPMA, which provides for suspensions or revocations of instruments providing for the use occupancy or development of the public lands.

Existing subpart 3809 does not address the suspension or revocation authority of section 302(c) of FLPMA, but the proposed rule would. The proposed rules would establish BLM's suspension or revocation authority without requiring insertion of such language into each notice or plan of operations. Inclusion of language in the rule would be more convenient than requiring operators to insert the necessary text into the notices and plans of operations that they submit to BLM, and would not be substantively different.

In comments on earlier versions of the rule, industry representatives asserted that section 302(c) of FLPMA does not apply to notices and plans of operations under subpart 3809. BLM disagrees. Plans of operations constitute FLPMA authorizations. See *James C. Mackey,* 96 IBLA 356. Although notices under subpart 3809 are not considered as Federal actions or authorizations (See *Sierra Club* v. *Michael Penfold,* 857 F.2d 1307 (9th Cir. 1988)), they can be considered as instruments providing for a use under the language of FLPMA.

Proposed § 3809.601(b) would provide for the issuance of suspension orders for all or any part of operations that fail to timely comply with a noncompliance order for a significant violation issued under § 3809.601(a). Although section 302(c) does not require that BLM first issue a noncompliance order or make the distinction between significant and non-significant violations, BLM believes that an operator should ordinarily be given an opportunity to abate a violation before having its operations suspended and that non-significant violations should not result in suspensions. The proposal would define a significant violation as one that causes or may result in environmental or other harm or danger or that substantially deviates from the complete notice or approved plan of operations.

Under the proposal, before the issuance of a suspension order, BLM would notify an operator of its intent to issue a suspension order; and provide the operator an opportunity for an informal hearing before the BLM State Director to object to a suspension.

The informal hearing requirement before the BLM State Director is included to satisfy the hearing requirement of FLPMA section 302(c). In the case of *Dvorak Expeditions,* 127 IBLA 145, 155 (1993), the Interior Board of Land Appeals (IBLA) addressed the type of a hearing that is required by section 302(c) of FLPMA, and the BLM's responsibilities. The IBLA concluded that section 302(c) does not require a hearing ''on the record.'' A hearing before an administrative law judge is not required before issuance of a suspension order. Thus, the proposed rule would be consistent with section 302(c). Like other BLM orders, suspension orders would be appealable to the IBLA.

Temporary immediate suspensions. Section 302(c) contains a proviso allowing for temporary immediate suspensions prior to a hearing or final administrative finding upon a determination that such a suspension is necessary to protect health or public safety or the environment. Proposed § 3809.601(b)(2) would implement this proviso. Under this paragraph, BLM would be authorized to order an immediate, temporary suspension of all or any part of an operation without issuing a noncompliance order, notifying an operator in advance, or providing the operator an opportunity for an informal hearing if the operator does not comply with any provision of a notice, plan of operations, or subpart 3809; and an immediate, temporary suspension is necessary to protect health, safety, or the environment *from imminent danger or harm.* Although FLPMA does not expressly mention imminent danger or harm, BLM views an element of imminence as necessary to forgo the normal procedures for an advance hearing.

The proposed rule would include a provision that BLM may presume that an immediate suspension is necessary if a person conducts plan-level operations without an approved plan of operations or conducts operations other than casual use without submitting a complete notice. Plans of operation and notices are essential to assure that operations proceed in an orderly manner without causing environmental harm. The conduct of mining operations in the absence of an approved plan or a complete notice on file with BLM is a reasonable basis to conclude that a threat exists to the health, safety or the environment, and that a temporary immediate suspension is warranted.

Proposed § 3809.601(b)(3) would specify that BLM will terminate a suspension order under § 3809.601(b)(1) or (b)(2) no later than the date by which an operator corrects the violation. This provision would implement a proviso of FLPMA section 302(c).

Contents of enforcement orders. Proposed § 3809.601(c) would enumerate the contents of enforcement orders. In part, it is based on existing § 3809.3–2(d). It would provide that enforcement orders will specify (1) how an operator is failing or has failed to comply with the requirements of subpart 3809; (2) the portions of the operations, if any, that must be suspended; (3) the actions necessary to correct the noncompliance and the time, not exceed 30 days, within which corrective action must begin; and (4) the time to complete corrective action. These items would provide the information that an operator receiving the order should know.

Portion of remanded section 3809.3–2 not re-proposed. Section 3809.3–2(e) of the rules remanded in May 1998 contained a provision requiring operators with records of noncompliance to provide financial guarantees to BLM for all of their operations, and that financial guarantees held by a State were not acceptable for purposes of that section. Upon consideration, BLM has decided not to re-propose this remanded provision. BLM has concluded that if a State is holding an adequate financial guarantee that is otherwise acceptable, no good reason exists to require an operator to provide a second separate financial guarantee with BLM.

Section 3809.602 Can BLM Revoke My Plan of Operations or Nullify My Notice?

Proposed § 3809.602 would be a new section and would implement the revocation portion of FLPMA section 302(c). It would provide that BLM may revoke a plan of operations or nullify a notice upon finding that (1) a violation exists of any provision of the notice, plan of operation, or subpart 3809, and the operator has failed to correct the violation within the time specified in the enforcement order issued under § 3809.601; or (2) a pattern of violations exists at the operations. The finding would not be effective until BLM notifies the operator of its intent to revoke the plan of operations or nullify the notice, and affords the operator with an opportunity for an informal hearing before the BLM State Director. The provision would specify that if BLM nullifies a notice or revokes a plan of operations, the operator must not conduct operations on the public lands in the project area, except for reclamation and other measures specified by BLM.

Section 3809.603 How Does BLM Serve Me With an Enforcement Action?

Proposed § 3809.603 would identify the means by which BLM will serve a noncompliance order, a notification of intent to issue a suspension order, a suspension order, or other enforcement order. The existing service provision appears in § 3809.3–2(b)(1).

Under the proposal, service would be made on the person to whom it is directed or his or her designated agent, either by (1) offering a copy at the project area to the designated agent or to the individual who, based upon reasonable inquiry, appears to be in charge. If no such individual can be located at the project area, BLM may offer a copy to any individual at the project area who appears to be an employee or agent of the person to whom the notification or order is issued. Service would be complete when the notice or order is offered and would not be incomplete because of refusal to accept. Optionally service could occur by sending a copy of the notification or order by certified mail or by hand to the operator or his or her designated agent, or by any means consistent with the rules governing service of a summons and complaint under rule 4 of the Federal Rules of Civil Procedure. Service is complete upon offer of the notification or order or of the certified mail. The service rules would recognize that mining claimants, as well as operators, are responsible for activities on a mining claim or mill site and provide that BLM may serve a mining claimant in the same manner an operator would be served.

The proposal would allow a mining claimant or operator to designate an agent for service of notifications and orders. A written designation would have to be provided in writing to the local BLM field office having jurisdiction over the lands involved.

Section 3809.604 What Happens If I Do Not Comply With a BLM Order?

Proposed § 3809.604(a) would reiterate the provision of existing § 3809.3–2(c) that failure to comply with a BLM enforcement order could lead to judicial enforcement. Under the proposed rule, if a person does not comply with a BLM order issued under §§ 3809.601 or 3809.602, the Department of the Interior may request the United States Attorney to institute a civil action in United States District Court for an injunction or order to enforce its order, prevent the person from conducting operations on the public lands in violation of subpart 3809, and collect damages resulting from unlawful acts. This judicial relief may be in addition to the enforcement actions described in proposed §§ 3809.601 and 3809.602 and the penalties described in §§ 3809.700 and 702.

Proposed § 3809.604(b) would embody the substance of existing § 3809.3–2(e). It would provide that if an operator fails to timely comply with a noncompliance order issued under § 3809.601(a), and remains in noncompliance, BLM may require submittal of plans of operations for current and future notice-level operations.

Penalties

This portion of the proposed rule (§§ 3809.700 through 3809.703) would set forth the penalties applicable to violations of this subpart. These penalty provisions would apply to existing operations as of the effective date of the final rule.

Section 3809.700 What Criminal Penalties Apply to Violations of This Subpart?

Proposed § 3809.700 would be included for information purposes and identify the criminal penalties established by statute for individuals and organizations for violations of subpart 3809. It was previously included in § 3809.3–2(f) of the rules that were remanded in May 1998. Proposed paragraph (a) would specify that individuals who knowingly and willfully violate the requirements of subpart 3809 may be subject to arrest and trial under section 303(a) of FLPMA (43 U.S.C. 1733(a)). Individuals convicted are subject to a fine of not more than $100,000 or the alternative fine provided for in the applicable provisions of 18 U.S.C. 3571, or imprisonment not to exceed 12 months, or both, for each offense. Proposed paragraph (b) would specify that organizations or corporations that knowingly or willfully violate the requirements of subpart 3809 are subject to trial and, if convicted, will be subject to a fine of not more than $200,000, or the alternative fine provided for in the applicable provisions of 18 U.S.C. 3571.

Section 3809.701 What Happens if I Make False Statements to BLM?

Proposed § 3809.701 would inform the public of the existing criminal sanctions for making false statements to BLM. Under statute (18 U.S.C. 1001), persons are subject to arrest and trial before a United States District Court if, in any matter under this subpart, they knowingly and willfully falsify, conceal, or cover up by any trick, scheme, or

device a material fact, or make any false, fictitious, or fraudulent statements or representations, or make or use any false writings or document knowing the same to contain any false, fictitious, or fraudulent statement or entry. If a person is so convicted, he or she will be fined not more than $250,000 or the alternative fine provided for in the applicable provisions of 18 U.S.C. 3571, or imprisoned not more than 5 years, or both.

Section 3809.702 What Civil Penalties Apply to Violations of This Subpart?

Proposed subpart 3809 would provide authority for BLM to issue administrative civil penalties. Existing subpart 3809 does not provide for the issuance of administrative penalties. BLM believes that the issuance of administrative penalties for violations of subpart 3809 would be an important means of deterring violations and to encourage abatement of violations that do occur. As stated earlier, section 302(b) of FLPMA provides that ''[i]n managing the public lands, the Secretary shall, by regulation or otherwise, take any action necessary to prevent unnecessary or undue degradation of the lands.'' This provision confers upon the Secretary, acting through BLM, both the authority and the responsibility to take necessary actions to protect the public lands. Enforcement of subpart 3809 would be strengthened if operators understood that administrative enforcement orders can be backed up by administrative penalties. The possibility of such penalties should prevent unnecessary or undue degradation of the public lands by deterring the occurrence of violations of subpart 3809, and should also prevent the further degradation of the public lands by operators who fail to see the need for promptly acting to abate violations. Providing the authority for such administrative action would allow the agency to help itself in enforcing the law without having to resort to the judicial system for the assessment of penalties. Although industry representatives have understandably objected to the administrative penalty provisions, BLM believes that the authority and need exist for administrative penalties.

Proposed § 3809.702(a)(1) would provide that following issuance of a noncompliance or suspension order under section 3809.601, BLM may assess a proposed civil penalty of up to $5,000 for each violation against any persons who (i) violate any term or condition of a plan of operations or fail to conform with operations described in a notice; (ii) violate any provision of this subpart; or (iii) fail to comply with an order issued under proposed § 3809.601. To encourage timely compliance, the proposal would specify that BLM may consider each day of continuing violation a separate violation for purposes of penalty assessments.

The amount of the administrative penalty would be discretionary. To assure that the penalty amount assessed would be reasonable proposed § 3809.702(a)(3) would provide that in determining the amount of the penalty, BLM must consider the person's history of previous violations at the particular mining operation; the seriousness of the violation, including any irreparable harm to the environment and any hazard to the health or safety of the public; whether the person was negligent; and the person's demonstrated good faith in attempting to achieve rapid compliance after notification of the violation. Also, to conform with section 323(a) of the Small Business Regulatory Enforcement Fairness Act of 1996, Pub. L. 104–121 (March 29, 1996), the proposal would provide that if the person assessed the penalty is a small entity, BLM will, under appropriate circumstances, consider reducing or waiving a civil penalty and may consider ability to pay in determining a penalty assessment.

The proposal would also establish procedures to assure fairness in the penalty assessment process. Under proposed § 3809.702(b), a final administrative assessment of a civil penalty would occur only after BLM has notified the person of the assessment and given the person opportunity to request within 30 days a hearing by the Department's Office of Hearings and Appeals (OHA). BLM would have the ability to extend the time to request a hearing if it is conducting settlement discussions. If a hearing occurs, OHA would issue any final penalty assessment. Under proposed § 3809.702(c), if BLM issues a proposed civil penalty and the recipient fails to request a hearing, the proposed assessment would become a final order of the Department, and the penalty assessed becomes due upon expiration of the time allowed to request a hearing.

Section 3809.703 Can BLM Settle a Proposed Civil Penalty?

Proposed § 3809.703 would clarify BLM's authority to negotiate a settlement of civil penalties, in which case BLM would prepare a settlement agreement. Under the proposal, the BLM State Director or his or her designee must sign the agreement.

Appeals

Section 3809.800 What Appeal Rights do I Have?

Proposed § 3809.800 would specify the rights of any person adversely affected by a decision made under subpart 3809. Existing appeal rights are contained in § 3809.4, and require operators to appeal to the BLM State Director before an appeal may be taken to the Interior Board of Land Appeals. Under the proposal, any person adversely affected by a decision made under subpart 3809 may appeal the decision to the Office of Hearings and Appeals under 43 CFR parts 4 and 1840. Review of a decision by the BLM State Director would be discretionary and could take place if consistent with 43 CFR part 1840. BLM expects in the near future to propose changes to the State Director review process to address which decisions would be appealable to the State Director.

Under proposed § 3809.800(b), in order for the Department of the Interior to consider the appeal of a decision, the person appealing must file a notice of appeal in writing with the BLM office where the decision was made within 30 days after the date the decision is received. This provision would carry over the terms of existing § 3809.4(b).

Under proposed § 3809.800(b), all decisions under this subpart would go into effect immediately and remain in effect while appeals are pending unless a stay is granted under 43 CFR section 4.21(b). This provision also would carry over the terms of existing § 3809.4(b).

Proposed § 3809.800 (c) and (d) would continue the provisions of existing § 3809.4(c) concerning the contents of an appeal. Under the proposal, a written appeal must contain the appellant's name and address and the BLM serial number of the notice or plan of operations that is the subject of the appeal. It would also require an appellant to submit a statement of reasons for the appeal and any arguments the appellant wishes to present that would justify reversal or modification of the decision within the time frame specified in part 4 of this chapter (usually within 30 days after filing an appeal).

Existing paragraph (e) would not be proposed because it deals with the specifics of State Director review. Such procedures would be proposed separately as part of another regulatory proposal. Similarly, existing § 3809.4(g) is not necessary because although a correct statement, it does not need to be stated in the rules. Agency actions do not become final until appeals to OHA have been finally resolved.

IV. How Did BLM Meet Its Procedural Obligations?

Executive Order 12866, Regulatory Planning and Review

These proposed regulations are a ''significant regulatory action,'' as defined in section 3(f) of Executive Order 12866, and require an assessment of potential costs and benefits of the regulatory action, including an explanation of the manner in which the regulatory action is consistent with a statutory mandate and, to the extent permitted by law, promotes the President's priorities and avoids undue interference with State, local, and tribal governments in the exercise of their governmental functions. As a ''significant regulatory action,'' the proposed regulations are subject to review by the Office of Management and Budget.

In accordance with E.O. 12866, BLM performed a benefit-cost analysis for the proposed action. We used as a baseline the existing regulation and current BLM administrative costs. The potential costs associated with the regulation are increased operating costs for miners and increased administrative costs for BLM. The potential benefits are environmental improvements. Both benefits and costs are difficult to quantify because many of the possible impacts associated with the regulation will be site- or mining operation-specific. Costs were analyzed in two ways: (1) a simple supply and demand approach; and (2) a simple cost modeling approach. Both approaches were designed to provide rough estimates of the potential costs and were not expected to provide precise estimates of costs. The analysis does serve, however, to establish a rough estimate of the range of potential costs. The site specific nature of most of the potential economic benefits prevented their quantification. However, the analysis developed sufficient information to demonstrate that it was plausible to assume that the benefits were at least equal to the costs. The annual costs of the proposed regulation are estimated to range from $12.1 million to $89.4 million. BLM has placed the full assessment on file in the BLM Administrative Record at the address specified in the **ADDRESSES** section.

Clarity of the Regulations

Executive Order 12866 requires each agency to write regulations that are simple and easy to understand. We invite your comments on how to make these proposed regulations easier to understand, including answers to questions such as the following: (1) Are the requirements in the proposed regulations clearly stated? (2) Do the proposed regulations contain technical language or jargon that interferes with their clarity? (3) Does the format of the proposed regulations (grouping and order of sections, use of headings, paragraphing, etc.) aid or reduce their clarity? (4) Would the regulations be easier to understand if they were divided into more (but shorter) sections? (A ''section'' appears in bold type and is preceded by the symbol ''§'' and a numbered heading, for example § 3809.430. (5) Is the description of the proposed regulations in the **SUPPLEMENTARY INFORMATION** section of this preamble helpful in understanding the proposed regulations? How could this description be more helpful in making the proposed regulations easier to understand?

Please send any comments you have on the clarity of the regulations to the address specified in the **ADDRESSES** section.

National Environmental Policy Act

These proposed regulations constitute a major Federal action significantly affecting the quality of the human environment under section 102(2)(C) of the National Environmental Policy Act of 1969, 42 U.S.C. 4332(2)(C). BLM is in the process of preparing a draft environmental impact statement (DEIS) which will be on file and available to the public in the BLM Administrative Record at the address specified in the **ADDRESSES** section. We will publish a notice in the **Federal Register** when the DEIS becomes publicly available.

Regulatory Flexibility Act

Congress enacted the Regulatory Flexibility Act of 1980, as amended, 5 U.S.C. 601–612, to ensure that Government regulations do not unnecessarily or disproportionately burden small entities. The RFA requires a regulatory flexibility analysis if a rule would have a significant economic impact, either detrimental or beneficial, on a substantial number of small entities. The Small Business Administration (SBA) has determined that the size standard for businesses engaged in mining of metals and non-metallic minerals, except fuels, is 500 employees. See 13 CFR 121.201. Thus, any business employing 500 or fewer employees is considered ''small'' for the purposes of this analysis. Based on the 1992 Census of Mineral Industries (MIC 92–S–1, U.S. Department of Commerce, Bureau of the Census, August 1996), we believe that virtually all businesses currently engaged in mining on public lands could be considered ''small'' under the SBA 500-employee standard. Based on the 1992 Census of Mineral Industries and information collected from BLM field staff, we estimate that the proposed regulations will apply to 672 small entities (289 metal mining plus 383 non-metallic mineral mining companies). This represents about 3 percent of the total number of companies involved in the mineral industry in 1992 and about 15 percent of the companies involved in metal and non-metallic minerals mining in 1992.

Cost models developed by BLM suggest that the cost impact of the proposed rule would vary according to the type of mining operation. On a present value basis, the estimated percent cost increases were 2.9%, 5.6%, and 7.8% respectively for the modeled placer, open pit, and strip operations. These cost increases represent 1.7%, 0.13%, and 3.9% of the present value of estimated gross annual revenues over the expected life of placer, open pit, and strip operations respectively. We expect nearly all exploration activities would face cost increases of less than 5 percent.

The modeled exploration and placer mine probably best represent the potential impact on small entities. We do not consider the potential effect of this proposed rule on the modeled placer operation to be significant, given that the compliance cost represents less than 2 percent of gross revenues. Nor do we consider exploration cost increases below 5 percent significant. While the proposed rule affects a significant number of entities, the impacts cannot be classified as significant. Therefore, BLM has determined under the RFA that this proposed rule would not have a significant economic impact on a substantial number of small entities. For additional information, see the Regulatory Flexibility Act analysis on file in the BLM Administrative Record at the address specified in the **ADDRESSES** section.

Unfunded Mandates Reform Act

These proposed regulations do not impose an unfunded mandate on State, local, or tribal governments or the private sector of more than $100 million per year; nor do these proposed regulations have a significant or unique effect on State, local, or tribal governments or the private sector.

Executive Order 12630, Governmental Actions and Interference With Constitutionally Protected Property Rights (Takings)

The proposed rule does not have significant takings implications. The

proposed rule does not affect property rights or interests in property, such as mining claims; it governs how an individual or corporation exercises those rights. Therefore, the Department of the Interior has determined that the rule would not cause a taking of private property or require further discussion of takings implications under this Executive Order.

Executive Order 12612, Federalism

The proposed rule will not have a substantial direct effect on the States, on the relationship between the national government and the States, or on the distribution of power and responsibilities among the various levels of government. It would provide States greater opportunities to administer the mining regulatory program on public lands. In accordance with Executive Order 12612, BLM has determined that this proposed rule does not have sufficient Federalism implications to warrant preparation of a Federalism Assessment.

Paperwork Reduction Act

Sections 3809.301 and 3809.401 contain information collection requirements. As required by the Paperwork Reduction Act of 1995 (44 U.S.C. 3507(d)), BLM has submitted a copy of the proposed regulations to the Office of Management and Budget (OMB) for review. BLM will not require collection of this information until OMB has given its approval.

This set of information collections, Management of Public Lands under the U.S. Mining Laws, is comprised of information about proposed operations on public lands, including information necessary to identify and contact the operator; a description of the operation (whether notice- or plan-level); the reclamation plan; the reclamation cost estimate; and, in the case of plan-level operations, a plan for monitoring the effect of the operation. Respondents are those individuals and corporations who plan to conduct operations on public lands. The information would have to be submitted each time an operator proposed to conduct a new operation. We estimate the average burden for these information collections is 16 hours per notice and 32 hours per plan of operations. Since BLM processes about 350 notices each year, we estimate the annual total burden for notices is 5,600 hours. We process about 325 plans of operations each year for an estimated total yearly burden of 10,400 hours.

Organizations and individuals desiring to submit comments on the information collection requirements should direct them to the Office of Information and Regulatory Affairs, Office of Management and Budget, New Executive Office Building, Washington, DC 20503; Attention: Desk Officer for the Department of the Interior.

BLM considers comments by the public on this proposed collection of information in—

- Evaluating whether the proposed collection of information is necessary for the proper performance of the functions of BLM, including whether the information will have practical use;
- Evaluating the accuracy of BLM's estimate of the burden of the proposed collection of information, including the validity of the methodology and assumptions used;
- Enhancing the quality, usefulness, and clarity of the information to be collected; and
- Minimizing 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; such as permitting electronic submittal of responses.

OMB is required to make a decision concerning the collection of information contained in these proposed regulations between 30 and 60 days after publication of this document in the **Federal Register**. Therefore, a comment to OMB is best assured of having its full effect if OMB receives it within 30 days of publication. This does not affect the deadline for the public to comment to BLM on the proposed regulations.

Authors

The principal authors of this proposed rule are the members of the Departmental 3809 Task Force, chaired by Robert M. Anderson; Deputy Assistant Director, Minerals, Realty, and Resource Protection; Bureau of Land Management, (202) 208–4201.

List of Subjects in 43 CFR Part 3800

Administrative practice and procedure, Environmental protection, Intergovernmental relations, Land Management Bureau, Mines, Public lands-mineral resources, Reporting and recordkeeping requirements, Surety bonds, Wilderness areas.

Dated: November 13, 1998.

Sylvia V. Baca,

Assistant Secretary, Land and Minerals Management.

Accordingly, BLM proposes to amend 43 CFR part 3800 as set forth below:

PART 3800—MINING CLAIMS UNDER THE GENERAL MINING LAWS

1. BLM is amending part 3800 by revising subpart 3809 to read as follows:

Subpart 3809—Surface Management

Sec.

General Information:

3809.1 What are the purposes of this subpart?
3809.2 What is the scope of this subpart?
3809.3 What rules must I follow if State law conflicts with this subpart?
3809.5 How does BLM define certain terms used in this subpart?
3809.10 How does BLM classify operations?
3809.11 (Alternative 1) When does BLM require that I submit a notice or a plan of operations?
3809.11 (''Forest Service'' Alternative) When does BLM require that I submit a notice of intention to operate or a plan of operations? (Forest Service Alternative)
3809.100 What special provisions apply to operations on segregated or withdrawn lands?
3809.101 What special provisions apply to minerals that may be common variety minerals, such as sand, gravel, and building stone?
3809.111 Public availability of information.
3809.115 Information collection.
3809.116 As a mining claimant or operator, what are my responsibilities under this subpart for my project area?

Federal/State Agreements

3809.201 What kinds of agreements may BLM and a State make under this subpart?
3809.202 Under what conditions will BLM defer to State regulation of operations?
3809.203 What are the limitations on BLM deferral to State regulation of operations?
3809.204 Does this subpart cancel an existing agreement between BLM and a State?

Operations Conducted Under Notices

3809.300 Does this subpart apply to my existing notice-level operations?
3809.301 Where do I file my notice and what information must I include in it?
3809.311 What action does BLM take when it receives my notice?
3809.312 When may I begin operations after filing a complete notice?
3809.313 Under what circumstances may I not begin operations 15 business days after filing my notice?
3809.320 Which performance standards apply to my notice-level operations?
3809.330 May I modify my notice?
3809.331 Under what conditions must I modify my notice?
3809.332 How long does my notice remain in effect?
3809.333 May I extend my notice, and, if so, how?
3809.334 What if I temporarily stop conducting operations under a notice?
3809.335 What happens when my notice expires?

3809.336 What if I abandon my notice-level operations?

Operations Conducted Under Plans of Operations

3809.400 Does this subpart apply to my existing or pending plan of operations?
3809.401 Where do I file my plan of operations and what information must I include with it?
3809.411 What action will BLM take when it receives my plan of operations?
3809.412 When may I operate under a plan of operations?
3809.415 How do I prevent unnecessary or undue degradation while conducting operations on public lands?
3809.420 What performance standards apply to my notice or plan of operations?
3809.423 How long does my plan of operations remain in effect?
3809.424 What are my obligations if I stop conducting operations?

Modifications of Plans of Operations

3809.430 May I modify my plan of operations?
3809.431 When must I modify my plan of operations?
3809.432 What process will BLM follow in reviewing a modification of my plan of operations?
3809.433 Does this subpart apply to a new modification of my plan of operations?
3809.434 Does this subpart apply to my pending modification for a new facility?
3809.435 Does this subpart apply to my pending modification for an existing facility?

Financial Guarantee Requirements—General

3809.500 In general, what are BLM's financial guarantee requirements?
3809.503 When must I provide a financial guarantee for my notice-level operations?
3809.505 How do the financial guarantee requirements of this subpart apply to my existing plan of operations?
3809.551 What are my choices for providing BLM with a financial guarantee?

Individual Financial Guarantee

3809.552 What must my individual financial guarantee cover?
3809.553 May I post a financial guarantee for a part of my operations?
3809.554 How do I estimate the cost to reclaim my operations?
3809.555 What forms of individual financial guarantee are acceptable to BLM?
3809.556 What special requirements apply to financial guarantees described in § 3809.555(e)?

Blanket Financial Guarantee

3809.560 Under what circumstances may I provide a blanket financial guarantee?

State-Approved Financial Guarantee

3809.570 Under what circumstances may I provide a State-approved financial guarantee?
3809.571 What forms of State-approved financial guarantee are acceptable to BLM?
3809.572 What happens if BLM rejects a financial instrument in my State-approved financial guarantee?
3809.573 What happens if the State makes a demand against my financial guarantee?

Modification or Replacement of a Financial Guarantee

3809.580 What happens if I modify my notice or approved plan of operations?
3809.581 Will BLM accept a replacement financial instrument?
3809.582 How long must I maintain my financial guarantee?

Release of Financial Guarantee

3809.590 When will BLM release or reduce the financial guarantee for my notice or plan of operations?
3809.591 What are the limitations on the amount by which BLM may reduce my financial guarantee?
3809.592 Does release of my financial guarantee relieve me of all responsibility for my project area?
3809.593 What happens to my financial guarantee if I transfer my operations?
3809.594 What happens to my financial guarantee when my mining claim is patented?

Forfeiture of Financial Guarantee

3809.595 When will BLM initiate forfeiture of my financial guarantee?
3809.596 How does BLM initiate forfeiture of my financial guarantee?
3809.597 What if I do not comply with BLM's forfeiture notice?
3809.598 What if the amount forfeited will not cover the cost of reclamation?
3809.599 What if the amount forfeited exceeds the cost of reclamation?

Inspection and Enforcement

3809.600 With what frequency will BLM inspect my operations?
3809.601 What type of enforcement action may BLM take if I do not meet the requirements of this subpart?
3809.602 Can BLM revoke my plan of operations or nullify my notice?
3809.603 How does BLM serve me with an enforcement action?
3809.604 What happens if I do not comply with a BLM order?

Penalties

3809.700 What criminal penalties apply to violations of this subpart?
3809.701 What happens if I make false statements to BLM?
3809.702 What civil penalties apply to violations of this subpart?
3809.703 Can BLM settle a proposed civil penalty?

Appeals

3809.800 What appeal rights do I have?

Authority: 16 U.S.C. 1280; 30 U.S.C. 22; 30 U.S.C. 612; 43 U.S.C. 1201; and 43 U.S.C. 1732, 1733, 1740, 1781, and 1782.

Subpart 3809—Surface Management

General Information

§ 3809.1 What are the purposes of this subpart?

The purposes of this subpart are to:

(a) Prevent unnecessary or undue degradation of public lands by operations authorized by the mining laws. Anyone intending to develop mineral resources on the public lands must prevent unnecessary or undue degradation of the land and reclaim disturbed areas. This subpart establishes procedures and standards to ensure that operators and mining claimants meet this responsibility; and

(b) Provide for maximum possible coordination with appropriate State agencies to avoid duplication and to ensure that operators prevent unnecessary or undue degradation of public lands.

§ 3809.2 What is the scope of this subpart?

(a) This subpart applies to all operations authorized by the mining laws on public lands, including Stock Raising Homestead lands, as provided in § 3809.11(i), where the mineral interest is reserved to the United States.

(b) This subpart does not apply to lands in the National Park System, National Forest System, and the National Wildlife Refuge System; acquired lands; lands leased or patented under the Recreation and Public Purposes Act; lands patented under the Small Tract Act; or lands administered by BLM that are under wilderness review, which are subject to subpart 3802 of this part.

(c) This subpart applies to all patents issued after October 21, 1976 for mining claims in the California Desert Conservation Area, except for any patent for which a right to the patent vested before that date.

(d) This subpart applies to operations that involve metallic minerals; some industrial minerals, such as gypsum; and a number of other non-metallic minerals that have a unique property which gives the deposit a distinct and special value. This subpart does not apply to leasable and salable minerals. Leasable minerals, such as coal, phosphate, sodium, and potassium; and salable minerals, such as common varieties of sand, gravel, stone, and pumice, are not subject to location under the mining laws. Parts 3400, 3500 and 3600 of this title govern mining operations for leasable and salable minerals.

§ 3809.3 What rules must I follow if State law conflicts with this subpart?

If State laws or regulations conflict with this subpart regarding operations on public lands, you must follow the requirements of this subpart. However, there is no conflict if the State law or regulation requires a higher standard of protection for public lands than this subpart.

§ 3809.5 How does BLM define certain terms used in this subpart?

As used in this subpart, the term:

Casual use means activities ordinarily resulting in no or negligible disturbance of the public lands or resources. For example—

(1) Casual use generally includes the collection of mineral specimens using hand tools, hand panning, and non-motorized sluicing.

(2) Casual use does not include use of mechanized earth-moving equipment, truck-mounted drilling equipment, portable suction dredges, motorized vehicles in areas designated as closed to ''off-road vehicles'' as defined in § 8340.0–5 of this title, chemicals, or explosives; ''occupancy'' as defined in § 3715.0–5 of this title; or hobby or recreational mining in areas where the cumulative effects of the activities result in more than negligible disturbance.

Mininize means to reduce the adverse impact of an operation to the lowest practical level. During review of operations, BLM may determine that ''minimize'' means to avoid or eliminate particular impacts.

Mining claim means any unpatented mining claim, millsite, or tunnel site located under the mining laws. The term also applies to those mining claims and millsites located in the California Desert Conservation Area that were patented after the enactment of the Federal Land Policy and Management Act of October 21, 1976. Mining ''claimant'' is defined in § 3833.0–5 of this title.

Mining laws means the Lode Law of July 26, 1866, as amended (14 Stat. 251); the Placer Law of July 9, 1870, as amended (16 Stat. 217); and the Mining Law of May 10, 1872, as amended (17 Stat. 91); as well as all laws supplementing and amending those laws, including the Building Stone Act of August 4, 1892, as amended (27 Stat. 348); the Saline Placer Act of January 31, 1901 (31 Stat. 745); the Surface Resources Act of 1955 (30 U.S.C. 611–614); and the Federal Land Policy and Management Act of 1976 (43 U.S.C. 1701 *et seq.*).

Mitigation, as defined in 40 CFR 1508.20, may include one or more of the following:

(1) Avoiding the impact altogether by not taking a certain action or parts of an action;

(2) Minimizing impacts by limiting the degree or magnitude of the action and its implementation;

(3) Rectifying the impact by repairing, rehabilitating, or restoring the affected environment;

(4) Reducing or eliminating the impact over time by preservation and maintenance operations during the life of the action; and

(5) Compensating for the impact by replacing, or providing substitute, resources or environments.

Most appropriate technology and practices (MATP) means equipment, devices, or methods that have demonstrable feasibility, success, and practicality in meeting the standards of this subpart. MATP includes the use of equipment and procedures that are either proven or reasonably expected to be effective in a particular region or location. MATP does not necessarily require use of the most expensive technology or practice. BLM determines whether the requirement to use MATP is met on a case-by-case basis during its review of a notice or plan of operations.

Operations means all functions, work, facilities, and activities on public lands in connection with prospecting, discovery and assessment work, development, extraction, and processing of mineral deposits locatable under the mining laws; reclamation of disturbed areas; and all other reasonably incident uses, whether on a mining claim or not, including the construction of roads, transmission lines, pipelines, and other means of access across public lands for support facilities.

Operator means any person who manages, directs, or conducts operations at a project area under this subpart, including a parent entity or an affiliate who materially participates in such management, direction, or conduct. An operator on a particular mining claim may also be the mining claimant.

Person means any individual, firm, corporation, association, partnership, trust, consortium, joint venture, or any other entity conducting operations on public lands.

Project area means the area of land upon which the operator conducts operations, including the area required for construction or maintenance of roads, transmission lines, pipelines, or other means of access by the operator.

Public lands, as defined in 43 U.S.C. 1702, means any land and interest in land owned by the United States within the several States and administered by the Secretary of the Interior through the BLM, without regard to how the United States acquired ownership, except—

(1) Lands located on the Outer Continental Shelf; and

(2) Lands held for the benefit of Indians, Aleuts, and Eskimos.

Reclamation means taking measures required by this subpart following disturbance of public lands caused by operations to meet applicable performance standards and achieve conditions required by BLM at the conclusion of operations. (For a definition of ''reclamation'' applicable to operations conducted under the mining laws on Stock Raising Homestead Act lands, see part 3810, subpart 3814 of this title) Components of reclamation include, where applicable:

(1) Isolation, control, or removal of acid-forming, toxic, or deleterious substances;

(2) Regrading and reshaping to conform with adjacent landforms, facilitate revegetation, control drainage, and minimize erosion;

(3) Rehabilitation of fisheries or wildlife habitat;

(4) Placement of growth medium and establishment of self-sustaining revegetation;

(5) Removal or stabilization of buildings, structures, or other support facilities;

(6) Plugging of drill holes and closure of underground workings; and

(7) Providing for post-mining monitoring, maintenance, or treatment.

Riparian area is a form of wetland transition between permanently saturated wetlands and upland areas. These areas exhibit vegetation or physical characteristics reflective of permanent surface or subsurface water influence. Typical riparian areas include lands along, adjacent to, or contiguous with perennially and intermittently flowing rivers and streams, glacial potholes, and the shores of lakes and reservoirs with stable water levels. Excluded are areas such as ephemeral streams or washes that do not exhibit the presence of vegetation dependent upon free water in the soil.

Tribe means, and *Tribal* refers to, a Federally recognized Indian tribe.

Unnecessary or undue degradation means conditions, activities, or practices that:

(1) Fail to comply with one or more of the following: § 3809.420, the terms and conditions of an approved plan of operations, operations described in a complete notice, and other Federal and State laws related to environmental protection and protection of cultural resources;

(2) Are not ''reasonably incident'' to prospecting, mining, or processing operations as defined in § 3715.0–5 of this title; or

(3) Fail to attain a stated level of protection or reclamation required by specific laws in areas such as the California Desert Conservation Area, Wild and Scenic Rivers, BLM-administered portions of the National Wilderness System, and BLM-administered National Monuments and National Conservation Areas.

§ 3809.10 How does BLM classify operations?

BLM classifies operations as—

(a) Casual use, for which an operator generally need not notify BLM;

(b) Notice-level operations, for which an operator must submit a notice (except for certain suction-dredging operations covered by § 3809.11(h)); and

(c) Plan-level operations, for which an operator must submit a plan of operations and obtain BLM's approval.

§ 3809.11 (Alternative 1) When does BLM require that I submit a notice or a plan of operations?

To see when you must submit a notice or a plan of operations, follow this table:

If your operations . . .	Then . . .
(a) Consist of casual use,	You do not need to notify BLM or seek permission to conduct operations. You must reclaim casual-use disturbance. BLM may monitor your operations to ensure that unnecessary or undue degradation does not occur.
(b) Consist of unreclaimed surface disturbance of 5 acres or less of public lands,	You must give BLM a complete notice of your planned activities 15 business days before you plan to start operations. You have the option to file a plan of operations. You must not segment a project area by filing a series of notices solely to avoid filing a plan of operations. See §§ 3809.300 through 3809.336.
(c) Consist of unreclaimed surface disturbance of more than 5 acres of public lands,	You must submit a plan of operations and obtain BLM's approval before beginning operations. See §§ 3809.400 through 3809.435.
(d) Cause any surface disturbance greater than casual use in the special status areas described in paragraph (j) of this section,	You must submit a plan of operations and obtain BLM's approval. See §§ 3809.400 through 3809.435.
(e) Involve any recreational mining activities by a group, such as a mining club,	The group's representative must contact BLM at least 15 business days before initiating activities to find out if BLM will require the group to file a notice or a plan of operations. This contact is not required if the group submits a notice or plan of operations.
(f) Involve any leaching or storage, addition, or use of chemicals in milling, processing, beneficiation, or concentrating activities (This does not include chemicals used solely for fuel or as lubricants for equipment.),	You must submit a plan of operations and obtain BLM's approval. See §§ 3809.400 through 3809.435.
(g) Require you to occupy or use a site for activities ''reasonably incident'' to mining, as defined in § 3715.0–5 of this title,	Whether you are operating under a notice or a plan, you must also comply with part 3710, subpart 3715, of this title.
(h) Involve the use of a portable suction dredge with an intake diameter of 4 inches or less, the State requires an authorization for its use, and BLM and the State have an agreement under § 3809.201 addressing suction dredging,	You need not submit a notice or plan of operations unless otherwise required by this section. For all other use of a suction dredge, you must submit to BLM either a notice or a plan of operations, whichever is applicable under this section.
(i) Are located on lands patented under the Stock Raising Homestead Act and you do not have the written consent of the surface owner,	You must submit a plan of operations and obtain BLM's approval. Where you have surface-owner consent, you do not need a notice or a plan of operations under this subpart. See part 3810, subpart 3814, of this title.

(j) The special status areas where BLM requires a plan of operations for all operations greater than casual use include:

(1) Lands in the California Desert Conservation Area (CDCA) designated by the CDCA plan as ''controlled'' or ''limited'' use areas;

(2) Areas in the National Wild and Scenic Rivers System, and areas designated for potential addition to the system;

(3) Designated Areas of Critical Environmental Concern;

(4) Areas designated as part of the National Wilderness Preservation System and administered by BLM;

(5) Areas designated as ''closed'' to off-road vehicle use, as defined in § 8340.0–5 of this title;

(6) Any areas specifically identified in BLM land-use or activity plans where BLM has determined that a plan of operations is required to provide detailed review of project effects on unique, irreplaceable, or outstanding historical, cultural, recreational, or natural resource values, such as threatened or endangered species or their critical habitat;

(7) National Monuments and National Conservation Areas administered by BLM; and

(8) All areas segregated in anticipation of a mineral withdrawal and all withdrawn areas, except for areas segregated or withdrawn under the Alaska Native Claims Settlement Act, the Alaska National Interest Lands Conservation Act, and the Alaska Statehood Act.

(k) If your operations do not qualify as casual use, you must submit a notice or plan of operations, whichever is applicable.

§ 3809.11 (''Forest Service'' Alternative) When does BLM require that I submit a notice of intention to operate or a plan of operations?

To see when you must submit a notice of intention to operate or a plan of operations, follow this table:

If . . .	Then . . .
(a) Your proposed operations—	You do not need to notify BLM or seek permission to conduct your operations. You must reclaim your operations, and BLM may monitor them to ensure that unnecessary or undue degradation does not occur.

If . . .	Then . . .
(1) Are limited to the use of vehicles on existing public roads or roads used and maintained for BLM purposes; (2) Involve individuals desiring to search for and occasionally remove small mineral samples or specimens; (3) Consist of prospecting and sampling that will not cause significant surface resource disturbance and will not involve removal of more than a reasonable amount of mineral deposit for analysis and study; (4) Are limited to marking and monumenting a mining claim; (5) Involve subsurface operations that will not cause significant surface resource disturbance; or (6) Do not involve the use of mechanized earthmoving equipment, such as a bulldozer or a backhoe, and will not involve the cutting of trees;	
(b) You propose to conduct operations that— (1) Are not described in paragraph (a) of this section; and (2) Might cause disturbance of surface resources,	You must file with BLM a complete notice of intention to operate 15 business days before you plan to start operations. See §§ 3809.300 through 3809.336.
(c) After reviewing your notice of intention to operate, BLM determines that your operations are likely to cause significant disturbance of surface resources,	You must submit a plan of operations and obtain BLM's approval. See §§ 3809.400 through 3809.435.

(d) You always have the option to submit a plan of operations in lieu of the notice of intention to operate required under paragraph (b) of this section.

§ 3809.100 What special provisions apply to operations on segregated or withdrawn lands?

(a) *Mineral examination report.* After the date on which the lands are withdrawn from appropriation under the mining laws, BLM will not approve a plan of operations until BLM has prepared a mineral examination report to determine whether the mining claim was valid before the withdrawal, and whether it remains valid. BLM may require preparation of a mineral examination report before approving operations on segregated lands. If the report concludes that the mining claim is invalid, BLM will not approve operations on the mining claim. BLM will also promptly initiate contest proceedings.

(b) *Allowable operations.* If BLM has not completed the mineral examination report under paragraph (a) of this section, if the mineral examination report for proposed operations concludes that a mining claim is invalid, or if there is a pending contest proceeding for the mining claim, BLM may—

(1) Approve a plan of operations for the disputed mining claim proposing operations that are limited to taking samples to confirm or corroborate mineral exposures that are physically disclosed and existing on the mining claim before the segregation or withdrawal date, whichever is earlier; and

(2) Approve a plan of operations for the operator to perform the minimum necessary annual assessment work under § 3851.1 of this title.

(c) *Time limits.* While BLM prepares a mineral examination report under paragraph (a) of this section, it may suspend the time limit for responding to a notice for operations in Alaska or acting on a plan of operations. See §§ 3809.311 and 3809.411, respectively.

(d) *Final decision.* If a final departmental decision declares a mining claim to be null and void, the operator must cease all operations, except required reclamation.

§ 3809.101 What special provisions apply to minerals that may be common variety minerals, such as sand, gravel, and building stone?

(a) *Mineral examination report.* On mining claims located on or after July 23, 1955, you must not initiate operations for minerals that may be ''common variety'' minerals, as defined in § 3711.1(b) of this title, until BLM has prepared a mineral examination report, except as provided in paragraph (b) of this section.

(b) *Interim authorization.* Until the mineral examination report described in paragraph (a) of this section is prepared, BLM will allow notice-level operations or approve a plan of operations for the disputed mining claim for—

(1) Operations limited to taking samples to confirm or corroborate mineral exposures that are physically disclosed and existing on the mining claim;

(2) Performance of the minimum necessary annual assessment work under § 3851.1 of this title; or

(3) Operations to remove possible common variety minerals if you establish an escrow account in a form acceptable to BLM. You must make regular payments to the escrow account for the appraised value of possible common variety minerals removed under a payment schedule approved by BLM. The funds in the escrow account must not be disbursed to the operator or to the U.S. Treasury until a final determination of whether the mineral is a common variety and therefore salable under part 3600 of this title.

(c) *Determination of common variety.* If the mineral examination report under paragraph (a) of this section concludes that the minerals are common variety minerals, you may either relinquish your mining claim(s) or BLM will initiate contest proceedings. Upon relinquishment or final departmental determination that the mining claim(s) is null and void, you must promptly close and reclaim your operations unless you are authorized to proceed under parts 3600 and 3610 of this title.

(d) *Disposal.* BLM may dispose of common variety minerals from an unpatented mining claim with a written waiver from the mining claimant.

§ 3809.111 Public availability of information.

Part 2 of this title applies to all information and data you submit under this subpart. If you submit information or data under this subpart that you believe is exempt from disclosure, you must mark each page clearly ''CONFIDENTIAL INFORMATION.'' You must also separate it from other materials you submit to BLM. BLM will keep confidential information or data marked in this manner to the extent required by part 2 of this title. If you do not mark the information as confidential, BLM, without notifying you, may disclose the information to the public to the full extent allowed under part 2 of this title.

§ 3809.115 Information collection.

(a) The Office of Management and Budget has approved the collections of information contained in this subpart 3809 under 44 U.S.C. 3501 *et seq.* and assigned clearance number 1004–____. BLM will use this information to regulate and monitor mining and exploration operations on public lands. Response to requests for information is mandatory in accordance with 43 U.S.C. 1701 *et seq.* The information collection approval expires _____.

(b) BLM estimates that the public reporting burden for this information averages 8 hours per response for notices and 80 hours per response for plans of operations. This includes reviewing instructions, searching existing data sources, gathering and maintaining the data needed, and completing and reviewing the collection of information. Send comments regarding this burden estimate or any other aspect of this collection of information, including suggestions for reducing the burden, to the Information Collection Clearance Officer (783), Bureau of Land Management, Washington, D.C. 20240, and the Office of Management and Budget, Attention Desk Officer for the Interior Department, Office of Information and Regulatory Affairs, Office of Management and Budget, Washington, DC 20503, referring to information collection clearance number 1004–____.

§ 3809.116 As a mining claimant or operator, what are my responsibilities under this subpart for my project area?

(a) Mining claimants and operators (if other than the mining claimant) are jointly and severally liable for obligations under this subpart that accrued while they held their interests. Joint and several liability, in this context, means that the mining claimants and operators are responsible together and individually for obligations, such as reclaiming the project area. In the event obligations are not met, BLM may take any action authorized under this subpart against either the mining claimants or the operators, or both.

(b) Relinquishment, forfeiture, or abandonment of a mining claim does not relieve a mining claimant's or operator's responsibility under this subpart for obligations or conditions created while the mining claimant or operator was responsible for operations conducted on that mining claim or in the project area.

(c) Transfer of a mining claim or operation does not relieve a mining claimant's or operator's responsibility under this subpart for obligations or conditions created while the mining claimant or operator was responsible for operations conducted on that mining claim or in the project area until—

(1) BLM receives documentation that a transferee accepts responsibility, and

(2) BLM accepts an adequate replacement financial guarantee.

Federal/State Agreements

§ 3809.201 What kinds of agreements may BLM and a State make under this subpart?

To prevent unnecessary administrative delay and to avoid duplication of administration and enforcement, BLM and a State may make the following kinds of agreements:

(a) An agreement to provide for a joint Federal/State program; and

(b) An agreement under § 3809.202 which provides that, in place of BLM administration, BLM defers to State administration of some or all of the requirements of this subpart subject to the limitations in § 3809.203.

§ 3809.202 Under what conditions will BLM defer to State regulation of operations?

(a) *State request.* A State may request BLM enter into an agreement for State regulation of operations on public lands in place of BLM administration of some or all of the requirements of this subpart. The State must send the request to the BLM State Director with jurisdiction over public lands in the State.

(b) *BLM review.* (1) When the State Director receives the State's request, he/she will notify the public and provide an opportunity for comment. The State Director will then review the request and determine whether the State's requirements are consistent with the requirements of this subpart, and whether the State has necessary legal authorities, resources, and funding for an agreement. The State requirements may be contained in laws, regulations, guidelines, policy manuals, and demonstrated permitting practices.

(2) For the purposes of this subpart, BLM will determine consistency with the requirements of this subpart by comparing this subpart and State standards on a provision-by-provision basis to determine—

(i) Whether non-numerical State standards are functionally equivalent to BLM counterparts; and

(ii) Whether numerical State standards, such as the 5-acre threshold for plans of operations, are the same as corresponding BLM standards, except that State review and approval timeframes do not have to be the same as the corresponding Federal timeframes.

(3) A State environmental protection standard that exceeds a corresponding Federal standard is consistent with the requirements of this subpart.

(c) *State Director decision.* The BLM State Director will notify the State in writing of his/her decision regarding the State's request. The State Director will address whether the State requirements are consistent with the requirements of this subpart, and whether the State has necessary legal authorities, resources, and funding to implement any agreement. If BLM determines that the State's requirements are consistent with the requirements of this subpart and the State has the necessary legal authorities, resources, and funding, BLM must enter into an agreement with the State so that the State will regulate some or all of the operations on public lands, as described in the State request.

(d) *Appeal of State Director decision.* The BLM State Director's decision will be a final decision of BLM and may be appealed to the Assistant Secretary for Land and Minerals Management, but not to the Department of the Interior Office of Hearings and Appeals. See § 3809.800(c) for the items you should include in the appeal.

§ 3809.203 What are the limitations on BLM deferral to State regulation of operations?

Any agreement between BLM and a State in which BLM defers to State regulation of some or all operations on public lands is subject to the following limitations:

(a) *Plans of operations.* BLM must concur with each State decision approving a plan of operations to assure compliance with this subpart, and BLM retains responsibility for compliance with the National Environmental Policy Act (NEPA). The State and BLM may decide who will be the lead agency in the plan review process, including preparation of NEPA documents.

(b) *Federal land-use planning and other Federal laws.* BLM will continue to be responsible for all land-use planning on public lands and for implementing other Federal laws relating to the public lands for which BLM is responsible.

(c) *Federal enforcement.* BLM may take any authorized action to enforce the requirements of this subpart or any term, condition, or limitation of a notice or an approved plan of operations. BLM may take this action regardless of the nature of its agreement with a State, or actions taken by a State.

(d) *Financial guarantee.* The amount of the financial guarantee must be calculated based on the completion of both Federal and State reclamation

requirements, but may be held as one instrument. If the financial guarantee is held as one instrument, it must be redeemable by both the Secretary and the State. BLM must concur in the approval and release of a financial guarantee for public lands.

(e) *State performance.* If BLM determines that a State is not in compliance with all or part of its Federal/State agreement, BLM will notify the State and provide a reasonable time for the State to comply.

(f) *Termination.* (1) If a State does not comply after being notified under paragraph (e) of this section, BLM will take appropriate action, which may include termination of all or part of the agreement.

(2) A State may terminate its agreement by notifying BLM 60 days in advance.

§ 3809.204 Does this subpart cancel an existing agreement between BLM and a State?

No. A Federal/State agreement or memorandum of understanding in effect on (effective date of the final rule.) will continue while BLM and the State perform a review to determine whether revisions are required under this subpart. BLM and the State must complete the review and make necessary revisions no later than one year from (effective date of the final rule.)

Operations Conducted Under Notices

§ 3809.300 Does this subpart apply to my existing notice-level operations?

To see how this subpart applies to your operations conducted under a notice and existing on (effective date of the final rule.), follow this table:

If you are conducting operations under a notice filed before (effective date of the final rule.) and . . .	Then . . .
(a) You are the operator identified in the notice on file with BLM on (effective date of the final rule.),	You may conduct operations under the terms of your existing notice for 2 years after (effective date of the final rule.), or longer if your notice is extended under § 3809.333. See § 3809.503 for financial guarantee requirements applicable to notices.
(b) You are a new operator, that is, you were not the operator identified in the notice on file with BLM on (effective date of the final rule.),	You must conduct operations under the provisions of this subpart, including § 3809.320 for 2 years after (effective date of the final rule.), unless extended under § 3809.333.
(c) Your notice has expired,	You may not conduct operations under an expired notice. You must reclaim your project area immediately or promptly submit a new notice under § 3809.301.

§ 3809.301 Where do I file my notice and what information must I include in it?

(a) If you qualify under § 3809.11, you must file your notice with the local BLM office with jurisdiction over the lands involved. BLM does not require that the notice be on a particular form.

(b) To be complete, your notice must include the following information:

(1) *Operator information.* The name, mailing address, phone number, social security number or corporate identification number of the operator(s), and the BLM serial number(s) of any unpatented mining claim(s) where the disturbance would occur. If the operator is a corporation, you must identify one individual as the point of contact;

(2) *Activity description, map, and schedule of activities.* A description of the proposed activity with a level of detail appropriate to the type, size, and location of the activity. The description must include the following:

(i) The measures that you will take to prevent unnecessary or undue degradation during operations;

(ii) A map showing the location of your project area in sufficient detail for BLM to be able to find it and the location of access routes you intend to use, improve, or construct;

(iii) A description of the type of equipment you intend to use; and

(iv) A schedule of activities, including the date when you will begin operations and the date by which you will complete reclamation;

(3) *Reclamation plan.* A description of how you will complete reclamation to the standards described in § 3809.420; and

(4) *Reclamation cost estimate.* An estimate of the cost to fully reclaim your operations as required by § 3809.552; and

(c) BLM may require you to provide additional information, if necessary to ensure that your operations will comply with this subpart.

(d) You must notify BLM in writing within 30 days of any change of operator or corporate point of contact, or of the mailing address of the operator or corporate point of contact.

§ 3809.311 What action does BLM take when it receives my notice?

(a) Upon receipt of your notice, BLM will review it within 15 business days to see if it is complete under § 3809.301.

(b) If your notice is incomplete, BLM will inform you in writing of the additional information you must submit. BLM may also take the actions described in § 3809.313.

(c) BLM will review your additional information within 15 business days to ensure it is complete. BLM will repeat this process until your notice is complete.

§ 3809.312 When may I begin operations after filing a complete notice?

(a) If BLM does not take any of the actions described in § 3908.313, you may begin operations no sooner than 15 business days after the appropriate BLM office receives your complete notice. BLM may send you an acknowledgement that indicates the date we received your notice. If you don't receive an acknowledgement or have any doubt about the date we received your notice, contact the office to which you sent the notice. This subpart does not require BLM to approve your notice or inform you that your notice is complete.

(b) If we complete our review sooner than 15 days after receiving your complete notice, we may notify you that you may begin operations.

(c) You must provide a financial guarantee that meets the requirements of this subpart before beginning operations.

(d) Your operations may be subject to BLM approval under part 3710, subpart 3715, of this title relating to use or occupancy of unpatented mining claims.

§ 3809.313 Under what circumstances may I not begin operations 15 business days after filing my notice?

To see when you may not begin operations 15 business days after filing your notice, follow this table:

If BLM reviews your notice and, within 15 business days, . . .	Then . . .
(a) Notifies you that BLM needs additional time, not to exceed 15 business days, to complete its review,	You must not begin operations until the additional review time period ends.
(b) Notifies you that if you do not modify your notice, your operations will likely cause unnecessary or undue degradation,	You must not begin operations until you modify your notice to ensure that your operations prevent unnecessary or undue degradation.
(c) Requires you to consult with BLM about the location of existing or proposed access routes,	You must not begin operations until you consult with BLM and satisfy BLM's concerns about access.
(d) Determines that an on-site visit is necessary,	You must not begin operations until BLM visits the site, and you satisfy any concerns arising from the visit.
(e) BLM determines you don't qualify under § 3809.11 as a notice-level operation,	You must file a plan of operations before beginning operations. See §§ 3809.400 through 3809.420.

§ 3809.320 Which performance standards apply to my notice-level operations?

Your notice-level operations must meet all applicable performance standards of § 3809.420.

§ 3809.330 May I modify my notice?

(a) Yes, you may submit a notice modification at any time during operations under a notice.

(b) BLM will review your notice modification the same way it reviewed your initial notice under §§ 3809.311 and 3809.313.

§ 3809.331 Under what conditions must I modify my notice?

(a) You must modify your notice—

(1) If BLM requires you to do so to prevent unnecessary or undue degradation; or

(2) If you plan to make material changes to your operations. Material changes include the addition of planned surface disturbance up to the threshold described in § 3809.11, undertaking new drilling or trenching activities, or changing reclamation.

(b) You must submit your notice modification 15 business days before making any material changes. If BLM determines your notice modification is complete before the 15-day period has elapsed, BLM may notify you to proceed. When BLM requires you to modify your notice, it may also notify you to proceed before the 15-day period has elapsed to prevent unnecessary or undue degradation.

§ 3809.332 How long does my notice remain in effect?

If you filed your notice on or after (effective date of the final rule.), it remains in effect for 2 years, unless extended under § 3809.333, or unless you notify BLM beforehand that operations have ceased and reclamation is complete. BLM will conduct an inspection to verify whether you have met your obligations, will notify you promptly in writing, and terminate your notice, if appropriate.

§ 3809.333 May I extend my notice, and, if so, how?

Yes. If you wish to conduct operations for 2 additional years after the expiration date of your notice, you must notify BLM in writing on or before the expiration date. You may extend your notice more than once.

§ 3809.334 What if I temporarily stop conducting operations under a notice?

(a) If you stop conducting operations for any period of time, you must—

(1) Maintain public lands within the project area, including structures, in a safe and clean condition;

(2) Take all steps necessary to prevent unnecessary or undue degradation; and

(3) Maintain an adequate financial guarantee.

(b) If the period of non-operation is likely to cause unnecessary or undue degradation, BLM will—

(1) Require you to take all steps necessary to prevent unnecessary or undue degradation; and

(2) Require you, after an extended period of non-operation for other than seasonal operations, to remove all structures, equipment, and other facilities and reclaim the project area.

§ 3809.335 What happens when my notice expires?

(a) When your notice expires, you must—

(1) Cease operations, except reclamation; and

(2) Complete reclamation promptly according to your notice.

(b) Your reclamation obligations continue beyond the expiration or any termination of your notice until you satisfy them.

§ 3809.336 What if I abandon my notice-level operations?

(a) BLM may consider your operations to be abandoned if, for example, you leave inoperable or non-mining related equipment in the project area, remove equipment and facilities from the project area other than for purposes of completing reclamation according to your reclamation plan, do not maintain the project area, discharge local workers, or there is no sign of activity in the project area over time.

(b) If BLM determines that you abandoned your operations without completing reclamation, BLM may initiate forfeiture under § 3809.595. If the amount of the financial guarantee is inadequate to cover the cost of reclamation, BLM may complete the reclamation, and the operator and all other responsible persons are liable for the cost of reclamation.

Operations Conducted Under Plans of Operations

§ 3809.400 Does this subpart apply to my existing or pending plan of operations?

To see how this subpart applies to your existing or pending plan of operations, follow this table:

If you submitted your plan of operations to BLM before (effective date of final rule.), and . . .	Then . . .
(a) BLM approved your plan of operations before that date,	The performance standards of this subpart (§ 3809.420) do not apply to your existing plan of operations. The performance standards in effect at the time BLM approved your plan of operations continue to apply. All other provisions of this subpart apply to your plan of operations. See § 3809.505 for applicability of financial guarantee requirements.

If you submitted your plan of operations to BLM before (effective date of final rule.), and . . .	Then . . .
(b) BLM made an environmental assessment or a draft environmental impact statement available to the public before that date,	The plan content requirements (43 CFR 3809.1–5) and performance standards (43 CFR 3809.1–3(d) and 3809.2–2) that were in effect immediately before (effective date of final rule.) apply to your plan of operations. All provisions of this subpart, except §§ 3809.401 and 3809.420, apply to your plan of operations.
(c) BLM has not yet made an environmental assessment or a draft environmental impact statement available to the public,	All provisions of this subpart apply to your plan of operations.

(d) If you want this subpart to apply to any existing plan of operations, where not otherwise required, you may choose to have this subpart apply.

§ 3809.401 Where do I file my plan of operations and what information must I include with it?

(a) If you are required to file a plan of operations under § 3809.11, you must file it with the local BLM field office with jurisdiction over the lands involved. BLM does not require that the plan be on a particular form.

(b) Operators or mining claimants must demonstrate that the proposed operations would not result in unnecessary or undue degradation of public lands. Your plan of operations must describe fully the proposed activity and contain the following information with a level of detail appropriate to the type, size, and location of the planned activity:

(1) *Operator information.* The name, mailing address, phone number, social security number or corporate identification number of the operator(s), and the BLM serial number(s) of any unpatented mining claim(s) where disturbance would occur. If the operator is a corporation, you must identify one individual as the point of contact. You must notify BLM in writing within 30 days of any change of operator or corporate point of contact or in the mailing address of the operator or corporate point of contact;

(2) *Description of operations.* A detailed description of the equipment, devices, or practices you propose to use during operations including, where applicable—

(i) Maps of the project area at an appropriate scale showing the location of exploration activities, drill sites, mining activities, processing facilities, waste rock and tailing disposal areas, support facilities, structures, buildings, and access routes;

(ii) Preliminary designs, cross sections, and operating plans for mining areas, processing facilities, and waste rock and tailing disposal facilities;

(iii) Water management plans;

(iv) Rock characterization and handling plans;

(v) Quality assurance plans;

(vi) Spill contingency plans;

(vii) A general schedule of operations from start through closure; and

(viii) Plans for all access roads, water supply pipelines, and power or utility services;

(3) *Reclamation plan.* A plan for reclamation to meet the standards in § 3809.420, with a detailed description of the equipment, devices, or practices you propose to use including, where applicable, plans for—

(i) Drill-hole plugging;

(ii) Regrading and reshaping;

(iii) Mine reclamation;

(iv) Riparian mitigation;

(v) Wildlife habitat rehabilitation;

(vi) Topsoil handling;

(vii) Revegetation;

(viii) Isolation and control of acid, toxic or deleterious materials;

(ix) Facilities removal; and

(x) Post-closure management;

(4) *Monitoring plan.* A plan for monitoring the effect of your operations. You must design monitoring plans to meet the following objectives: to demonstrate compliance with the approved plan of operations and other Federal or State environmental laws and regulations, to provide early detection of potential problems, and to supply information that will assist in directing corrective actions should they become necessary. Where applicable, you must include in monitoring plans details on type and location of monitoring devices, sampling parameters and frequency, analytical methods, reporting procedures, and procedures to respond to adverse monitoring results. Examples of monitoring programs which may be necessary include surface- and ground-water quality and quantity, air quality, revegetation, stability, noise levels, and wildlife mortality;

(c) In addition to the requirements of paragraph (b) of this section, BLM may require you to supply—

(1) Operational and baseline environmental information for BLM to analyze potential environmental impacts as required by the National Environmental Policy Act. BLM will also use this information to determine if your plan of operations will prevent unnecessary or undue degradation. This could include information on public and non-public lands needed to characterize the geology, hydrology, soils, vegetation, wildlife, air quality, cultural resources, and socioeconomic conditions in and around the project area. This may also include requiring static and kinetic testing to characterize the potential for your operations to produce acid drainage or other leachate. BLM can advise you on the exact type of information and level of detail needed to meet these requirements; and

(2) Other information, if necessary to ensure that your operations will comply with this subpart.

(d) *Reclamation cost estimate.* At a time specified by BLM, you must submit an estimate of the cost to fully reclaim your operations as required by § 3809.552.

§ 3809.411 What action will BLM take when it receives my plan of operations?

(a) BLM will review your plan of operations within 30 business days and will notify you that—

(1) BLM approves your plan of operations as submitted (See part 3810, subpart 3814, of this title for specific plan-related requirements applicable to operations on Stock Raising Homestead Act lands.);

(2) Your plan does not contain a complete description of the proposed operations under § 3809.401(b). BLM will identify deficiencies that you must address before BLM can continue processing your plan of operations. If necessary, BLM may repeat this process until your plan of operations is complete;

(3) BLM approves your plan subject to changes or conditions that are necessary to meet the performance standards of § 3809.420;

(4) The description of the proposed operations is complete, but BLM cannot approve the plan until certain additional steps are completed, including one or more of the following:

(i) You complete collection of adequate baseline data;

(ii) BLM completes the environmental review, required under the National Environmental Policy Act;

(iii) BLM completes the consultation required under the National Historic

Preservation Act or Endangered Species Act;

(iv) BLM or the Department of the Interior completes other Federal responsibilities, such as Native American consultation;

(v) BLM conducts an on-site visit;

(vi) BLM completes review of public comments on the amount of the financial guarantee;

(vii) For public lands where BLM does not have responsibility for managing the surface, BLM consults with the surface-managing agency; and

(viii) In cases where the surface is owned by a non-Federal entity, BLM consults with the surface owner; or

(5) BLM disapproves your plan of operations under paragraph (c) of this section.

(b) Pending final approval of your plan of operations, BLM may approve any operations that may be necessary for timely compliance with requirements of Federal and State laws, subject to any terms and conditions that may be needed to prevent unnecessary or undue degradation.

(c) BLM must disapprove, or withhold approval of, a plan of operations if it—

(1) Does not meet the content requirements of § 3809.401;

(2) Proposes operations that are in an area segregated or withdrawn from the operation of the mining laws, unless the requirements of § 3809.100 are met; or

(3) Proposes operations that would result in unnecessary or undue degradation of public lands.

(d) Before BLM approves your plan of operations, it will publish in a local newspaper of general circulation or in a NEPA document and accept comments for 30 days on the amount of financial guarantee required and an explanation of the basis for the amount. Detailed calculations will remain part of the record, subject to public inspection.

§ 3809.412 When may I operate under a plan of operations?

You must not begin operations until BLM approves your plan of operations and you provide the financial guarantee required under §§ 3809.411(d) and 3809.552.

§ 3809.415 How do I prevent unnecessary or undue degradation while conducting operations on public lands?

You prevent unnecessary or undue degradation while conducting operations on public lands by—

(a) Complying with § 3809.420, as applicable; the terms and conditions of your approved plan of operations; the operations described in your notice; and other Federal and State laws related to environmental protection and protection of cultural resources;

(b) Assuring that your operations are ''reasonably incident,'' as defined in § 3715.0–5 of this title; and

(c) Attaining the stated level of protection or reclamation required by specific laws in areas such as the California Desert Conservation Area, Wild and Scenic Rivers, BLM-administered portions of the National Wilderness System, and BLM-administered National Monuments and National Conservation Areas.

§ 3809.420 What performance standards apply to my notice or plan of operations?

The following performance standards apply to your notice or plan of operations:

(a) *General performance standards.* (1) *Technology and practices.* You must use MATP to meet the standards of this subpart.

(2) *Sequence of operations.* You must avoid unnecessary impacts by following a reasonable and customary mineral exploration, development, mining and reclamation sequence.

(3) *Land-use plans.* Consistent with the mining laws, your operations and post-mining land use must comply with the applicable BLM land-use plans and activity plans, and with coastal zone management plans under 16 U.S.C. 1451, as appropriate.

(4) *Mitigation.* You must take mitigation measures specified by BLM to protect public lands.

(5) *Concurrent reclamation.* You must initiate and complete reclamation at the earliest feasible time on those portions of the disturbed area that you will not disturb further.

(b) *Environmental performance standards.* (1) *Air quality.* Your operations must comply with applicable Federal, Tribal, and State laws and requirements.

(2) *Water.* You must conduct operations to minimize water pollution (source control) in preference to water treatment. You must conduct operations to minimize changes in water quantity in preference to water supply replacement. Your operations must comply with State water law with respect to water use and water quality.

(i) *Surface water.* (A) Releases to surface waters must comply with applicable Federal, Tribal, and State laws and requirements.

(B) You must handle earth materials and water in a manner that minimizes the formation of acidic, toxic, or other deleterious pollutants of surface water systems.

(C) You must manage excavations and other disturbances to prevent or control the discharge of pollutants into surface waters.

(ii) *Ground water.* (A) Ground water affected by your operations must comply with State standards and other applicable requirements.

(B) You must handle earth materials and water in a manner that minimizes the formation of acidic, toxic, or other deleterious infiltration to ground water systems and manage excavations and other disturbances to minimize the discharge of pollutants into ground water.

(C) You must conduct operations affecting ground water, such as dewatering, pumping, and injecting, to minimize impacts on surface and other natural resources, such as wetlands, riparian areas, aquatic habitat, and other features that are dependent on ground water.

(3) *Wetlands and riparian areas.* (i) You must avoid locating operations in wetlands and riparian areas where possible, minimize impacts on wetlands and riparian areas that your operations cannot avoid, and mitigate damage to wetlands and riparian areas that your operations impact.

(ii) Where feasible, you must return disturbed wetlands and riparian areas to a properly functioning condition. Wetlands and riparian areas are functioning properly when adequate vegetation, land form, or large woody debris is present to dissipate stream energy associated with high water flows, thereby reducing erosion and improving water quality; filter sediment, capture bedload, and aid floodplain development; improve floodwater retention and ground-water recharge; develop root masses that stabilize streambanks against cutting action; develop diverse ponding and channel characteristics to provide the habitat and water depth, duration, and temperature necessary for fish production, waterfowl breeding, and other uses, and support greater biodiversity.

(iii) You must take appropriate mitigation measures, such as restoration or replacement, if your operations cause the loss of nonjurisdictional wetland or riparian areas or the diminishment of their proper functioning condition.

(iv) You must mitigate impacts to wetlands under the jurisdiction of the U.S. Army Corps of Engineers (COE) and other waters of the United States in accord with COE requirements.

(4) *Soil and growth material.* (i) You must remove, segregate, and preserve topsoil, or where more feasible other suitable growth material, to minimize erosion and sustain revegetation when reclamation begins.

(ii) To preserve soil viability and promote concurrent reclamation, you

must directly transport topsoil from its original location to the point of reclamation without intermediate stockpiling, where feasible.

(5) *Revegetation.* You must—

(i) Revegetate disturbed lands by establishing a stable and long-lasting vegetative cover that is self-sustaining and, considering successional stages, will result in cover that is—

(A) Comparable in both diversity and density to pre-existing natural vegetation of the surrounding area; or

(B) Compatible with the approved BLM land-use plan or activity plan;

(ii) Take all reasonable steps to prevent the introduction of noxious weeds and to limit or reduce any existing infestations;

(iii) Use native species to the extent feasible;

(iv) Achieve success over the time frame approved by BLM; and

(v) Where you demonstrate revegetation is not achievable under this paragraph, you must use other techniques to prevent erosion and stabilize the project area, subject to BLM approval.

(6) *Fish and wildlife.* (i) You must minimize disturbances and adverse impacts on fish, wildlife, and related environmental values.

(ii) You must take necessary measures to protect threatened or endangered species and their habitat as required by the Endangered Species Act.

(iii) You must take any necessary action to minimize the adverse effects of your operations, including access, on BLM-defined special status species.

(iv) You must rehabilitate fisheries and wildlife habitat affected by your operations.

(7) *Cultural, paleontologic, and cave resources.* (i) You must not knowingly disturb, alter, injure, or destroy any scientifically important paleontologic remains or any historic, archaeologic, or cave-related site, structure, building, resource, or object unless—

(A) You identify the resource in your notice or plan of operations;

(B) You propose action to protect, remove or preserve the resource; and

(C) BLM specifically authorizes such action in your plan of operations, or does not prohibit such action under your notice.

(ii) You must immediately bring to BLM's attention any previously unidentified historic, archaeologic, cave-related, or scientifically important paleontologic resources that might be altered or destroyed by your operations. You must leave the discovery intact until BLM authorizes you to proceed. BLM will evaluate the discovery and take action to protect, remove, or preserve the resource within 20 business days after you notify BLM of the discovery, unless otherwise agreed to by the operator and BLM, or unless otherwise provided by law.

(iii) BLM has the responsibility for determining who bears the cost of the investigation, recovery, and preservation of discovered historic, archaeologic, cave-related, and paleontologic resources, or of any human remains and associated funerary objects. If BLM incurs costs associated with investigation and recovery, BLM will recover the costs from the operator on a case-by-case basis, after an evaluation of the factors set forth in section 304(b) of FLPMA.

(c) *Operational performance standards.* (1) *Roads and structures.* (i) You must design, construct, and maintain roads and structures to control or prevent erosion, siltation, and air pollution and minimize impacts to resources.

(ii) You must minimize surface disturbance, using existing access where feasible, while maintaining safe design, following natural contour where feasible, and minimizing cut and fill.

(iii) When commercial hauling on an existing BLM road is involved, BLM may require you to make appropriate arrangements for use, maintenance, and safety.

(iv) You must remove and reclaim roads and structures according to BLM land-use plans and activity plans, unless retention is approved by BLM.

(2) *Drill holes.* (i) You must not allow drilling fluids and cuttings to flow off the drill site.

(ii) You must plug all exploration drill holes to prevent mixing of waters from aquifers, impacts to beneficial uses, downward water loss, or upward water loss from artesian conditions.

(iii) You must conduct surface plugging to prevent direct inflow of surface water into the drill hole and to eliminate the open hole as a hazard.

(3) *Acid-forming, toxic, or other deleterious materials.* You must incorporate identification, handling, and placement of potentially acid-forming, toxic or other deleterious materials into your operations, facility design, reclamation, and environmental monitoring programs to minimize the formation and impacts of acidic, alkaline, metal-bearing, or other deleterious leachate, including the following:

(i) You must handle, place, or treat potentially acid-forming, toxic, or other deleterious materials in a manner that minimizes the likelihood of acid formation and toxic and other deleterious leachate generation (source control);

(ii) If you cannot prevent the formation of acid, toxic, or other deleterious drainage, you must minimize uncontrolled migration of leachate; and

(iii) You must capture and treat acid drainage, or other undesirable effluent, to the applicable standard if source controls and migration controls do not prove effective. You are responsible for any costs associated with water treatment or facility maintenance after project closure. Long-term, or post-mining, effluent capture and treatment are not acceptable substitutes for source control, and you may rely on them only after all reasonable source control methods have been employed.

(4) *Leaching operations and impoundments.* (i) You must design, construct, and operate all leach pads, tailings impoundments, ponds, and solution-holding facilities according to standard engineering practices to achieve and maintain stability and facilitate reclamation.

(ii) You must construct a low-permeability liner or containment system that will minimize the release of leaching solutions to the environment. You must monitor to detect potential releases of contaminants from heaps, process ponds, tailings impoundments, and other structures and remediate environmental impacts if leakage occurs.

(iii) You must design, construct, and operate cyanide or other leaching facilities and impoundments to contain precipitation from the local 100-year, 24-hour storm event in addition to the maximum process solution inventory. You must also include allowances for snowmelt events and draindown from heaps during power outages in the design.

(iv) You must construct a secondary containment system around vats, tanks, or recovery circuits adequate to prevent the release of toxic solutions to the environment in the event of primary containment failure.

(v) You must exclude access by the public, wildlife, or livestock to solution containment and transfer structures that contain lethal levels of cyanide or other solutions.

(vi) During closure and at final reclamation, you must detoxify leaching solutions and heaps and manage tailings or other process waste to minimize impacts to the environment from contact with toxic materials or leachate. Acceptable practices include natural degradation, rinsing, chemical treatment, or equally successful alternative methods to detoxify

solutions and materials. Upon completion of reclamation, all materials and discharges must meet applicable standards.

(vii) In cases of temporary or seasonal closure, you must provide adequate maintenance, monitoring, security, and financial guarantee, and BLM may require you to detoxify process solutions.

(5) *Waste rock, tailings, and leach pads.* You must locate, design, construct, operate, and reclaim waste rock, tailings, and leach pads to minimize infiltration and contamination of surface water and ground water; achieve stability; and, to the extent feasible, blend with pre-mining, natural topography.

(6) *Stability, grading and erosion control.* (i) You must grade or otherwise engineer all disturbed areas to a stable condition to minimize erosion and facilitate revegetation.

(ii) You must recontour all areas to blend with pre-mining, natural topography to the extent feasible. You may temporarily retain a highwall or other mine workings in a stable condition to preserve evidence of mineralization.

(iii) You must minimize erosion during all phases of operations.

(7) *Pit reclamation.* (i) You must partially or fully backfill pits unless you demonstrate to BLM's satisfaction it is not feasible for economic, environmental, or safety reasons.

(ii) You must take mitigation measures if you do not completely backfill a pit or other disturbance.

(iii) Water quality in pits and other water impoundments must comply with applicable Federal, State, and Tribal standards. Where no standards exist, you must take measures to protect wildlife, domestic livestock, and public water supplies and users.

(8) *Solid waste.* (i) You must comply with applicable Federal and State standards for the disposal and treatment of solid waste, including regulations issued under the Solid Waste Disposal Act, as amended by the Resource Conservation and Recovery Act (42 U.S.C. 6901 *et seq.*).

(ii) To the extent feasible, you must remove from the project area, dispose of, or treat all non-mine garbage, refuse, or waste to minimize their impact.

(9) *Fire prevention and control.* You must comply with all applicable Federal and State fire laws and regulations, and take all reasonable measures to prevent and suppress fires in the project area.

(10) *Maintenance and public safety.* During all operations and after mining—

(i) You must maintain structures, equipment, and other facilities in a safe and orderly manner;

(ii) You must mark by signs or fences, or otherwise identify hazardous sites or conditions resulting from your operations to alert the public in accord with applicable Federal and State laws and regulations; and

(iii) You must restrict unaccompanied public access to portions of your operations that present a hazard to the public, consistent with §§ 3809.600 and 3712.1 of this title.

(11) *Protection of survey monuments.* (i) To the extent feasible, you must protect all survey monuments, witness corners, reference monuments, bearing trees, and line trees against damage or destruction.

(ii) If you damage or destroy a monument, corner, or accessory, you must immediately report the matter to BLM. BLM will tell you in writing how to restore or re-establish a damaged or destroyed monument, corner, or accessory.

§ 3809.423 How long does my plan of operations remain in effect?

Your plan of operations remains in effect as long as you are conducting operations, unless BLM suspends or revokes your plan of operations for failure to comply with this subpart.

§ 3809.424 What are my obligations if I stop conducting operations?

(a) To see what you must do if you stop conducting operations, follow this table:

If . . .	Then . . .
(1) You stop conducting operations for any period of time,	You must— (i) Maintain the project area, including structures, in a safe and clean condition; (ii) Take all necessary actions to assure that unnecessary or undue degradation does not occur, including those specified at § 3809.420(c)(4)(vii); and (iii) Maintain an adequate financial guarantee.
(2) The period of non-operation is likely to cause unnecessary or undue degradation,	BLM will require you to take all necessary actions to assure that unnecessary or undue degradation does not occur, including requiring you, after an extended period of non-operation for other than seasonal operations, to remove all structures, equipment, and other facilities and reclaim the project area.
(3) Your operations are inactive for 5 consecutive years,	BLM will review your operations and determine whether BLM should terminate your plan of operations and direct final reclamation and closure.
(4) BLM determines that you abandoned your operations,	BLM may initiate forfeiture under § 3809.595. If the amount of the financial guarantee is inadequate to cover the costs of reclamation, BLM may complete the reclamation, and the operator and all other responsible persons are liable for the costs of such reclamation. See § 3809.336(a) for indicators of abandonment.

(b) Your reclamation and closure obligations continue until satisfied.

Modifications of Plans of Operations

§ 3809.430 May I modify my plan of operations?

Yes. You may request a modification of the plan at any time during operations under an approved plan of operations.

§ 3809.431 When must I modify my plan of operations?

(a) You must modify your plan of operations to reflect proposed operations not described in the approved plan; and

(b) You must modify your plan of operations when required by BLM to prevent unnecessary or undue degradation.

§ 3809.432 What process will BLM follow in reviewing a modification of my plan of operations?

(a) BLM will review and approve a modification of your plan of operations in the same manner as it reviewed and approved your initial plan under §§ 3809.401 through 3809.420, except that BLM may not obtain public comment on the financial guarantee amount if the modification does not change the financial guarantee amount or only changes it minimally; or

(b) BLM will accept the modification without formal approval if it does not constitute a substantive change and does not require additional analysis under the National Environmental Policy Act.

§ 3809.433 Does this subpart apply to a new modification of my plan of operations?

To see how this subpart applies to a new modification of your plan of operations, see the following table. A ''new'' modification is one that you submit to BLM after this subpart becomes effective:

If you have an approved plan of operations on (effective date of the final rule.) and . . .	Then . . .
(a) *New facility.* You subsequently propose to modify your plan of operations by constructing a new facility, such as waste rock repository, leach pad, impoundment, drill site, or road,	The plan contents requirements (§ 3809.401) and performance standards (§ 3809.420) of this subpart apply to the new facility. Those facilities and areas not included in the modification may continue to operate under the terms of your existing plan of operations.
(b) *Existing facility.* You subsequently propose to modify your plan of operations by modifying an existing facility, such as expansion of a waste rock repository, leach pad, or impoundment; layback of a mine pit; or widening of a road,	The plan contents requirements (§ 3809.401) and performance standards (§ 3809.420) of this subpart apply to the modified facility, unless you demonstrate to BLM's satisfaction it is not feasible to apply them for environmental, safety, or technical reasons. If you make the demonstration, the plan content requirements (43 CFR 3809.1–5) and performance standards (43 CFR 3809.1–3(d) and 3809.2–2) that were in effect immediately before (effective date of final rule.) apply to your modified facility. Those facilities and areas not included in the modification may continue to operate under the terms of your existing plan of operations.

§ 3809.434 Does this subpart apply to a pending modification for a new facility?

To see how this subpart applies to a pending modification for a new facility, see the following table. A ''pending'' modification is one that you submitted to BLM before this subpart became effective, and BLM has not yet approved it.

If you have an approved plan of operations on (effective date of the final rule.) and before that date, you submitted to BLM a proposed modification to construct a new facility, such as waste rock repository, leach pad, impoundment, drill site, or road and . . .	Then . . .
(a) BLM made an environmental assessment or a draft environmental impact statement available to the public before that date,	The plan content requirements (43 CFR 3809.1–5) and performance standards (43 CFR 3809.1–3(d) and 3809.2–2) that were in effect immediately before (effective date of final rule.) apply to the new facility. Those facilities and areas not included in the modification may continue to operate under the terms of your existing plan of operations.
(b) BLM has not yet made an environmental assessment or a draft environmental impact statement available to the public,	All provisions of this subpart apply to the modified facility. Those facilities and areas not included in the modification may continue to operate under the terms of your existing plan of operations.

§ 3809.435 Does this subpart apply to my pending modification for an existing facility?

To see how this subpart applies to your pending modification for an existing facility, follow this table:

If you have an approved plan of operations on (effective date of the final rule.) and before that date, you submitted to BLM a proposed modification of an existing facility, such as expansion of a waste rock repository, leach pad, or impoundment; layback of a mine pit; or widening of a road, and . . .	Then . . .
(a) BLM made an environmental assessment or a draft environmental impact statement available to the public before that date,	The plan content requirements (43 CFR 3809.1–5) and performance standards (43 CFR 3809.1–3(d) and 3809.2–2) that were in effect immediately before (effective date of final rule.) apply to the new facility. Those facilities and areas not included in the modification may continue to operate under the terms of your existing plan of operations.

If you have an approved plan of operations on (effective date of the final rule.) and before that date, you submitted to BLM a proposed modification of an existing facility, such as expansion of a waste rock repository, leach pad, or impoundment; layback of a mine pit; or widening of a road, and . . .	Then . . .
(b) BLM has not yet made an environmental assessment or a draft environmental impact statement available to the public,	The plan contents requirements (§ 3809.401) and performance standards (§ 3809.420) of this subpart apply to the modified facility, unless you demonstrate to BLM's satisfaction it is not feasible to apply them for environmental, safety, or technical reasons. If you make the demonstration, the plan content requirements (43 CFR 3809.1–5) and performance standards (43 CFR 3809.1–3(d) and 3809.2–2) that were in effect immediately before (effective date of final rule.) apply to your plan of operations. Those facilities and areas not included in the modification may continue to operate under the terms of your existing plan of operations.

Financial Guarantee Requirements—General

§ 3809.500 In general, what are BLM's financial guarantee requirements?

To see generally what BLM's financial guarantee requirements are, follow this table:

If . . .	Then . . .
(a) Your operations constitute casual use,	You do not have to provide any financial guarantee.
(b) You conduct operations under a notice or a plan of operations,	You must provide BLM or the State a financial guarantee that meets the requirements of this subpart before starting operations. For more information, see §§ 3809.551 through 3809.573.

§ 3809.503 When must I provide a financial guarantee for my notice-level operations?

To see how this subpart applies to your notice, follow this table:

If . . .	Then . . .
(a) Your notice was on file with BLM on (effective date of final rule.),	You do not need to provide a financial guarantee unless you modify the notice or extend the notice under § 3809.333.
(b) Your notice was on file with BLM before (effective date of final rule.) and you choose to modify your notice as required by this subpart on or after that date,	You must provide a financial guarantee before you can begin operations under the modified notice.
(c) You file a new notice on or after (effective date of final rule.)	You must provide a financial guarantee before you can begin operations under the notice.

§ 3809.505 How do the financial guarantee requirements of this subpart apply to my existing plan of operations?

For each plan of operations approved before (effective date of final rule.), you must post a financial guarantee according to the requirements of this subpart no later than (date 180 days after effective date of final rule.) at the local BLM office with jurisdiction over the lands involved.

§ 3809.551 What are my choices for providing BLM with a financial guarantee?

You must provide BLM with a financial guarantee using any of the 3 options in the following table:

If . . .	Then . . .
(a) You have only one notice or plan of operations, or wish to provide a financial guarantee for a single notice or plan of operations	You may provide an individual financial guarantee that covers only the cost of reclaiming areas disturbed under the single notice or plan of operations. See §§ 3809.552 through 3809.556 for more information.
(b) You are currently operating under more than one notice or plan of operations	You may provide a blanket financial guarantee covering statewide or nationwide operations. See § 3809.560 for more information.
(c) You do not choose one of the options in paragraphs (a) and (b) of this section	You may provide evidence of an existing financial guarantee under State law or regulations. See §§ 3809.570 through 3809.573 for more information.

Individual Financial Guarantee

§ 3809.552 What must my individual financial guarantee cover?

(a) If you conduct operations under a notice or a plan of operations and you provide an individual financial guarantee, it must cover the estimated cost as if BLM were to contract with a third party to reclaim your operations according to the reclamation plan, including construction and maintenance costs for any treatment facilities necessary to meet Federal and State environmental standards.

(b) BLM will periodically review the estimated cost of reclamation and the adequacy of any funding mechanism established under paragraph (c) of this section and require increased coverage, if necessary.

(c) When BLM identifies a need for it, you must establish a trust fund or other funding mechanism available to BLM to ensure the continuation of long-term treatment to achieve water quality standards and for other long term, post-mining maintenance requirements. The

funding must be adequate to provide for construction, long-term operation, maintenance, or replacement of any treatment facilities and infrastructure, for as long as the treatment and facilities are needed after mine closure. BLM may identify the need for a trust fund or other funding mechanism during plan review or later.

§ 3809.553 May I post a financial guarantee for a part of my operations?

(a) Yes, BLM may authorize you to provide a financial guarantee covering a part of your operations if—

(1) Your operations do not go beyond what is specifically covered by the partial financial guarantee; and

(2) The partial financial guarantee covers all reclamation costs within the incremental area of operations.

(b) BLM will review the amount and terms of the financial guarantee for each increment of your operations at least annually.

§ 3809.554 How do I estimate the cost to reclaim my operations?

(a) You must estimate the cost to reclaim your operations as if BLM were hiring a third-party contractor to perform reclamation of your operations after you have vacated the project area. Your estimate must include BLM's cost to administer the reclamation contract. Contact BLM to obtain this administrative cost information.

(b) Your estimate of the cost to reclaim your operations must be acceptable to BLM.

§ 3809.555 What forms of individual financial guarantee are acceptable to BLM?

You may use any of the following instruments for an individual financial guarantee, provided that the BLM State Director has determined that it is an acceptable financial instrument within the State where the operations are proposed:

(a) Non-cancelable surety bonds, including surety bonds arranged or paid for by third parties;

(b) Cash in an amount equal to the required dollar amount of the financial guarantee, to be deposited and maintained in a Federal depository account of the United States Treasury by BLM;

(c) Irrevocable letters of credit from a bank or financial institution organized or authorized to transact business in the United States;

(d) Certificates of deposit or savings accounts not in excess of the maximum insurable amount as set by the Federal Deposit Insurance Corporation; and

(e) Either of the following instruments having a market value of not less than the required dollar amount of the financial guarantee and maintained in a Securities Investors Protection Corporation insured trust account by a licensed securities brokerage firm for the benefit of the Secretary of the Interior, acting by and through BLM:

(1) Negotiable United States Government, State and Municipal securities or bonds; or

(2) Investment-grade rated securities having a Standard and Poor's rating of AAA or AA or an equivalent rating from a nationally recognized securities rating service.

§ 3809.556 What special requirements apply to financial guarantees described in § 3809.555(e)?

(a) If you choose to use the instruments permitted under § 3809.555(e) in satisfaction of financial guarantee requirements, you must provide BLM, before you begin operations and by the end of each calendar year thereafter, a certified statement describing the nature and market value of the instruments maintained in that account, and including any current statements or reports furnished by the brokerage firm to the operator or mining claimant concerning the asset value of the account.

(b) You must review the market value of the account instruments by December 31 of each year to ensure that their market value continues to be not less than the required dollar amount of the financial guarantee. When the market value of the account instruments has declined by more than 10 percent of the required dollar amount of the financial guarantee, you must, within 10 days after its annual review or at any time upon the written request of BLM, provide additional instruments, as defined in § 3809.555(e), to the trust account so that the total market value of all account instruments is not less than the required dollar amount of the financial guarantee. You must send a certified statement to BLM within 45 days thereafter describing your actions to raise the market value of its account instruments to the required dollar amount of the financial guarantee. You must include copies of any statements or reports furnished by the brokerage firm to you documenting such an increase.

(c) If your review under paragraph (b) of this section demonstrates that the total market value of trust account instruments exceeds 110 percent of the required dollar amount of the financial guarantee, you may ask BLM to authorize a written release of that portion of the account that exceeds 110 percent of the required financial guarantee. BLM will approve your request only if you are in compliance with the terms and conditions of your notice or approved plan of operations.

Blanket Financial Guarantee

§ 3809.560 Under what circumstances may I provide a blanket financial guarantee?

(a) If you have more than one notice- or plan-level operation underway, you may provide a blanket financial guarantee covering statewide or nationwide operations instead of individual financial guarantees for each operation.

(b) BLM will accept a blanket financial guarantee if we determine that its terms and conditions are sufficient to comply with the regulations of this subpart.

State-Approved Financial Guarantee

§ 3809.570 Under what circumstances may I provide a State-approved financial guarantee?

When you provide evidence of an existing financial guarantee under State law or regulations that covers your operations, you are not required to provide a separate financial guarantee under this subpart if—

(a) The existing financial guarantee is redeemable by the Secretary, acting by and through BLM;

(b) It is held or approved by a State agency for the same operations covered by your notice(s) or plan(s) of operations; and

(c) It provides at least the same amount of financial guarantee as required by this subpart.

§ 3809.571 What forms of State-approved financial guarantee are acceptable to BLM?

You may provide a State-approved financial guarantee in any of the following forms, subject to the conditions in § 3809.570:

(a) The kinds of individual financial guarantees specified under § 3809.555;

(b) Participation in a State bond pool, if—

(1) The State agrees that, upon BLM's request, the State will use part of the pool to meet reclamation obligations on public lands; and

(2) The BLM State Director determines that the State bond pool provides the equivalent level of protection as that required by this subpart; and

(c) A corporate guarantee if—

(1) The corporate guarantee is acceptable to the State;

(2) The corporate guarantee is redeemable by or guaranteed to the Secretary; and

(3) The BLM State Director determines that the corporate guarantee

provides a level of protection equal to the estimated cost of reclamation under §§ 3809.552 and 3809.554, considering the operator's net income, net working capital and intangible net worth, and total liabilities and assets.

§ 3809.572 What happens if BLM rejects a financial instrument in my State-approved financial guarantee?

If BLM rejects a submitted financial instrument in an existing State-approved financial guarantee, BLM will notify you in writing, with a complete explanation of the reasons for the rejection within 30 days of BLM's receipt of the evidence of State-approved financial guarantee. You must provide BLM with a financial guarantee acceptable under this subpart at least equal to the amount of the rejected financial instrument.

§ 3809.573 What happens if the State makes a demand against my financial guarantee?

When the State makes a demand against your financial guarantee, thereby reducing the available balance, you must replace or augment the financial guarantee if the available balance is insufficient to cover the remaining reclamation cost.

Modification or Replacement of a Financial Guarantee

§ 3809.580 What happens if I modify my notice or approved plan of operations?

In the event you modify a notice or an approved plan under § 3809.331 or § 3809.431 respectively and your estimated reclamation cost increases, your revised financial guarantee must comply with § 3809.552. You must adjust the amount of the financial guarantee to cover the estimated additional cost of reclamation and long-term treatment, as modified.

§ 3809.581 Will BLM accept a replacement financial instrument?

Yes. If you or a new operator have an approved financial guarantee, you may request BLM to accept a replacement financial instrument at any time after the approval of an initial instrument. BLM will review the offered instrument for adequacy and may reject any offered instrument, but will do so by a decision in writing, with a complete explanation of the reasons for the rejection, within 30 days of the offering.

§ 3809.582 How long must I maintain my financial guarantee?

You must maintain your financial guarantee until you or a new operator replace it, with BLM's written concurrence, by another adequate financial guarantee, or until BLM releases the requirement to maintain your financial guarantee after you have completed reclamation of your operation according to the requirements of § 3809.320 (for notices), including any measures identified as the result of consultation with BLM under § 3809.313, or § 3809.420 (for plans of operations).

Release of Financial Guarantee

§ 3809.590 When will BLM release or reduce the financial guarantee for my notice or plan of operations?

(a) When you (the mining claimant or operator) have completed all or any portion of the reclamation of your operations in accordance with your notice or approved plan of operations, you may notify BLM that the reclamation has occurred and request a reduction in the financial guarantee or BLM approval of the adequacy of the reclamation, or both.

(b) BLM will then promptly inspect the reclaimed area. We encourage you to accompany the BLM inspector.

(c) BLM will publish notice of final financial guarantee release in a local newspaper of general circulation and accept comments for 30 days. Subsequently, BLM will notify you, in writing, whether you may reduce the financial guarantee under § 3809.591, or the reclamation is acceptable, or both.

§ 3809.591 What are the limitations on the amount by which BLM may reduce my financial guarantee?

(a) This section applies to your financial guarantee, but not to any funding mechanism established under § 3809.552(c) to pay for long-term treatment of effluent or site maintenance. Calculation of bond percentages in paragraphs (b) and (c) of this section does not include any funds held in that kind of funding mechanism.

(b) BLM may release up to 60 percent of your financial guarantee for a portion of your project area when BLM determines that you have successfully completed backfilling; regrading; establishment of drainage control; and stabilization and detoxification of leaching solutions, heaps, tailings, and similar facilities on that portion of the project area.

(c) BLM may release the remainder of your financial guarantee for the same portion of the project area when BLM determines that you have successfully completed reclamation, including revegetating the area disturbed by operations, and when—

(1) Any effluent discharged from the area has met applicable effluent limitations and water quality standards for one year without needing additional treatment; or

(2) If you have established a funding mechanism under § 3809.552(c) to pay for long-term treatment, any effluent discharged from the area meets applicable effluent limitations and water quality standards for one year with or without treatment.

§ 3809.592 Does release of my financial guarantee relieve me of all responsibility for my project area?

(a) Release of your financial guarantee under this subpart does not release you (the mining claimant or operator) from responsibility for reclamation of your operations should reclamation fail to meet the standards of this subpart.

(b) Any release of your financial guarantee under this subpart does not release or waive any claim BLM or other persons may have against any person under the Comprehensive Environmental Response, Compensation and Liability Act of 1980, as amended, 42 U.S.C. 9601 *et seq.*, or under any other applicable statutes or regulations.

§ 3809.593 What happens to my financial guarantee if I transfer my operations?

You remain responsible for obligations or conditions created while you conducted operations unless a transferee accepts responsibility under § 3809.16, and BLM accepts an adequate replacement financial guarantee. Therefore, your financial guarantee remains in effect until BLM determines that you are no longer responsible for all or part of the operation. BLM can release your financial guarantee on an incremental basis. The new operator must provide a financial guarantee before BLM will allow the new operator to conduct operations.

§ 3809.594 What happens to my financial guarantee when my mining claim is patented?

(a) When your mining claim is patented, BLM will release the portion of the financial guarantee that applies to operations within the boundaries of the patented land. This paragraph does not apply to patents issued on mining claims within the boundaries of the California Desert Conservation Area.

(b) BLM will release the remainder of the financial guarantee, including the portion covering approved means of access outside the boundaries of the mining claim, when you have completed reclamation to the standards of this subpart.

(c) BLM will continue to regulate under this subpart existing access for mining purposes across public lands to patented mining claims, including the

requirement to have an adequate financial guarantee.

Forfeiture of Financial Guarantee

§ 3809.595 When will BLM initiate forfeiture of my financial guarantee?

BLM will initiate forfeiture of all or part of your financial guarantee for any project area or portion of a project area if—

(a) You (the operator or mining claimant) refuse or are unable to conduct reclamation as provided in the reclamation measures incorporated into your notice or approved plan of operations or the regulations in this subpart;

(b) You fail to meet the terms of your notice or the decision approving your plan of operations; or

(c) You default on any of the conditions under which you obtained the financial guarantee.

§ 3809.596 How does BLM initiate forfeiture of my financial guarantee?

When BLM decides to require the forfeiture of all or part of your financial guarantee, BLM will notify you (the operator or mining claimant) by certified mail, return receipt requested; the surety on the financial guarantee, if any; and the State agency holding the financial guarantee, if any, informing you and them of the following:

(a) BLM's decision to require the forfeiture of all or part of the financial guarantee;

(b) The reasons for the forfeiture;

(c) The amount that you will forfeit based on the estimated total cost of achieving the reclamation plan requirements for the project area or portion of the project area affected, including BLM's administrative costs; and

(d) How you may avoid forfeiture, including—

(1) Providing a written agreement under which you or another person will perform reclamation operations in accordance with a compliance schedule which meets the conditions of your notice or the decision approving your plan of operations and the reclamation plan, and a demonstration that such other person has the ability to satisfy the conditions; and

(2) Obtaining written permission from BLM for a surety to complete the reclamation, or the portion of the reclamation applicable to the bonded phase or increment, if the surety can demonstrate an ability to complete the reclamation in accordance with the reclamation measures incorporated in your notice or approved plan of operations.

§ 3809.597 What if I do not comply with BLM's forfeiture notice?

If you fail to meet the requirements of BLM's forfeiture notice provided under § 3809.596, if you fail to appeal the forfeiture notice under § 3809.800, or if the decision appealed is affirmed, BLM will—

(a) Immediately collect the forfeited amount as provided by applicable laws for the collection of defaulted financial guarantees, other debts, or State bond pools; and

(b) Use funds collected from financial guarantee forfeiture to implement the reclamation plan, or portion thereof, on the area or portion of the area to which financial guarantee coverage applies.

§ 3809.598 What if the amount forfeited will not cover the cost of reclamation?

If the amount forfeited is insufficient to pay for the full cost of reclamation, the operators and mining claimants are jointly and severally liable for the remaining costs. BLM may complete or authorize completion of reclamation of the area covered by the financial guarantee and may recover from you all costs of reclamation in excess of the amount forfeited.

§ 3809.599 What if the amount forfeited exceeds the cost of reclamation?

If the amount of financial guarantee forfeited is more than the amount necessary to complete reclamation, BLM will return the unused funds within a reasonable amount of time to the party from whom they were collected.

Inspection and Enforcement

§ 3809.600 With what frequency will BLM inspect my operations?

(a) At any time, BLM may inspect your operations, including all structures, equipment, workings, and uses located on the public lands. The inspection may include verification that your operations comply with this subpart. See § 3715.7 of this title for special provisions governing inspection of the inside of structures used solely for residential purposes.

(b) BLM may authorize a member(s) of the public to accompany a BLM inspector. However, BLM will not authorize a member of the public to accompany an inspector if the presence of the public would materially interfere with the mining operations or with BLM's administration of this subpart, or create safety problems. When BLM authorizes a member of the public to accompany the inspector, the operator must provide access to operations.

(c) At least 4 times each year, BLM will inspect your operations if you use cyanide or other leachate or where there is significant potential for acid drainage.

§ 3809.601 What types of enforcement action may BLM take if I do not meet the requirements of this subpart?

BLM may issue various types of enforcement orders, including the following:

(a) *Noncompliance order.* If your operations do not comply with any provision of your notice, plan of operations, or requirement of this subpart, BLM may issue you a noncompliance order; and

(b) *Suspension orders.* (1) BLM may order a suspension of all or any part of your operations after—

(i) You fail to timely comply with a noncompliance order for a significant violation issued under paragraph (a) of this section. A significant violation is one that causes or may result in environmental or other harm or danger or that substantially deviates from the complete notice or approved plan of operations;

(ii) BLM notifies you of its intent to issue a suspension order; and

(iii) BLM provides you an opportunity for an informal hearing before the BLM State Director to object to a suspension.

(2) BLM may order an immediate, temporary suspension of all or any part of your operations without issuing a noncompliance order, notifying you in advance, or providing you an opportunity for an informal hearing if—

(i) You do not comply with any provision of your notice, plan of operations, or this subpart; and

(ii) An immediate, temporary suspension is necessary to protect health, safety, or the environment from imminent danger or harm. BLM may presume that an immediate suspension is necessary if you conduct plan-level operations without an approved plan of operations or conduct operations other than casual use without submitting a complete notice.

(3) BLM will terminate a suspension order under paragraph (b)(1) or (b)(2) of this section no later than the date by which you correct the violation.

(c) *Contents of enforcement orders.* Enforcement orders will specify—

(1) How you are failing or have failed to comply with the requirements of this subpart;

(2) The portions of your operations, if any, that you must cease or suspend;

(3) The actions you must take to correct the noncompliance and the time, not exceed 30 days, within which you must start corrective action; and

(4) The time within which you must complete corrective action.

§ 3809.602 Can BLM revoke my plan of operations or nullify my notice?

(a) BLM may revoke your plan of operations or nullify your notice upon finding that—

(1) A violation exists of any provision of your notice, plan of operation, or this subpart, and you have failed to correct the violation within the time specified in the enforcement order issued under § 3809.601; or

(2) A pattern of violations exists at your operations.

(b) The finding is not effective until BLM notifies you of its intent to revoke your plan or nullify your notice, and BLM provides you an opportunity for an informal hearing before the BLM State Director.

(c) If BLM nullifies your notice or revokes your plan of operations, you must not conduct operations on the public lands in the project area, except for reclamation and other measures specified by BLM.

§ 3809.603 How does BLM serve me with an enforcement action?

(a) BLM will serve a noncompliance order, a notification of intent to issue a suspension order, a suspension order, or other enforcement order on the person to whom it is directed or his or her designated agent, either by—

(1) Offering a copy at the project area to the designated agent or to the individual who, based upon reasonable inquiry, appears to be in charge. If no such individual can be located at the project area, BLM may offer a copy to any individual at the project area who appears to be an employee or agent of the person to whom the notification or order is issued. Service is complete when the notice or order is offered and is not incomplete because of refusal to accept; or

(2) Sending a copy of the notification or order by certified mail or by hand to the operator or his or her designated agent, or by any means consistent with the rules governing service of a summons and complaint under rule 4 of the Federal Rules of Civil Procedure. Service is complete upon offer of the notification or order or of the certified mail and is not incomplete because of refusal to accept.

(b) BLM may serve a mining claimant in the same manner an operator is served under paragraph (a)(2) of this section.

(c) The mining claimant or operator may designate an agent for service of notifications and orders. You must provide the designation in writing to the local BLM field office having jurisdiction over the lands involved.

§ 3809.604 What happens if I do not comply with a BLM order?

(a) If you do not comply with a BLM order issued under §§ 3809.601 or 3809.602, the Department of the Interior may request the United States Attorney to institute a civil action in United States District Court for an injunction or order to enforce its order, prevent you from conducting operations on the public lands in violation of this subpart, and collect damages resulting from unlawful acts. This relief may be in addition to the enforcement actions described in §§ 3809.601 and 3809.602 and the penalties described in §§ 3809.700 and 3809.702.

(b) If you fail to timely comply with a noncompliance order issued under § 3809.601(a), and remain in noncompliance, BLM may order you to submit plans of operations under § 3809.401 for current and future notice-level operations.

Penalties

§ 3809.700 What criminal penalties apply to violations of this subpart?

The criminal penalties established by statute for individuals and organizations are as follows:

(a) *Individuals.* If you knowingly and willfully violate the requirements of this subpart, you may be subject to arrest and trial under section 303(a) of FLPMA (43 U.S.C. 1733(a)). If you are convicted, you will be subject to a fine of not more than $100,000 or the alternative fine provided for in the applicable provisions of 18 U.S.C. 3571, or imprisonment not to exceed 12 months, or both, for each offense; and

(b) *Organizations.* If an organization or corporation knowingly or willfully violates the requirements of this subpart, it is subject to trial and, if convicted, will be subject to a fine of not more than $200,000, or the alternative fine provided for in the applicable provisions of 18 U.S.C. 3571.

§ 3809.701 What happens if I make false statements to BLM?

Under statute (18 U.S.C. 1001), you are subject to arrest and trial before a United States District Court if, in any matter under this subpart, you knowingly and willfully falsify, conceal, or cover up by any trick, scheme, or device a material fact, or make any false, fictitious, or fraudulent statements or representations, or make or use any false writings or document knowing the same to contain any false, fictitious, or fraudulent statement or entry. If you are convicted, you will be fined not more than $250,000 or the alternative fine provided for in the applicable provisions of 18 U.S.C. 3571, or imprisoned not more than 5 years, or both.

§ 3809.702 What civil penalties apply to violations of this subpart?

(a)(1) Following issuance of an order under § 3809.601, BLM may assess a proposed civil penalty of up to $5,000 for each violation against you if you—

(i) Violate any term or condition of a plan of operations or fail to conform with operations described in your notice;

(ii) Violate any provision of this subpart; or

(iii) Fail to comply with an order issued under § 3809.601.

(2) BLM may consider each day of continuing violation a separate violation for purposes of penalty assessments.

(3) In determining the amount of the penalty, BLM must consider your history of previous violations at the particular mining operation; the seriousness of the violation, including any irreparable harm to the environment and any hazard to the health or safety of the public; whether you were negligent; and your demonstrated good faith in attempting to achieve rapid compliance after notification of the violation.

(4) If you are a small entity, BLM will, under appropriate circumstances including those described in paragraph (a)(3) of this section, consider reducing or waiving a civil penalty and may consider ability to pay in determining a penalty assessment.

(b) A final administrative assessment of a civil penalty occurs only after BLM has notified you of the assessment and given you opportunity to request within 30 days a hearing by the Office of Hearings and Appeals. BLM may extend the time to request a hearing during settlement discussions. The Office of Hearings and Appeals will issue a penalty assessment that is final.

(c) If BLM issues you a proposed civil penalty and you fail to request a hearing as provided in paragraph (b) of this section, the proposed assessment becomes a final order of the Department, and the penalty assessed becomes due upon expiration of the time allowed to request a hearing.

§ 3809.703 Can BLM settle a proposed civil penalty?

Yes. BLM may negotiate a settlement of civil penalties, in which case BLM will prepare a settlement agreement. The BLM State Director or his or her designee must sign the agreement.

Appeals

§ 3809.800 What appeal rights do I have?

(a) Any person adversely affected by a decision made under this subpart may appeal the decision under parts 4 and 1840 of this title. Review of a decision by the BLM State Director will take place if consistent with part 1840 of this title.

(b) In order for the Department of the Interior to consider your appeal of a decision, you must file a notice of appeal in writing with the BLM office where the decision was made within 30 days after the date you received the decision. All decisions under this subpart go into effect immediately and remain in effect while appeals are pending unless a stay is granted under § 4.21(b) of this title.

(c) Your written appeal must contain:

(1) Your name and address; and

(2) The BLM serial number of the notice or plan of operations that is the subject of the appeal.

(d) You must submit a statement of your reasons for the appeal and any arguments you wish to present that would justify reversal or modification of the decision within the time frame specified in part 4 of this chapter (usually within 30 days after filing your appeal).

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Part III

Department of Housing and Urban Development

24 CFR Part 291
Disposition of HUD-Acquired Single Family Property; Final Rule

DEPARTMENT OF HOUSING AND URBAN DEVELOPMENT

24 CFR Part 291

[Docket No. FR–4244–F–03]

RIN 2502–AG96

Disposition of HUD-Acquired Single Family Property; Final Rule

AGENCY: Office of the Assistant Secretary for Housing-Federal Housing Commissioner, HUD.

ACTION: Final rule.

SUMMARY: On May 29, 1998, HUD published for public comment a proposed rule that would amend HUD's regulations for the disposition of HUD-acquired single family properties. Among other amendments, the proposed rule would provide HUD with the necessary flexibility to use a variety of innovative, efficient, and cost-effective methods for selling its inventory of single family properties. HUD's goals are to reduce the inventory of single family properties while continuing to expand homeownership opportunities for American families and to ensure the stability of the Federal Housing Administration (FHA) Mortgage Insurance Fund. This final rule makes effective the amendments in the May 29, 1998 proposed rule and takes into consideration the public comments submitted on the proposed rule.

EFFECTIVE DATE: March 11, 1999.

FOR FURTHER INFORMATION CONTACT: Joseph McCloskey, Director, Single Family Asset Management Division, Office of Insured Single Family Housing, Department of Housing and Urban Development, Room 9184, 451 Seventh Street, SW, Washington, DC 20410; telephone number (202) 708–1672 (this is not a toll-free number). For hearing- and speech-impaired persons, this number may be accessed via TTY by calling the Federal Information Relay Service at 1–800–877–8399.

SUPPLEMENTARY INFORMATION:

I. HUD's Single Family Property Disposition Program

Section 204 of the National Housing Act (12 U.S.C. 1710) governs the Federal Housing Administration (FHA) insurance claim process and property disposition. Section 204(g) of the National Housing Act addresses the management and disposition of HUD-acquired single family properties. HUD's implementing regulations are found in 24 CFR part 291 (entitled ''Disposition of HUD-Acquired Single Family Property''). Under these statutory and regulatory authorities, HUD is charged with implementing a program of sales of HUD-acquired properties along with appropriate credit terms and standards to be used in carrying out the program. Before issuance of this final rule, HUD's principal method of selling properties was through HUD-administered competitive sales of individual properties to individual purchasers.

As previously structured, the competitive sales process was found to be time consuming and did not always result in the efficient and prompt delivery of the single family properties to the sales market. HUD has the largest real estate-owned (REO) operation in the nation, selling in excess of 50,000 properties each year. While this volume of property sales represents only a small percentage of the total number of home sales nationwide, it represents a significant administrative responsibility for HUD. HUD determined that both HUD and potential homeowners were disadvantaged by the processing time involved in the competitive sales process. The longer the properties remain in HUD's inventory, the more HUD's holding costs increase, and the longer they remain unavailable as homeownership opportunities for potential purchasers.

On June 13, 1997 (62 FR 32251), HUD published in the **Federal Register** an advance notice of proposed rulemaking (ANPR) to solicit public comments on more effective and efficient methods of disposing of HUD-owned single family properties. The ANPR suggested that proposed methods could include bulk sales of current inventory or future acquisitions on a regional or national basis, or arrangements similar to joint ventures, profit-sharing arrangements, or private-public partnerships. In addition to soliciting comments through the ANPR published in the **Federal Register**, HUD requested public input through a notice published in the following newspapers: *The Washington Post*, *The New York Times*, *The Wall Street Journal*, *Barron's*, and *U.S.A. Today*.

II. The May 29, 1998 Proposed Rule

On May 29, 1998 (63 FR 29496), after consideration of the public comments received on the June 13, 1997 ANPR, HUD published for public comment a proposed rule to amend its regulations at 24 CFR part 291. (The preamble to the May 29, 1998 proposed rule contained a detailed summary of the public comments received on the ANPR, and HUD's responses to these comments (see 63 FR 29496, 29497–29498)).

The May 29, 1998 proposed rule provided as its primary proposal that HUD would no longer limit itself to a primary method for the disposition of its single family properties. The proposed rule provided that HUD may, in its discretion, on a case-by-case basis or as a regular course of its business, choose from a variety of sales methods. These methods may include competitive sales to individuals, direct sales, bulk sales, and other sales as determined necessary by the Secretary.

The May 29, 1998 proposed rule also amended 24 CFR part 291 to introduce for public comment an innovative and cost-effective sales method, known as the REO acquisition method. Under this sales method, HUD will invite interested entities to participate in a competitive selection process for the right and obligation to acquire properties designated by HUD. These designated properties would consist primarily of properties that would otherwise come into HUD's inventory in the future (''pipeline'' properties), but could also include properties that are currently in HUD's inventory. HUD and the selected entity/transferor would enter into a property acquisition agreement, which would provide for the right and obligation of the transferor to acquire the designated properties as the properties become available. The preamble to the May 29, 1998 proposed rule provided additional details regarding the REO acquisition method.

III. This Final Rule

This final rule makes effective the amendments contained in the May 29, 1998 proposed rule, and takes into consideration the public comments on the proposed rule. In response to public comment, this final rule also amends 24 CFR part 291 to refine the already codified policies and procedures governing another innovative sales method, disposition of single family properties through management and marketing services. The management and marketing service process was designed to address the deficiencies of HUD-administered competitive sales of individual properties. Under this process, HUD contracts the management and sales function of HUD real estate-owned properties to experienced companies located in areas that correspond to HUD's Homeownership Centers.

Under this method, management and marketing contractors are selected by HUD to successfully manage single family properties owned by or in the custody of HUD, to successfully market those single family properties, and to successfully oversee the sales closing

activity, including proper accounting for HUD's sales proceeds. Following the selection of the management and marketing contractors, the individual acquired single family properties will continue to be sold to individuals, including nonprofit organizations and government entities. HUD will continue to retain closing agents who will have primary responsibility for carrying out all closing activities. The management and marketing contractors will be responsible, however, for providing appropriate materials to the closing agent and reconciling any discrepancies resulting from closing activities.

HUD is refining the codified procedures governing management and marketing services in its regulations because it has determined that it is an effective and efficient sales method. HUD has conducted a successful management and marketing pilot program in the cities of Baltimore, New Orleans and Sacramento. As noted in the preamble to the May 29, 1998 proposed rule, HUD has been considering expanding its use of management and marketing contracting as a result of this successful pilot program (see 63 FR 29496, 29497). Additionally, many commenters on the May 29, 1998 proposed rule praised the pilot program and urged that HUD increase its use of management and marketing contracts (see section IV of this preamble). As one of the public commenters wrote, the management and marketing sales method is ''a public/private partnership that works.''

As noted previously, the May 29, 1998 proposed rule was designed to provide HUD with the flexibility to choose from a variety of sales methods. Section 291.90 of the proposed rule, which is made effective by this final rule, identifies the various sales methods available to HUD, and includes disposition of properties through management and marketing service contracts. Section 291.90(e) provides that ''HUD may select any other method [of sale], as determined by the Secretary.'' HUD retains the right to use a sales method not listed in this section that it determines is appropriate, efficient, and effective given the circumstances involved. If, under § 291.90(e), HUD determines that a particular sales method may be used more frequently than originally anticipated, HUD will amend § 291.90 to include this sales method. In any given disposition of single family properties, the public will be notified of the sales methods to be used through appropriate methods, which may include bid materials, the internet, and other methods.

In also keeping with HUD's stated goal of increased flexibility, HUD has determined that several additional amendments to the proposed rule are necessary for purposes of clarity and the successful implementation of this sales method. HUD also has made several other changes in response to public comment to the procedures governing competitive sales of individual properties. The revisions were necessary to make the program more efficient and cost effective. Additionally, HUD has made other non-substantive amendments for purposes of clarity. The following summarizes the principal differences between the May 29, 1998 proposed rule and this final rule. As described below, none of these changes substantively alter the policies and procedures described in the proposed rule.

1. Purpose and General Requirements (§ 291.1)

This rule amends § 291.1, to clarify the purpose of 24 CFR part 291. As amended, § 291.1(a)(1) provides that part 291 governs the disposition of one-to-four family properties acquired by the Federal Housing Administration (FHA) through foreclosure of an insured or Secretary-held mortgage or loan under the National Housing Act, or acquired by HUD under section 312 of the Housing Act of 1964.

2. Definitions (§ 291.5)

The definitions of the terms ''*Closing agent*,'' ''*HUD-acquired properties*,'' and ''*Single family property*'' have been removed. Due to other revisions made to the regulatory text of the May 29, 1998 proposed rule, these terms are not used in the final rule. Accordingly, the definitions of these terms are unnecessary and have been removed. The definition of the term ''*Preapproved*'' has also been removed from § 291.5. This term is commonly used and understood by individuals involved in the sale of HUD-acquired single family properties. Further, the term ''*Preapproved*'' is used only once in the part 291 regulations (at § 291.210(a)(1)), and not in the sense provided by the former regulatory definition. It is therefore unnecessary to include a definition of this term in 24 CFR part 291.

The definition of the term ''*HUD*'' has been clarified to provide that, as used in 24 CFR part 291, it means the Department of Housing and Urban Development or its contractor, as appropriate.

For purposes of clarity, the definition of the term ''*Purchase money mortgage (PMM)*'' has been removed from § 291.5 and relocated to § 291.100(d)(3). This term is only used in this section of the regulation, and is therefore more appropriately located in the section of the final rule where the term is referenced, rather than in the general definitions section. The substance of the definition of ''*Purchase money mortgage (PMM)*'' has not been revised.

This rule also relocates the definition of the term ''*Lessee*'' from § 291.5 to § 291.405. Section 291.405 sets forth the definitions of terms that are used exclusively in 24 CFR part 291, subpart E (entitled ''Lease and Sale of HUD-Acquired Single Family Properties for the Homeless''). The term ''lessee'' is only used in subpart E of 24 CFR part 291, and is therefore more appropriately defined in § 291.405 than in § 291.5. The substance of the definition of the term ''lessee'' has not been revised.

3. Reference to Management and Marketing Service Contracts (§§ 291.90 and 291.205)

As noted above, the final rule has been amended to reference management and marketing service contracts. Specifically, §§ 291.90 (entitled ''Sales methods'') and 291.205 (entitled ''Competitive sales of individual properties'') have been revised explicitly to provide that HUD may conduct competitive sales of individual properties either directly or through management and marketing service contracts.

4. Minimum Property Standards (MPS) (§§ 291.100(c)(1) and (c)(2))

Section 291.100 describes certain general policies applicable to most sales methods used by HUD in its single family property disposition program. Paragraph (c)(1) of proposed § 291.100 provided that ''[a] property that HUD believes meets the intent of the Minimum Property Standards (MPS) for existing dwellings * * * will be offered for sale * * * with FHA mortgage insurance available.'' Several public commenters recommended methods that HUD might use to improve its competitive sales process, including suggestions for enhancing appraisal standards (see comment captioned ''Improve Upon Current Disposition Process'' in section IV.E. of this preamble). In response to these commenters, HUD is strengthening the regulatory language of § 291.100(c)(1) to require that a property offered for an insured sale must meet the MPS, as determined by the Secretary. A conforming change has also been made to proposed § 291.100(c)(2), which formerly also referred to the ''intent of the MPS.''

5. ''As Is'' Condition for Section 203(k) Properties (§ 291.100(c)(3))

This final rule also amends § 291.100(c)(3) of the May 29, 1998 proposed rule for technical clarity. Proposed § 291.100(c)(3) stated that uninsured single family properties would be ''offered for sale either in 'as is' condition without mortgage insurance, or under section 203(k) of the National Housing Act (12 U.S.C. 1709(k)).'' The quoted language might erroneously imply that properties offered for sale under the section 203(k) program will not be offered for sale in ''as is'' condition. However, as is made clear from the rest of the rule, all properties are offered on an ''as is'' basis. In addition, HUD's sales contracts in all cases provide that the properties are sold in ''as is'' condition. Accordingly, the phrase ''as is'' has been added following the reference to the section 203(k) program in § 291.100(c)(3).

6. Listings (§ 291.100(h))

For purposes of clarity, the substance of proposed § 291.100(h) and (i) have been consolidated in § 291.100(h), which sets forth the listing requirements for HUD's single family property disposition program. The substance of proposed § 291.100(h), has been reorganized and redesignated as paragraph (h)(1) of § 291.100. The substance of proposed § 291.100(i), which concerns asset management and listing contracts, has been redesignated as new paragraph § 291.100(h)(2). With the exception of these clarifying changes, the substance of these provisions has not been revised.

7. Repair Escrow Amounts (§ 291.205(b)(2))

Section 291.205(b) describes the procedures relating to the calculation of net offers under the competitive sale program. This final rule removes proposed § 291.205(b)(2), which provided that ''[i]n the case of properties sold under the insured sales with repair escrow program, the repair escrow amount is also deducted from the bid to determine the net offer.'' HUD has determined that this change is necessary for two reasons. First, in response to public comment, HUD intends to expand its use of multiple listing services (MLS). Specifically, HUD is considering use of the MLS for sales governed by management and marketing sales contracts. (See the public comment captioned ''HUD Should Require Transferors to Use MLS'' in section IV.B of this preamble.) The identification of two list prices (one for repair escrow purchasers and one for other buyers) is cumbersome under the MLS. Further, the deduction of the repair escrow amount from the bid amounts submitted by repair escrow purchasers may inadvertently penalize these purchasers during the bid selection process.

8. Bid Period for Competitive Sales (§ 291.205(d))

Section 291.205(d) describes the bid procedures for competitive sales of individual properties. The proposed rule (which reflected the procedures in the existing part 291 regulations) would have established fixed time frames for the submission and HUD review of bids. It is not necessary to codify this information in HUD's regulations, since the information may more appropriately be included in the bid materials accompanying a particular sale. Further, HUD is refining and updating its procedures governing management and marketing service contracts in response to public comment. These public comments praised HUD's management and marketing pilot program in the cities of Baltimore, New Orleans, and Sacramento. The commenters urged HUD to revise the May 29, 1998 proposed rule to incorporate the procedures used in the successful pilot program.

Among other revised features, HUD may provide for the electronic submission of bids. The use of automated procedures and other streamlined bid submission methods may call for a shortened bid period or for the modification of HUD's bid review procedures. Accordingly, this final rule revises § 291.205(d) to provide HUD with the necessary flexibility to successfully implement a variety of bid submission and review procedures in the competitive sale of individual properties. Specifically, the final rule removes the references to fixed time periods and specific bid review procedures contained in the May 29, 1998 proposed rule.

As revised by this final rule, § 291.205(d) provides that HUD will establish a bid period for properties available for competitive sale. Generally, this bid period will be 10 days, but may be lengthened or shortened by HUD. In the case of properties offered with mortgage insurance, HUD may establish procedures that give priority to owner-occupant purchasers for a period of up to 30-days (see § 291.205(a)(2)). HUD may treat all bids received during a specified period of time as having been received simultaneously. HUD may also choose to review bids on a daily basis, with all bids submitted during each day considered to have been received simultaneously. HUD may use either (or both) of these methods during the bid period, as specified in the bid materials accompanying a particular competitive sale.

9. Extended Listing period (§ 291.205(f))

This section provides that properties not sold at the bid opening of a competitive sale will remain available for an extended listing period. Proposed § 291.205(f) provided that properties that ''fail to sell within 30-days after being offered for competitive bidding will be reanalyzed and relisted.'' Proposed § 291.205(f) also stated that ''[i]f a property's price or terms are changed, it will be subject to another competitive bidding process * * *'' (emphasis added).

This final rule makes three changes to § 291.205(f). First, this final rule lengthens the extended listing period from 30 days to 45 days. This change extends the availability of a property being offered for sale, and thus provides potential buyers with additional time to purchase the property. In keeping with the stated goal of this rule to provide HUD with the necessary flexibility to successfully implement a variety of sales methods, this final rule also provides that a property may be subject to another competitive bidding process if the property's price or terms are changed (the language of the proposed rule would have mandated another competitive bid process). Finally, this final rule makes a clarifying change to § 291.205(f) by replacing the term ''relisted'' with the phrase ''made available for sale.''

10. Bid Format (§ 291.205(g) and (k))

These two regulatory provisions have been updated to incorporate the use of automated bid submission procedures. As set forth in the May 29, 1998 proposed rule, these provisions reflected outdated bid format requirements. For example, § 291.205(g)(2) provided that ''bids must be placed in sealed envelopes marked with the property number, address, and return address of the broker.'' This final rule revises § 291.205(g) and (k) to remove these references to outdated bid format requirements, and to reflect modern electronic bid submission procedures.

11. Multiple Bids (§ 291.205(i))

This final rule revises § 291.205(i) for purposes of technical clarity. Proposed § 291.205(i) provided that ''[i]f a prospective owner-occupant purchaser submits a bid on more than one

property, the first of those bids that produces the greatest return to HUD will be accepted * * * .'' The quoted language might be misinterpreted to mean that HUD will accept the first such bid submitted by an owner-occupant purchaser, rather than the bid that overall produces the greatest net return to HUD. Accordingly, this final rule clarifies the language of § 291.205(i).

12. Owner-Occupant Priority During Competitive Sales Process (§ 291.205(j))

This final rule adds a new § 291.205(j), which provides that owner-occupant purchasers will be given priority in those cases where an owner-occupant and an investor purchaser submit identical bids during a competitive sale. Several public commenters recommended that HUD ensure that the transferor will sell the properties to owner-occupants (see the comment captioned ''HUD Should Ensure That Properties Are Sold to Owner-Occupants'' in section IV.B. of this preamble). HUD agrees with the commenters that the sale of single family properties to owner-occupant purchasers is an effective method of promoting affordable homeownership opportunities. In response to these public comments, this final rule provides that if identical bids are submitted by an owner-occupant purchaser and an investor purchaser during a competitive sale, HUD will select the bid submitted by the owner-occupant purchaser. As a result of the addition of new § 291.205(j), proposed §§ 291.205(j) and (k) of the May 29, 1998 proposed rule have been redesignated as §§ 291.205(k) and (l), respectively.

13. Direct Sales to Government Entities and Nonprofit Organizations (§ 291.210(a)(1))

Section 291.210(a) describes the procedures governing the direct sale of properties to governmental entities and private nonprofit organizations. Section 291.210(a)(1) of the May 29, 1998 proposed rule would have changed the existing part 291 regulations by providing for the direct sale of properties to government entities and private nonprofit organizations of all properties located in HUD-designated revitalization areas. However, section 602 of the Departments of Veterans Affairs and Housing and Urban Development, and Independent Agencies Appropriations Act, 1999 (Pub.L. 105–276, 112 Stat. 2461, approved October 21, 1998) (the ''FY 1999 HUD Appropriations Act'') directs HUD to carry out a sales program to local governments and interested private nonprofit organizations in designated revitalization areas. HUD will implement section 602 of the FY 1999 HUD Appropriations Act through a separate rulemaking. Therefore, this final rule does not adopt the language of proposed § 291.210(a)(1). Rather, this final rule uses the language of the existing part 291 regulations, which provides for direct sales of properties without insured mortgages to government entities and private nonprofit organizations, without regard to their location. (For additional discussion regarding section 602 of the FY 1999 HUD Appropriations Act and its relationship to this final rule, please see the discussion of the public comment captioned ''HUD Should Foster Cooperation with Nonprofit, Community Organizations, and Local Governments'' in section IV.B of this preamble.)

As a result of the revision to § 291.210(a)(1), a conforming change has been made to § 291.90, which identifies the various sales methods available to HUD. Specifically, this final rule revises proposed § 291.90(c)(1), which lists direct sales to governmental entities and nonprofit organizations, to specify that such sales will be without mortgage insurance, and to remove the reference to ''HUD designated revitalization areas.''

14. Tiebreakers for Direct Sales to Governments and Nonprofit (§ 291.210(a)(2)(i))

In addition to the change discussed above, this final rule makes another change to the procedures concerning direct sales to government entities and private nonprofit organizations. Specifically, this final rule amends § 291.210(a)(2) to codify existing practice regarding award selection in the case of identical bids submitted by two or more bidders. Section 291.210(a)(2)(i) of this final rule provides that: ''All bids received on the same business day will be considered to have been received simultaneously. In the case of identical bids submitted on the same business day, award will be determined by drawing lots.''

15. Consideration and Inspection Period (§ 291.210(a)(2)(ii))

This final rule also revises § 291.210(a)(2)(ii), which describes the consideration and inspection period for governmental and nonprofit purchasers. Proposed § 291.210(a)(2)(ii) established a fixed 10 day consideration and inspection period. It is not necessary to codify this information in HUD's regulations, since the information is more appropriately included in the bid materials accompanying a particular sale. Further, removal of the fixed time period conforms to the stated goal of this final rule to provide HUD with the necessary flexibility to successfully use a variety of sales methods. Accordingly, this final rule amends § 291.210(a)(2)(ii) to remove the reference to the fixed 10 day period. As revised by this final rule, § 291.210(a)(2)(ii) states that the consideration and inspection period will usually be for ten days from the date of notification of interest, but may be lengthened or shortened by HUD.

IV. Discussion of Public Comments on the May 29, 1998 Proposed Rule

The public comment period for the proposed rule expired on June 29, 1998. HUD received 201 comments, including comments from real estate brokers, agencies, and related associations; vendors in the real estate industry (contractors, title companies, appraisers, etc.); mortgage lending institutions and related institutions and associations; local governments and government agencies; nonprofit organizations; members of Congress; and other commenters. This section of the preamble presents a summary of the significant issues raised by the public commenters on the May 29, 1998 proposed rule, and HUD's responses to these comments.

A. Support for the REO Acquisition Method

Several commenters offered support for the REO acquisition method described in the proposed rule. One commenter asserted that the management of foreclosed homes has been identified by many lenders as a task best contracted to specialists. Some of these commenters wrote that this approach would bring higher prices for the properties and move the properties more quickly. One commenter argued that the REO acquisition method would likely bring HUD's properties to the open market in better condition than through HUD's current sales process, and some commenters expressed confidence that local real estate markets would not be negatively affected, since the transferors would have profit incentives to achieve market prices. Several commenters expressed interest in participating in the future REO acquisition process.

HUD Response. HUD agrees with these commenters that the REO acquisition method is an efficient, and cost-effective process for the disposition of single family properties. The purpose of this final rule is to provide HUD with the flexibility to use a variety of innovative methods in the sale of single

family properties. As already noted in this preamble, HUD agrees that the management and marketing of foreclosed properties also presents an efficient and effective sales method. HUD is amending § 291.90 to refine the policies and procedures governing management and marketing service contracts. Through the use of management and marketing service contracts, the REO acquisition method, or other similar arrangements, HUD believes it will be able to transfer properties it acquires quickly and efficiently and in a manner that allows HUD to achieve its national housing goals.

B. Recommendations for Implementing the REO Acquisition Method Applicable to Other Sales Methods

Many commenters offered suggestions for the successful implementation of the REO acquisition method. Many of the suggestions made by these commenters are not limited to the REO sales method, but are applicable to a variety of disposition methods, including management and marketing contracts. The following presents a summary of the cross-cutting issues raised by these commenters, and HUD's responses to these issues.

Comment: HUD Should Ensure Involvement of Local Brokers. Several commenters recommended that if HUD uses the REO acquisition method, HUD should ensure that the transferor engages in partnerships and otherwise cooperates with local real estate brokers to ensure their continued participation and business viability. Several commenters argued that the involvement of local real estate professionals is the most cost-efficient means of selling properties, because these professionals provide knowledge of the local housing market. Several commenters argued further that the competition among multiple brokers will provide for fair market pricing.

HUD Response. HUD agrees that local real estate professionals can be important contributors to the success of its single family property disposition program. As the commenters note, the expertise provided by these professionals can enhance the efficiency and timeliness of the sales process. HUD has relied on the services of local real estate professionals in the implementation of management and marketing service contracts, and will seek to involve such professionals in the various other sales methods available to HUD, to the extent practicable.

Comment: HUD Should Require Transferors to Use MLS. Several commenters recommended that HUD require the transferors to list all properties on the local multiple listing service (MLS) in order to assure wide access to the properties by the general public. (However, one commenter argued that HUD properties are in such bad condition that they would not be suitable for placement on the MLS.)

HUD Response. HUD agrees that the MLS can be an effective method for informing the public of single family properties that are available for sale. HUD will determine on a case-by-case basis, depending on the specific sales method, whether the use of the MLS is appropriate. HUD intends to use the MLS for sales governed by management and marketing service contracts. HUD believes that the use of the MLS by management and marketing service contractors will ensure the widest possible access to the properties by the general public.

HUD will consider the use of the MLS for other disposition methods, such as the REO acquisition method. HUD may also use other methods to publicize properties available for sale, including the internet, newspapers, and other media determined appropriate by the Secretary.

Comment: HUD Should Foster Cooperation with Nonprofit, Community Organizations, and Local Governments. Several commenters recommended that HUD develop requirements or incentives (such as performance measures) for the REO transferors to work with nonprofit organizations and local governments in the disposition of the properties. Other commenters suggested that local governments and/or nonprofit organizations should be given the right of first refusal for properties located in their areas, or those in revitalization areas, before these properties are acquired by the transferors.

Four commenters recommended that HUD exempt all properties in revitalization areas from the future REO acquisition process. In those areas, the commenters suggested that HUD should sell all properties directly to nonprofit and local governments at discounted prices, so that those entities can then engage in community-based activities such as rehabilitation and homebuyer counseling.

Three commenters suggested that through the disposition of Mission Properties, HUD can implement its missions as an organization, which include neighborhood revitalization, homeownership, and a continuum of care for homeless persons, as well as other efforts such as the Officer Next Door program. The commenters explained that Mission Properties consist primarily of properties in areas of high FHA default and foreclosure rates, or in other areas as designated by the community and HUD. These commenters suggested that HUD should exempt such properties from the future REO acquisition process and sell them directly to nonprofit organizations and local governments at discounted prices.

HUD Response. HUD understands that there are nonprofit organizations, local governments, and other community groups that rely upon HUD-acquired properties as a resource for their housing programs. HUD is committed to continuing its partnership with these groups. As already noted in this preamble, HUD intends to continue to make available a portion of its acquired properties to nonprofit organizations (including homeless providers and nonprofit organizations representing persons with disabilities or other classes of persons protected by the Fair Housing Act) and units of government for use in HUD and local housing or homeless programs.

Additionally, section 602 of the FY 1999 HUD Appropriations Act requires that HUD carry out a program under which HUD-owned homes and mortgages are made available in a manner that promotes expanded homeownership opportunities in designated revitalization areas. Under section 602, the Secretary will designate revitalization areas, in consultation with affected units of general local government and interested nonprofit organizations. Section 602 provides that the Secretary shall provide a preference in the sale of HUD-owned homes and mortgages to nonprofit organizations or to the unit of general local government having jurisdiction in the revitalization area. HUD will implement section 602 of the FY 1999 HUD Appropriations Act through a future rulemaking.

Comment: HUD Should Ensure That Properties Are Sold to Owner-Occupants. Several commenters recommended that HUD ensure that the transferor will sell the properties to owner-occupants (or to nonprofit/local governments that will, in turn, sell to owner-occupants), and not to investors to use as rental properties. Two commenters suggested that this could be accomplished through the assignment of a preference or right of first refusal to owner-occupant purchasers, as well as through particular marketing guidelines. These commenters argued that the REO acquisition method should not undermine HUD's homeownership goals by resulting in a net decrease in homeownership. The commenters argued that HUD must ensure that its sales methods operate consistently with

and in support of HUD's national housing goals.

HUD Response. HUD agrees with the commenters that the sale of single family properties to owner-occupant purchasers is an effective method of promoting affordable homeownership opportunities. For example, this final rule retains the provision found in the existing part 291 regulations that permits HUD to give priority to owner-occupant purchasers in the competitive sales of individual properties (see § 291.205(a)(2)). In response to these public comments, this final rule also provides that HUD will give priority to bids submitted by owner-occupant purchasers during the competitive sales process. Specifically, the rule provides that if identical bids are submitted by an owner-occupant purchaser and an investor purchaser, HUD will select the bid submitted by the owner-occupant purchaser. (See § 291.205(j)). HUD also wishes to note that under the bid procedures established for management and marketing service contracts, priority will be given to owner-occupant purchasers during the initial bid opening period.

C. Specific Recommendations for Implementing the REO Acquisition Method

Many commenters made recommendations specifically applicable to the implementation of the REO acquisition method. HUD appreciates the very helpful and detailed suggestions regarding the implementation of this innovative sales method. At this time, HUD has decided not to amend the May 29, 1998 proposed rule to adopt by regulation the recommendations made by these commenters. HUD does not want to limit its ability to conduct an efficient and effective REO acquisition method by prescribing too much detail through regulation. Instead, HUD prefers to describe its sales methods broadly in order to retain the flexibility granted to HUD by statute, and to leave the details for any sales method to the bid materials.

A summary of the significant issues raised by these commenters is set forth below.

Comment: HUD Should Enter Agreements with More Than One Transferor Per Geographic Region. Several commenters recommended that HUD should enter into agreements with more than one transferor in each geographic region, in order to promote competition and increase access to the properties.

Comment: HUD Should Develop Guidelines to Ensure Affordability. Several commenters recommended that HUD develop a broad set of guidelines to ensure that the transferors controlling the properties continue to make them affordable to homeowners (e.g., through downpayment or closing cost assistance).

Comment: HUD Should Test Future REO Acquisition Method First. Two commenters recommended that HUD test the future REO acquisition method, perhaps in certain test areas, for a limited period of time. If the proposed method works without harming small businesses, homebuyers, or communities, then HUD should phase the proposed method in slowly.

Comment: Structuring the REO Acquisition Process. One commenter stressed that HUD must retain an interest in the properties and a share of the risks and gains in order for the future REO acquisition method to succeed. The commenter noted that a transferor under the future REO acquisition method would be acquiring the pipeline properties ''in a blind manner,'' which represents a potential risk. If HUD retains an interest, and therefore a share of the risk, in the transaction, the commenter asserted that HUD would receive higher bids from the prospective transferors and higher ultimate proceeds. The commenter also noted that the transferor must also have a significant interest in the success of and the goals of the disposition process, to ensure that properties are not ''dumped'' on the market.

One commenter suggested that in implementing the future REO acquisition process, and in determining criteria for choosing the transferors, HUD should emphasize the following factors: (1) The transferors should be well capitalized and have the financial capability to fund their obligations to HUD; (2) the transferors should have well developed systems, policies, procedures, and vendor networks in order to market and sell the properties promptly upon acquisition; (3) the transferors should have plans to maximize the involvement of small and/or disadvantaged businesses; and (4) the transferors should develop a program to screen properties for appropriate referrals to nonprofit and government sponsored housing development agencies.

One commenter offered very specific suggestions for establishing the basis upon which prospective transferors would submit their bids. This commenter expressed a concern that the transferors' profits will depend more upon the speed of sales than the actual selling prices. Therefore, this commenter argued that the transferor may have an incentive to forsake negotiating efforts with the ultimate purchaser. In order to counter that incentive, the commenter suggested that the bids should be based upon a percentage of the selling price.

Comment: Requests for Additional Information. Several commenters sought additional information about how the future REO acquisition method would work. For example, one commenter asked many specific questions, such as how HUD would decide which properties within a geographic region would be included in the acquisition agreement (if not all properties). Another commenter asked how the future REO acquisition method would affect servicers' responsibilities and contractors' duties and authorities.

Again, HUD appreciates all these suggestions and will consider these comments when it determines property should be disposed through the REO acquisition method.

D. Opposition to the REO Acquisition Method

Many of the commenters objected to the future REO acquisition method described in the proposed rule. Most of these commenters equated the proposed process with traditional bulk sales, which they claimed helps only the large wealthy investors, while eliminating homeownership opportunities for low-income and first-time buyers. They also claimed that such bulk ''fire'' sales depress neighborhood property values and otherwise harm neighborhoods.

Comment: HUD Should Continue Using Current Primary Method of Sale. Many commenters urged HUD to continue using its current primary method of selling its inventory of properties—competitive sales of individual properties to individuals. These commenters argued that the current method of sale is better than the proposed future REO acquisition method for several reasons, as described below.

1. Future REO Acquisition Method Would Eliminate Homeownership Opportunities

Many commenters argued that the future REO acquisition method would eliminate homeownership opportunities for low-income families, which is an important part of HUD's mission. Many of these commenters asserted that through altering FHA guidelines in the sale of HUD properties, HUD can provide homeownership assistance through reduced downpayments and closing costs. These commenters argued that under the future REO acquisition method, title to the properties would be

passed to a separate entity, and HUD would not be able to change the FHA guidelines to provide such assistance. These commenters argued that the future REO acquisition method would provide huge profits to large investors, but would eliminate homeownership opportunities for low-income families.

2. Future REO Acquisition Method Would Result in Lower Returns

Several commenters argued that the future REO acquisition method would result in deeply discounted wholesale prices to investment companies, reducing the return to HUD, and therefore to the taxpayers. Some commenters argued that the competitive bidding process under the current sales method results in the highest possible return to HUD.

Several commenters asserted that the future REO acquisition method would also result in lower ultimate sales prices that would contribute to the depreciation of the property values in the surrounding neighborhoods. Alternatively, other commenters argued that the ultimate sales prices would increase due to the profit motivations of the transferors, making homeownership more difficult for lower income buyers.

3. HUD Staff Can Sell Properties Faster and at Lower Cost Than Contractors

Several commenters argued that, as compared to outside contractors, HUD Single Family staff in its local offices can facilitate the sale of properties faster and at lower cost than outside contractors. These commenters argued, therefore, that HUD should not shift property disposition functions to such contractors.

HUD Response. In response to all three groups of commenters, HUD continues to believe that the REO acquisition method described in the May 29, 1998 proposed rule is an effective, timely, and cost-efficient method for the disposition of HUD-acquired single family properties, and therefore retains this sales method in the part 291 regulations. In addition, HUD has refined the procedures that govern management and marketing service contracts. Again, the purpose of amending HUD's part 291 regulations is to notify the public that there is no principal or primary sales method to which HUD must adhere.

This final rule codifies the proposal of the May 29, 1998 proposed rule that HUD has the discretion to use other methods of sale in addition to the REO acquisition method, including the competitive sales to individuals preferred by the commenters, direct sales, and other sales as determined necessary by the Secretary. At present, HUD has decided to concentrate its efforts on competitive sales to individuals through the use of management and marketing contracts. However, HUD retains the option to use the REO acquisition method at any time. HUD will consider the issues raised by these commenters during the development of any future REO sales method.

Comment: Future REO Acquisition Process Would Result in Decreased Rehabilitation. Two commenters argued that although the future REO acquisition method may result in a rapid sale of properties, the large investors that participate in the process would have an economic disincentive to expend resources on rehabilitation. The commenters argued that under the proposed sales method, HUD would have limited control of the rehabilitation performed on these homes, which are often physically distressed. The commenters argued that the transferors would simply perform minimal cosmetic repairs that would prepare the homes as rental properties.

HUD Response. HUD believes that the REO acquisition method is an innovative and effective method for the sale of HUD-acquired single family properties. At the present time, HUD is planning to rely on management and marketing service contracts. HUD, however, has the discretion to use the REO acquisition method or other sales methods when it believes that a particular method(s) is appropriate given the circumstances faced by HUD in economically and efficiently disposing of properties and meeting its national housing goals.

Comment: Future REO Acquisition Process Would Hurt Small Businesses. Several commenters argued that the future REO acquisition process would hurt small businesses (particularly real estate brokers) by eliminating them from HUD's disposition process. The commenters argued that although a few large companies would profit, many small real estate brokers would suffer. Some of these commenters remarked that small investors would also be effectively prohibited from participating in the future REO acquisition method, considering the magnitude of the transactions.

HUD Response. Before publication of the May 29, 1998 proposed rule, HUD performed an analysis on the impact the future REO acquisition method would have on small businesses that do business with HUD, such as real estate brokers. Based on this analysis, HUD determined that the REO acquisition method described in the rule would not have a significant economic impact on a substantial number of small entities (see 63 FR 29496, 29499).

In analyzing the impact of the REO acquisition method on small entities, HUD noted that a transferor under the REO sales arrangement may use a sales process similar to HUD's competitive sales process, in which case a number of the entities that would continue to be involved in the ultimate sales of the properties would be small entities. Further, in an effort to mitigate any potential impact on small entities, HUD would encourage the transferor(s) to use small local firms to assist in their disposal of single family acquired properties.

The May 29, 1998 proposed rule also noted that while HUD sells in excess of 50,000 properties each year, this volume of property sales represents only a small percentage of the total number of home sales nationwide. During fiscal year 1997, the sale of HUD homes represented only 1.2 percent of total home sales, using only 1.6 percent of the active selling brokers. Since HUD's home sales are a very small portion of the overall home sales business, the economic impact of the REO acquisition method would not be significant, and it would not affect a substantial number of small entities.

Comment: Shifting HUD Work to Contractors. Several commenters objected to the proposed rule because it would unnecessarily shift FHA Single Family work to contractors. One of these commenters argued that shifting property management and disposition functions to a private entity would clearly violate OMB Circular A–76, ''which permits alternative methods of performing an activity only if it can be carried out at a lower cost than in-house performance.'' One of these commenters asserted that HUD is relying upon a centralization pilot to support its argument that the future REO acquisition method would result in faster processing with no loss in customer service. The commenter asserted that most of the observed improvement was not a result of the pilot, but rather a result of a decrease in FHA refinancing volume and a reduction in quality reviews. One of the commenters asserted that HUD itself is jeopardizing its property disposition performance through downsizing.

These commenters also pointed to a comparison between HUD's Denver staff and outside contractors, and concluded that HUD's staff transferred properties more quickly and at lower costs than the contractors. One commenter argued further that any savings in personnel costs anticipated through the use of the

future REO acquisition method would be offset by the cost of personnel necessary to oversee the disposition process properly and to perform accounting functions. Another commenter argued that the disposition of HUD properties is an optimal function for the new community builder storefronts, since the commenter claimed that most of the public's knowledge of HUD, and most of the traffic in the new storefronts, consists of interest in HUD homes.

HUD Response. HUD does not agree with the assertions made by these commenters, and believes that the REO acquisition method is an efficient and cost-effective method for the disposition of HUD-acquired single family properties and of meeting national housing goals. As described in the preamble to the proposed rule, HUD anticipates that entities interested in participating in the future REO acquisition method will be experienced in high-volume property sales. Competition among interested entities would enhance this benefit and result in maximum efficiency and return. (See 63 FR 29496, 29497.)

Comment: An Invitation for Fraud and Corruption. Several commenters asserted that since only the largest investors (or bidding teams) would be capable of participating in the future REO acquisition method, competition would be minimized. Some of these commenters concluded that the magnitude of the proposed transactions would present an overwhelming opportunity for fraud and corruption. One commenter asserted that, due to downsizing, HUD would be even less capable of monitoring contractor performance.

HUD Response. HUD agrees with these commenters that should the Department pursue any future REO sales methods, appropriate safeguards will be put in place to minimize the opportunity for fraud and corruption.

Comment: HUD Violated Policy Regarding 60-Day Comment Period. One commenter argued that HUD violated its general policy in 24 CFR part 10 of providing the public 60 days to comment on proposed rules. The commenter argued that HUD provided an insufficient basis for shortening the comment period to 30 days.

HUD Response. HUD recognizes the value and importance of public comment in the regulatory process. HUD has invited public comment at every stage of the development of the amendments made effective by this final rule. HUD provided the public with notice and an opportunity to comment on innovative sales procedures in the advance notice of proposed rulemaking published in the **Federal Register** on June 13, 1997 (62 FR 32251). HUD also sought public input by publishing a notice in several prominent newspapers and business journals. In order to provide the fullest and most expedient access to the provisions of the May 29, 1998 proposed rule, HUD made it available on the HUD Home Page on the World Wide Web at http://www.hud.gov, on the date of its publication in the **Federal Register**. HUD also directly notified entities that had expressed a significant interest to HUD by sending such entities a copy of the May 29, 1998 proposed rule.

E. Other Recommendations

Comment: HUD Should Develop Sales Process Modelled on Freddie Mac/HomeSteps. Many commenters urged HUD to work with Freddie Mac in order to develop a property disposition process similar to Freddie Mac's HomeSteps program. Three commenters, however, criticized disposition programs such as Freddie Mac's, claiming that the required use of professionals in the ''network'' stifles competition (and is in violation of RESPA, according to two of the commenters). Two of the commenters also argued that the properties in such programs do not sell as quickly as HUD's.

HUD Response: As noted above, one of the purposes of this final rule is to provide HUD with the necessary flexibility to use a variety of sales methods for the disposition of HUD-acquired single family properties. Under § 291.90(e) of this rule, HUD has the authority to use any sales methods as determined necessary by the Secretary. At this time, HUD has decided not to implement a sales method modelled on the Freddie Mac HomeSteps program.

Comment: Property Disposition Pilot Program/Golden Feather Realty. Many commenters praised the management and marketing pilot program for property disposition that HUD is conducting in Baltimore, New Orleans, and Sacramento, describing it as ''a public/private partnership that works.'' In particular, many commenters commended Golden Feather Realty and its performance under the pilot program in Baltimore. These commenters complimented Golden Feather on its efficiency—homes sell quickly, with higher sales prices, saving HUD $8.6 million. One commenter asserted that Golden Feather has increased the awareness of and interest in the program through advertising and classes. These commenters suggested that HUD expand this program nationwide and use it as its primary sales method.

One commenter stressed that HUD should not, in implementing its proposed future REO acquisition method, adversely affect the current and pending management and marketing contracts in these pilot cities.

One commenter, however, asserted that nonprofit organizations have not been able to participate in the acquisition of a significant number of properties in these areas. The commenter suggested that in future management and marketing contracts HUD should set goals to ensure significant participation by nonprofit, along with appropriate discounts on the properties.

HUD Response. As discussed above, HUD has decided to refine the procedures relating to management and marketing service contracts in the part 291 regulations, given the success of this pilot program and the public comments praising this sales method. Under the management and marketing process, HUD will contract the REO management and sales function to experienced companies located in areas that correspond to HUD's Homeownership Centers. Following the selection of the management and marketing contractors, the individual acquired single family properties will be sold to individuals, including nonprofit organizations and government entities. HUD believes that the use of such innovative methods as management and marketing contracts, the REO acquisition method, and other sales methods will result in prompt delivery of HUD-acquired single family properties to the sales market; minimize losses to the FHA insurance fund; and keep the cost of mortgage insurance low.

In response to the commenter who asserted that nonprofits have not been able to meaningfully participate in the acquisition of properties, HUD notes that in FY 1998 nonprofit organizations/governments played a significant role in the management and marketing pilot program (acquiring 102 properties in Baltimore, 75 properties in New Orleans, and 105 properties in Sacramento).

Comment: Improve Upon Current Disposition Process. Several commenters suggested that HUD seek to improve upon its current disposition process, rather than abandoning it. For example, three commenters suggested that HUD should establish routine procedures for inspecting and appraising the properties, disclosing deficiencies, repairing the properties, and/or providing repair escrow when necessary. Another commenter

recommended that HUD should organize a broker committee with direct input at the local level. Two commenters suggested that HUD should develop an effective ''back-up'' process, so that if the first bid falls through (e.g., due to lack of financing), the property can go to the back-up bidder. One commenter wrote that HUD should establish minimum acceptable bids for the properties. Another commenter recommended that HUD should reduce the number of personnel in the property disposition process.

Several of these comments focused on HUD's use of media in informing the public of the availability of properties. For example, several commenters wrote that HUD should rely more heavily upon the Internet for listing the properties, and otherwise make better use of new technology. Another commenter suggested that HUD should rely on its employees and use all other tools available (online multiple listing services, television, direct mail, community builders) to speed up the property disposition process. One commenter recommended that HUD should resume the practice of advertising HUD listings in local newspapers, rather than just by facsimile (FAX), since small businesses do not always have fax machines.

HUD Response. HUD agrees that changes to the current competitive sales method for individual properties were necessary to make the program more efficient and cost effective, and permit HUD to meet its national housing goals. HUD has adopted several of these comments and has modified its competitive sales procedures as described in section III of this preamble. It is anticipated that with these modifications, properties will be listed and returned to private homeownership more quickly. In addition, HUD believes its expanded use of management and marketing contracts will improve the efficiency and cost-effectiveness of its competitive sales of individual properties.

Comment: Concentrate on Reducing Defaults/Foreclosures. Three commenters urged HUD to concentrate on reducing the number of loans that go into default and foreclosure. One commenter suggested that HUD review the FHA underwriting guidelines. Two commenters asserted that HUD should develop a comprehensive counseling and default mitigation program. One commenter argued that the future REO acquisition method would actually reduce the effectiveness of HUD's loss mitigation efforts by reducing appraised market values in affected neighborhoods.

HUD Response. Over the past few years, legislation has been enacted that provides HUD with several effective loss mitigation tools. HUD continues to encourage lenders to mitigate losses, and to make efficient use of available loss mitigation techniques.

V. Nondiscrimination Requirements

As noted in the May 29, 1998 proposed rule, HUD's responsibilities and priorities include ensuring compliance with applicable nondiscrimination requirements, such as the Americans with Disabilities Act, section 504 of the Rehabilitation Act of 1973, and the Fair Housing Act. With regard to the disposition of single family properties in HUD's inventory, all resales by public entities are subject to compliance with Title II of the Americans with Disabilities Act. All resales by both public and private entities are subject to compliance with the Fair Housing Act.

In addition, HUD must comply with section 504 of the Rehabilitation Act of 1973, which requires nondiscrimination based on disability in programs or activities conducted by any executive agency. HUD regulations implementing this requirement are in 24 CFR part 9. Under § 9.155(a) of those regulations, HUD must ensure that its Property Disposition Program policies and practices do not discriminate on the basis of disability, against a qualified individual with disabilities. HUD will take appropriate steps to ensure effective communication with applicants, participants, personnel of other Federal entities, and members of the public. HUD will provide appropriate auxiliary aids as necessary to afford an individual with disabilities an equal opportunity to participate in this program.

VI. Findings and Certifications

Executive Order 12866

The Office of Management and Budget (OMB) reviewed this rule under Executive Order 12866, *Regulatory Planning and Review.* OMB determined that this rule is a ''significant regulatory action,'' as defined in section 3(f) of the Order (although not economically significant, as provided in section 3(f)(1) of the Order). Any changes made to the final rule subsequent to its submission to OMB are identified in the docket file, which is available for public inspection in the office of the Department's Rules Docket Clerk, Room 10276, 451 Seventh Street, SW, Washington, DC 20410–0500.

Environmental Impact

A Finding of No Significant Impact with respect to the environment was made at the proposed rule stage in accordance with HUD regulations in 24 CFR part 50 that implement section 102(2)(C) of the National Environmental Policy Act of 1969 (42 U.S.C. 4223). That finding continues to be applicable to this final rule and is available for public inspection between 7:30 a.m. and 5:30 p.m. weekdays in the Office of the Rules Docket Clerk, Office of General Counsel, Room 10276, Department of Housing and Urban Development, 451 Seventh Street, SW, Washington, DC.

Regulatory Flexibility Act

The Secretary, in accordance with the Regulatory Flexibility Act (5 U.S.C. 605(b)), has reviewed this final rule before publication and by approving it certifies that this rule would not have a significant economic impact on a substantial number of small entities.

(1) No Significant Economic Impact

The amendments made by this final rule will not result in a significant economic impact on a substantial number of small entities. During fiscal year 1997, the sale of HUD homes represented only 1.2 percent of total home sales, using only 1.6 percent of the active selling brokers. Since HUD's home sales are a very small portion of the overall home sales business, the economic impact of this rule would not be significant, and it would not affect a substantial number of small entities.

(2) A Substantial Number of Small Entities Will Not Be Affected

HUD has determined that there are approximately 18,000 small entities that could be affected by this rule, including nonprofit organizations, State and local governments, Real Estate Asset Managers (REAMs), real estate brokers, selling agents, closing agents, and repair contractors. The number of entities potentially affected by this rule is not substantial, and any potential economic impact would not be significant.

Under many of the sales methods described in this final rule, such as the REO acquisition method and management and marketing contracts, it is likely that small entities would continue to be involved in the ultimate sales of the properties. For example, a transferor under the REO acquisition process may use a sales process similar to the process. Management and marketing contractors will continue to conduct competitive sales to individuals. Additionally, in an effort to mitigate any potential impact on small entities, HUD will encourage the use of

small local firms to assist in the disposal of single family acquired properties. Under the management and marketing pilot program, 99 percent of the funds spent on subcontracting went to small businesses providing services such as lawn cutting, debris removal, cleaning, and repairs.

Executive Order 12612, Federalism

The General Counsel, as the Designated Official under section 6(a) of Executive Order 12612, *Federalism*, has determined that the policies contained in this rule would not have substantial direct effects on States or their political subdivisions, on the relationship between the Federal Government and the States, or on the distribution of power and responsibilities among the various levels of government. This rule simply allows HUD to use innovative methods of selling its inventory of single family homes. As a result, this rule is not subject to review under the Order.

Unfunded Mandates Reform Act

Title II of the Unfunded Mandates Reform Act of 1995 (Pub. L. 104–4; approved March 22, 1995) (UMRA) establishes requirements for Federal agencies to assess the effects of their regulatory actions on State, local, and tribal governments, and the private sector. This rule does not impose any Federal mandates on any State, local, or tribal governments, or on the private sector, within the meaning of the UMRA.

List of Subjects in 24 CFR Part 291

Community facilities, Conflict of interests, Homeless, Lead poisoning, Low and moderate income housing, Mortgages, Reporting and recordkeeping requirements, Surplus government property.

Accordingly, for the reasons stated in the preamble, 24 CFR part 291 is amended as follows:

PART 291—DISPOSITION OF HUD-ACQUIRED SINGLE FAMILY PROPERTY

1. The authority citation for 24 CFR part 291 is revised to read as follows:

Authority: 12 U.S.C. 1701 *et seq.*; 42 U.S.C. 1441, 1441a, 1551a, and 3535(d).

2. In part 291, subparts A, B, and C are revised to read as follows:

Subpart A—General Provisions

Sec.
291.1 Purpose and general requirements.
291.5 Definitions.
291.10 General policy regarding rental of acquired property.

Subpart B—Disposition by Sale

291.90 Sales methods.
291.100 General policy.

Subpart C—Sales Procedures

291.200 Future REO acquisition method.
291.205 Competitive sales of individual properties.
291.210 Direct sales procedures.

Subpart A—General Provisions

§ 291.1 Purpose and general requirements.

(a) *Purpose.* (1) This part governs the disposition of one-to-four family properties acquired by the Federal Housing Administration (FHA) through foreclosure of an insured or Secretary-held mortgage or loan under the National Housing Act, or acquired by HUD under section 312 of the Housing Act of 1964. HUD will issue detailed policies and procedures that must be followed in specific areas.

(2) The purpose of the property disposition program is to dispose of properties in a manner that expands homeownership opportunities, strengthens neighborhoods and communities, and ensures a maximum return to the mortgage insurance funds.

(b) *Nondiscrimination policy.* The requirements set forth in 24 CFR parts 5 and 110 apply to the administration of any activity under this part. In addition, in accordance with 24 CFR 9.155(a), HUD must ensure that its policies and practices in conducting the single family property disposition program do not discriminate on the basis of disability.

§ 291.5 Definitions.

(a) The term *Secretary* is defined in 24 CFR part 5.

(b) Other terms used in this part are defined as follows:

Competitive sale of individual property means a sale of an individual property to an individual bidder through a sealed bid process (or other bid process specifically authorized by the Secretary) in competition with other bidders in which properties have been publicly advertised to all prospective purchasers for bids.

Direct sale means a sale to a selected purchaser to the exclusion of all others without resorting to advertising for bids. Such a sale is available only to approved applicants.

Eligible properties means HUD-acquired properties designated by HUD for property disposition or other housing programs.

HUD means the Department of Housing and Urban Development or its contractor, as appropriate.

Insured mortgage means a mortgage insured under the National Housing Act (12 U.S.C. 1701 *et seq.*).

Investor purchaser means a purchaser who does not intend to use the property as his or her principal residence.

Owner-occupant purchaser means a purchaser who intends to use the property as his or her principal residence; a State, governmental entity, tribe, or agency thereof; or a private nonprofit organization as defined in this section. Governmental entities include those with general governmental powers (e.g., a city or county), as well as those with limited or special powers (e.g., public housing agencies).

Private nonprofit organization means a secular or religious organization, no part of the net earnings of which may inure to the benefit of any member, founder, contributor, or individual. The organization must:

(1) Have a voluntary board;

(2)(i) Have a functioning accounting system that is operated in accordance with generally accepted accounting principles; or

(ii) Designate an entity that will maintain a functioning accounting system for the organization in accordance with generally accepted accounting principles;

(3) Practice nondiscrimination in the provision of assistance in accordance with the authorities described in § 291.435(a); and

(4) Have nonprofit status as demonstrated by approval under section 501(c)(3) of the Internal Revenue Code (26 U.S.C. 501(c)(3)), or demonstrate that an application for such status is currently pending approval.

State means any of the several States, the District of Columbia, the Commonwealth of Puerto Rico, the Virgin Islands, Guam, American Samoa, the Northern Mariana Islands, the Trust Territory of the Pacific Islands, and any other territory or possession of the United States.

Tribe has the meaning provided for the term ''Indian tribe'' in section 102 of the Housing and Community Development Act of 1974 (42 U.S.C. 5302).

§ 291.10 General policy regarding rental of acquired property.

HUD will lease acquired property to comply with other designated HUD programs, or when the Secretary determines that it is in the interest of HUD. Leases may include an option to purchase in appropriate circumstances.

Subpart B—Disposition by Sale

§ 291.90 Sales methods.

HUD will prescribe the terms and conditions for all methods of sale. HUD may, in its discretion, on a case-by-case basis or as a regular course of business, choose from among the following methods of sale:

(a) *Future REO acquisition method.* The Future Real Estate-Owned (REO) acquisition method consists of a property acquisition agreement (or agreements) between HUD and a transferor (or transferors), which shall provide for the right and obligation of the transferor(s) to acquire a future quantity of properties designated by HUD as they become available. HUD will select such transferor(s) through a competitive process, in accordance with all applicable laws and regulations, including the requirements in § 291.200. The transferor(s) shall have the right and obligation to manage and dispose of the properties upon such terms and conditions as are approved by the Secretary;

(b) *Competitive sales of individual properties.* This method consists of competitive sales of individual properties to individual buyers, the procedures for which are described in § 291.205;

(c) *Direct sales methods.* There are three types of direct sales methods:

(1) Direct sales of properties without insured mortgages to governmental entities and private nonprofit organizations, the procedures for which are described in § 291.210(a);

(2) Direct sales to displaced persons, sales of razed lots, or auctions, the procedures for which are described in § 291.210(b);

(3) Direct sales to other individuals or entities that do not meet any of the categories specified in paragraphs (a) through (d) of this section, under the circumstances and procedures described in § 291.210(c);

(d) *Bulk sales,* the procedures for which are described in § 291.210(d); or

(e) *Other sales methods.* HUD may select any other methods of sale, as determined by the Secretary.

§ 291.100 General policy.

For all sales, except as otherwise specifically indicated, those sales conducted in accordance with §§ 291.90(a) and 291.200 or with subpart D of this part, the following general policies apply:

(a) *Qualified purchaser.* (1) Anyone, including a purchaser from a transferor of a property pursuant to §§ 291.90(a) and 291.200, regardless of race, color, religion, sex, national origin, familial status, age, or disability may offer to buy a HUD-owned property, except that:

(i) No member of or delegate to Congress is eligible to buy or benefit from a purchase of a HUD-owned property; and

(ii) No nonoccupant mortgagor (whether an original mortgagor, assumptor, or a person who purchased ''subject to'') of an insured mortgage who has defaulted, thereby causing HUD to pay an insurance claim on the mortgage, is eligible to repurchase the same property.

(2) Neither HUD nor any transferor pursuant to §§ 291.90(a) or 291.200 will offer former mortgagors in occupancy who have defaulted on the mortgage the right of first refusal to repurchase the same property.

(3) HUD will offer tenants accepted under the occupied conveyance procedures outlined in 24 CFR 203.670 through 203.685 the right of first refusal to purchase the property only if:

(i) The tenant has a recognized ability to acquire financing and a good rent-paying history, and has made a request to HUD to be offered the right of first refusal; or

(ii) State or local law requires that tenants be offered the right of first refusal.

(b) *List price.* The list price, or ''asking price,'' assigned to the property is based upon an appraisal conducted by an independent real estate appraiser using nationally recognized industry standards for the appraisal of residential property.

(c) *Insurance.* Properties may be sold under the following programs:

(1) *Insured.* A property that meets the Minimum Property Standards (MPS), as determined by the Secretary, for existing dwellings (Requirements for Existing Housing, One to Four Family Living Units, HUD Handbook 4905.1, which is available at the Department of Housing and Urban Development, HUD Customer Service Center, 451 7th Street, SW, Room B–100, Washington, DC 20410; by calling (202) 708–3151; or via the Internet at www.hud.gov) will be offered for sale in ''as-is'' condition with FHA mortgage insurance available. Flood insurance must be obtained and maintained as provided in 24 CFR 203.16a.

(2) *Insured with repair escrow.* A property that requires no more than $5,000 for repairs to meet the MPS, as determined by the Secretary, will be offered for sale in ''as-is'' condition with FHA mortgage insurance available, provided the mortgagor establishes a cash escrow to ensure the completion of the required repairs.

(3) *Uninsured.* A property that fails to qualify under either paragraph (c)(1) or (c)(2) of this section will be offered for sale either in ''as-is'' condition without mortgage insurance available, or in ''as-is'' condition under section 203(k) of the National Housing Act (12 U.S.C. 1709(k)).

(d) *Financing.* (1) Except as provided in paragraph (d)(2) of this section, the purchaser is entirely responsible for obtaining financing for purchasing a property.

(2) HUD, in its sole discretion, may take back purchase money mortgages (PMMs) on property purchased by governmental entities or private nonprofit organizations who buy property for ultimate resale to owner-occupant purchasers with incomes at or below 115 percent of the area median income. When offered by HUD, a PMM will be available in an amount determined by the Secretary to be appropriate, at market rate interest, for a period not to exceed 5 years. Mortgagors must meet FHA mortgage credit standards.

(3) *Purchase money mortgage (PMM).* For purposes of this section, the term ''purchase money mortgage,'' or *PMM* means a note secured by a mortgage or trust deed given by a buyer, as mortgagor, to the seller, as mortgagee, as part of the purchase price of the real estate.

(e) *Environmental requirements and standards.* Sales under this part are subject to the environmental requirements and standards described in 24 CFR part 50, as applicable.

(f) [Reserved]

(g) *Lead-based paint poisoning prevention.* Properties constructed before 1978 are subject to the requirements for the evaluation and reduction of lead-based paint hazards contained in 24 CFR part 35 and 24 CFR part 200, subpart O.

(h) *Listings.* Any real estate broker who has agreed to comply with HUD requirements may participate in the sales program. Purchasers participating in the competitive sales program, except government entities and nonprofit organizations, must submit bids through a participating broker.

(1) *Open listings.* Except as provided in paragraph (h)(2) of this section, properties are sold on an open listing basis with participating real estate brokers.

(2) *Asset management and listing contracts.* (i) A local HUD office may invite firms experienced in property management to compete for contracts that provide for an exclusive right to manage and list specified properties in a given area.

(ii) In areas where a broker has an exclusive right to list properties, a purchaser may use a broker of his or her choice. The purchaser's broker must submit the bid to HUD through the exclusive broker.

Subpart C—Sales Procedures

§ 291.200 Future REO acquisition method.

(a) Under this method of property disposition, HUD will enter into a property acquisition agreement (or agreements) with a transferor (or transferors), which shall provide for the right and obligation of the transferor(s) to acquire a future quantity of properties designated by HUD as they become available. The transferor(s) will be selected through a competitive process, conducted in accordance with applicable laws. HUD will negotiate the specific terms of the property acquisition agreement(s) with the selected transferor(s). The properties will be available on an ''as-is'' basis only, without repairs or warranties.

(b) *Eligible entities.* An individual, partnership, corporation, or other legal entity will not be eligible to participate in this process if at the time of the sale, that individual or entity is debarred, suspended, or otherwise precluded from doing business with HUD under 24 CFR part 24.

§ 291.205 Competitive sales of individual properties.

When HUD conducts competitive sales of individual properties to individual buyers, it will sell the properties on an ''as-is'' basis, without repairs or warranties, and it will follow the sales procedures provided in this section.

(a) *General.* (1) Properties that are sold on an individual competitive bid basis are sold through local real estate brokers, except as provided in § 291.100(h).

(2) For properties being offered with insured mortgages, priority will be given to owner-occupant purchasers, as defined in § 291.5, for a period of up to 30 days, as determined by HUD. For properties offered without insured mortgages, priority will be given to governmental entities and nonprofit organizations prior to other owner-occupant purchasers.

(b) *Net offer.* (1) The net offer is calculated by subtracting from the bid price the dollar amounts for the financing and loan closing costs and the broker's sales commission, as described in paragraph (b)(2) of this section.

(2) If requested by the purchaser in the bid, HUD will pay all or a portion of the financing and loan closing costs and the broker's sales commission, not to exceed the percentage of the purchase price determined appropriate by the Secretary for the area. In no event will the total amount for broker's sales commission exceed 6 percent of the purchase price, except for cash bonuses offered to brokers by HUD for the sale of hard-to-sell properties.

(c) *Acceptable bid.* HUD will accept the bid producing the greatest net return to HUD and otherwise meeting the terms of HUD's offering of the property, with priority given to owner-occupant purchasers as described in paragraph (a)(2) of this section. The greatest net return is calculated based on the net offer, as described in paragraph (b) of this section.

(d) *Bid period.* (1) HUD will establish a bid period for properties available for sale. Generally, the bid period will be 10 days, but may be lengthened or shortened by HUD. After properties are initially advertised, bids may be submitted by all potential purchasers. However, in the case of properties offered with insured mortgages, HUD may give priority to owner-occupant purchasers for a period of up to 30-days, as described in paragraph (a)(2) of this section.

(2) HUD may treat all bids received during a specified period of time during the bid period to have been received simultaneously. HUD may also choose to review bids on a daily basis, with all bids submitted during each day considered to have been received simultaneously. HUD may use either (or both) of these methods during the bid period, as described in the bid materials accompanying a particular sale.

(3) Offers received on a property before the bid period begins will be returned. Offers received after the bid period will not be considered at the bid opening, but will be considered during the extended listing period if no acceptable bid was received during the bid period (see paragraph (f) of this section).

(e) *Full price offers.* HUD local offices that operate under a ''full price offer'' program open offers at specified times during the bid period. If an offer for the full list price and otherwise meeting the terms of the offering is received, it will be accepted at the time of the opening and the bid period cancelled.

(f) *Extended listing period.* Properties not sold during the bid period will remain available for an extended listing period. All bids received on each day of the extended listing period will be considered as being received simultaneously, and will be opened together at the next scheduled daily bid opening. Properties that fail to sell within 45 days after being offered for competitive bidding will be reanalyzed and made available for sale. If a property's price or terms are changed, it may be subject to another competitive bid period as described in paragraph (d) of this section.

(g) *Bid requirements.* (1) All successful bids submitted, whether during the bid period or the extended listing period, must be in a form prescribed by HUD, and must be submitted in accordance with procedures established by HUD. If the purchase is to be an insured sale, a local HUD office may also require that supporting exhibits for mortgage credit analysis accompany the initial submission of the bid. All bids not indicating that the purchaser will occupy the property will be considered as offers from investor purchasers.

(2) Noncomplying bids will be returned to the broker with an explanation for the noncompliance decision and information about whether the property is still available.

(h) *Earnest money deposits.* (1) The amount of earnest money deposit required for a property with a sales price of $50,000 or less is $500, except that for vacant lots the amount is 50 percent of the list price. For a property with a sales price greater than $50,000, the amount of earnest money deposit required in the area is set by the local HUD office, in an amount not less than $500 or more than $2,000. Information on the amount of the required earnest money deposit is available from the local HUD office or participating real estate brokers.

(2) All bids must be accompanied by earnest money deposits in the form of a cash equivalent as prescribed by the Secretary, or a certification from the real estate broker that the earnest money has been deposited in the broker's escrow account. If a bid is accepted by HUD, the earnest money deposit will be credited to the purchaser at closing; if the bid is rejected, the earnest money deposit will be returned. Earnest money deposits are subject to total or partial forfeiture for failure to close a sale.

(i) *Multiple bids.* Real estate brokers may submit unlimited numbers of bids on an individual property provided each bid is from a different prospective purchaser. If a purchaser submits multiple bids on the same property, only the bid producing the highest net return to HUD will be considered. If a prospective owner-occupant purchaser submits a bid on more than one property, the bid that produces the greatest net return to HUD will be accepted and all other bids from that purchaser will be eliminated from

consideration. However, if the prospective owner-occupant purchaser has submitted the only acceptable bid on another property, then that bid must be accepted and all other bids from that purchaser on any other properties will be eliminated from consideration.

(j) *Identical bids.* In the case of identical bids submitted by an owner-occupant purchaser and an investor purchaser, HUD will select the bid submitted by the owner-occupant purchaser. If identical bids are submitted by two or more owner-occupant purchasers, or by two or more investor purchasers, award will be determined by drawing lots.

(k) *Opening the bids.* Unless the Secretary specifically authorizes another bid process:

(1) The successful bids will be opened publicly at a time and place designated by the local HUD office.

(2) Successful bidders will be notified through their real estate brokers by mail, telephone, or other means. Information regarding losing bids will also be made available either through electronic posting or by contacting the local HUD office. Acceptance of a bid is final and effective only upon HUD's execution of the sales contract, signed by both the submitting real estate broker and the prospective purchaser, and mailing of a copy of the executed contract to the successful bidder or the bidder's agent.

(l) *Counteroffers.* If all bids received on a property are unacceptable, a local HUD office may notify all bidders or their brokers that HUD will accept an offer equalling a predetermined net acceptable price. Bidders must submit an acceptable offer before the established bid cut-off period, to be determined by the local HUD office. The highest acceptable offer received within the specified period of time, including any offer received from a bidder who did not submit a bid during the bid period, will be accepted, thus terminating the counteroffer negotiations.

§ 291.210 Direct sales procedures.

When HUD conducts the sales listed in § 291.90(c), it will sell the properties on an ''as-is'' basis, without repairs or warranties, and it will follow the applicable sales procedures provided in this section.

(a) *Direct sales of properties without insured mortgages to governmental entities and private nonprofit organizations.* (1) State and local governments, public agencies, and qualified private nonprofit organizations that have been preapproved to participate by HUD, according to standards determined by the Secretary, may purchase properties directly from HUD at a discount off the list price determined by the Secretary to be appropriate, but not less than 10 percent, for use in HUD and local housing or homeless programs.

(2)(i) Purchasers under paragraph (a)(1) of this section must designate geographical areas of interest by ZIP code. Upon request, before those properties without insured mortgages are publicly listed, HUD will assure that governmental entities and nonprofit organizations are notified in writing when eligible properties become available in the areas designated by them. HUD will coordinate the dissemination of the information to ensure that if more than one purchaser designates a specific area, those purchasers receive the list of properties at the same time, based on intervals agreed upon between HUD and the purchasers. A property in this section will be sold to the first eligible purchaser submitting an acceptable contract. All bids received on the same business day will be considered to have been received simultaneously. In the case of identical bids submitted on the same business day, award will be determined by drawing lots.

(ii) Purchasers under paragraph (a)(1) of this section must notify HUD of preliminary interest in specific properties within 5 days of the notification of available properties (if notification is by mail, the 5 days will begin to run 5 days after mailing). HUD will provide a consideration and inspection period for these purchasers. The consideration and inspection period will usually be for ten days from the date of notification of interest, but may be lengthened or shortened by HUD, as appropriate. Those properties in which purchasers express an interest will be held off the market for the duration of the consideration and inspection period. Other properties on the list will continue to be processed for public sale. HUD may limit the number of properties held off the market for a purchaser at any one time, based upon the purchaser's financial capacity as determined by HUD and upon past performance in HUD programs. At the end of the consideration and inspection period, properties in which no governmental entity or nonprofit organization has expressed a specific intent to purchase will be offered for sale under the competitive bid process. Properties in which a governmental entity or nonprofit organization expressed an intent to purchase, during the consideration and inspection period, will continue to be held off the market pending receipt of the sales contract. If a sales contract is not received within a time period of up to 10 days, as determined by HUD, following expiration of the consideration and inspection period, and no other governmental entity or nonprofit organization has expressed an interest, then the property will be offered for sale under the competitive bid process.

(3) In order to ensure that properties purchased at a discount are being utilized for expanding affordable housing opportunities, HUD may require, as appropriate, periodic, limited information regarding the purchase and resale of such properties, and certain restrictions on the resale of such properties.

(b) *Direct sales to displaced persons; razed lots; auctions.* HUD may seek to dispose of individual properties to individual buyers through methods such as direct sales to displaced persons, sales of razed lots, or auctions. These sales will be upon such terms and conditions as the Secretary may prescribe.

(c) *Direct sales to individuals or entities.* HUD may also seek to dispose of properties through direct sales to other individuals or entities that do not meet any of the categories specified in this section, if the Assistant Secretary for Housing-Federal Housing Commissioner (or his or her designee) finds in writing that such sales would further the goals of the National Housing Act (12 U.S.C. 1701 *et seq.*) and would be in the best interests of the Secretary. These sales will be upon such terms and conditions as the Secretary may prescribe.

(d) *Bulk sales.* HUD may seek to dispose of properties through bulk sales. Such sales will be upon such terms and conditions as the Secretary may prescribe.

3. A new § 291.405 is added, to read as follows:

§ 291.405 Definitions.

For purposes of this subpart E:

Applicant means a State, metropolitan city, urban county, governmental entity, tribe, or private nonprofit organization that submits a written expression of interest in eligible properties under this subpart E. Governmental entities include those that have general governmental powers (e.g., a city or county), as well as those with limited or special powers (e.g., public housing agencies or State housing finance agencies). In the case of applicants leasing properties while their applications for Supportive Housing assistance are pending, ''applicant'' is defined in 24 CFR part 583.

Homeless means:

(1) Individuals or families who lack the resources to obtain housing, whose annual income is not in excess of 50 percent of the median income for the area, as determined by HUD, and who:

(i) Have a primary nighttime residence that is a public or private place not designed for, or ordinarily used as, a regular sleeping accommodation for human beings;

(ii) Have a primary nighttime residence that is a supervised publicly or privately operated shelter designed to provide temporary living accommodations (including welfare hotels, congregate shelters, and transitional housing, but excluding prisons or other detention facilities); or

(iii) Are at imminent risk of homelessness because they face immediate eviction and have been unable to identify a subsequent residence, which would result in emergency shelter placement (except that persons facing eviction on the basis of criminal conduct such as drug trafficking and violations of handgun prohibitions shall not be considered homeless for purposes of this definition); or

(2) Persons with disabilities who are about to be released from an institution and are at risk of imminent homelessness because no subsequent residences have been identified and because they lack the resources and support networks necessary to obtain access to housing.

Lessee means the applicant, approved by HUD as financially responsible, that executes a lease agreement with HUD for an eligible property.

Dated: February 3, 1999.

William C. Apgar,

Assistant Secretary for Housing-Federal Housing Commissioner.

[FR Doc. 99–3046 Filed 2–8–99; 8:45 am]

BILLING CODE 4210–27–P

Federal Register

Tuesday
February 9, 1999

Part IV

Department of the Treasury

Bureau of Alcohol, Tobacco and Firearms

27 CFR Parts 4, 5, and 7

Prohibition of Certain Alcohol Beverage Containers and Standards of Fill for Distilled Spirits and Wine (98R–452P); Proposed Rule

DEPARTMENT OF THE TREASURY

Bureau of Alcohol, Tobacco and Firearms

27 CFR Parts 4, 5, and 7

[Notice No. 872]

RIN 1512–AB89

Prohibition of Certain Alcohol Beverage Containers and Standards of Fill for Distilled Spirits and Wine (98R–452P)

AGENCY: Bureau of Alcohol, Tobacco and Firearms (ATF), Department of the Treasury.

ACTION: Notice of proposed rulemaking (NPRM).

SUMMARY: The Bureau of Alcohol, Tobacco and Firearms proposes to amend regulations to clarify the standards of fill for distilled spirits and wine. ATF also proposes to amend regulations to prohibit certain alcohol beverage containers that are likely to mislead consumers as to the identity or character of the distilled spirits, wine, or malt beverage products or are likely to be confused with other (non-alcohol) food products. ATF proposes these changes to ensure consumer protection and to preclude administrative difficulties and jeopardy to the revenue. These proposed rules prohibit certain types of alcohol beverage containers. ATF is concerned that certain containers are likely to confuse consumers as to the nature of the product, especially those packages that are similar to those that contain ice cream, popsicles, squeeze-package frozen snacks, dairy creamers, or other non-alcohol food products. ATF specifically requests comments on the clarity of this proposed rule and how it may be made easier to understand. ATF also requests alternative approaches to accomplish the objectives outlined in this notice.

DATES: Send your comments on or before April 12, 1999.

ADDRESSES: Send your comments in writing or via facsimile transmission, electronic mail, or through the ATF internet web site.

Where do I Send Written Comments?

Send written comments to: Chief, Regulations Division, Bureau of Alcohol, Tobacco and Firearms, P.O. Box 50221, Washington, DC 20091–0221 Notice No. 872. You may submit comments by facsimile transmission, e-mail, or by internet. You must follow specific instructions, see the detailed requirements in Supplementary Information—2. Public Participation—Written Comments.

Where do I Send Facsimile Comments?

Submit comments of not more than three pages by facsimile transmission to (202) 927–8602.

Where do I Send Electronic Mail (e-mail) Comments?

Submit e-mail comments to nprm.notice.872@atfhq.atf.treas.gov.

Where do I Send Comments to the ATF Homepage?

Submit comments using the comment form provided with the online copy of the proposed rule on the ATF homepage web site at http://www.atf.treas.gov/core/regulations/rules.htm.

FOR FURTHER INFORMATION CONTACT: William H. Foster, Regulations Division, (202) 927–8210, Bureau of Alcohol, Tobacco and Firearms, 650 Massachusetts Avenue, NW, Washington, DC 20226. You may also write questions by e-mail to whfoster@atfhq.atf.treas.gov. ATF will not accept comments on the proposal that are submitted to this address.

SUPPLEMENTARY INFORMATION:

1. Background

The Bureau of Alcohol, Tobacco and Firearms is concerned that the use of certain containers in the packaging of alcohol beverages presents administrative difficulty for revenue collections and promotes consumer deception as to the contents of the alcohol beverage container. The use of these containers encourages complacency as to the dangers of both the abuse of alcohol beverages by all consumers and the consumption of alcohol beverages by underage persons. Existing regulations provide for standardized fill sizes for distilled spirits and wine. The standard sizes are intended to prevent consumer deception as to the quantity of product purchased and to facilitate the proper calculation of excise tax upon the products.

Some producers have increasingly stretched the limits of these regulations by packaging their products in non-authorized-fill containers that are sold together as a single authorized standard of fill. In practice, these containers are then disbanded by retailers and sold by their individual (non-standard of fill) units. This ''aggregate packaging'' encourages inappropriate use of alcohol beverages by the novelty of the small sizes that are, in turn, easily concealed. This practice enables retailer and consumer practices to undermine State and local controls which prohibit the possession of open containers of alcohol or prohibit retailers such as bar establishments from possessing on premise any package under certain specified sizes.

Aggregate Fill

The issue of whether the standard of fill requirements may be satisfied by aggregate packaging was raised in 1988, when an importer sought permission to import 375-milliliter bags. Each bag contained 25 individual pots of 15-milliliters each, similar to that of a coffee creamer container. This request was approved, as were subsequent requests for other types of containers. Such products now include distilled spirits products packaged in packs of thirty 25-milliliter test tubes (750-milliliter aggregate fill) and in a carton of plastic sachets, like popcicles. Products are also packaged in small cups similar to ice cream containers, or squeeze packages like popsicles, with others similarly bundled in the aggregate. ATF believes that this wide array of container types is likely to confuse consumers as to the quantity and nature of the alcohol beverage. Likewise, the variety of container sizes contributes to administrative difficulty in determining appropriate excise tax for the products. ATF also now recognizes the likelihood that underage individuals more easily obtain and use aggregate fill products.

Enforcement Problems in States and Local Jurisdictions

ATF's policy of allowing aggregate fills has also resulted in problems with State and local alcohol beverage controls, either by conflicting with State standard of fill provisions or with prohibitions against open containers of alcohol beverages.

For example, some states prohibit ''by-the-drink'' retailers from possessing on premise packages such as those comprising the aggregate-fill containers. To maintain these packages on retail premises, the retailer must break apart the 750-milliliter aggregate package in order to reach the individual 25-milliliter containers. Once the outer ''aggregate fill'' carton is broken apart, the retailer would be in violation of State law by possessing a package containing less than the authorized standard of fill on retail premises. Since these products are packaged in a 750-milliliter aggregate standard of fill, questions arise as to whether the State may prohibit such retailers from possessing the products.

Also, these containers present conflicts with State and local prohibitions against ''open containers.''

The smaller aggregate-fill containers are more easily concealed. In public areas where alcohol beverages are prohibited these small containers provide a ready means to undermine local enforcement efforts.

ATF Authority for Standards of Fill

The Federal Alcohol Administration Act (27 USC 205(e)) authorizes the Secretary of the Treasury to regulate the bottle sizes for wine, distilled spirits, and malt beverages. The Internal Revenue Code of 1986 (26 USC 5301) likewise authorizes regulations regarding the kind and size of containers for distilled spirits. Distilled spirits regulations allow for several standards of fill (27 CFR 5.47a). Wine regulations also authorize several standards of fill (27 CFR 4.73). Malt beverage regulations do not currently prescribe standards of fill, but do address net contents statements on labels (27 CFR 7.27). The purpose of the standards of fill provisions is to prevent a proliferation of bottle sizes and shapes which would inevitably result in consumer confusion and deception with regard to the quantity and net contents of the alcohol beverage package. The uniformity in bottle sizes required by these standards also facilitates the proper calculation of Federal excise tax.

Aggregate packaging practices undermine the standard of fill regulations and the underlying objectives of revenue protection and consumer protection. ATF recognizes such packaging presents the possibility, if not likelihood, that retailers will break apart the outer, labeled package and sell the individual non-standard containers, thereby diminishing any likelihood that consumers will be adequately informed about the quantity, identity, and quality of product they purchase. Also, the individual non-standard containers do not bear the mandatory label requirements, increasing the likelihood of consumer deception as to the identity and quantity of the product. The individual containers do not carry the required government warning statement, so this basic health protection is lost when these aggregate packages are unwrapped. ATF has no authority under the standard of fill provisions to proceed against retailers for breaking apart authorized fill containers for individual sale; however, ATF may proceed against such retailers under the alteration of label provisions.

ATF has encouraged certain safeguards to protect against consumer deception in the event that aggregate packages are broken apart and the single-serving packages are sold individually. These safeguards include: labeling the individual containers as ''not for individual sale'' and ''not for children,'' sealing the outer container with shrink wrap or other secure methods, and encouraging bottlers to bottle the individual units of the package in authorized standards of fill (such as 50-milliliters). However, ATF believes these safeguards have not proven fully effective to preclude abuse of the standards of fill.

ATF has reconsidered its position on the standard of fill regulations, for the reasons cited above. Although ATF authority exists under the law, existing regulations do not provide an adequate basis to reject such containers outright. We believe the most effective way of resolving this issue is through rulemaking to define the standards of fill to exclude aggregate fills. We propose to amend regulations to define the standard of fill to apply to the container in direct contact with the alcohol beverage. This measure serves to protect the integrity of the existing standard of fill regulations.

ATF is not concerned about containers such as aluminum cans or glass bottles that are well-established in the marketplace as both alcohol and non-alcohol beverage containers. Nor does ATF consider this change to preclude the use of certain distinctive containers that might contain separate chambers. For example, a glass container with two separate chambers permanently fused together would be considered a single standard of fill.

ATF Authority to Prohibit Misleading Containers

The Federal Alcohol Administration Act (27 U.S.C. 205(e)) authorizes the Secretary of the Treasury to regulate the packaging of wine, distilled spirits, and malt beverages to prohibit deception of the consumer with respect to alcohol beverage products. Distilled spirits regulations prohibit certain practices deemed to encourage consumer deception (27 CFR 5.42). Wine and beer regulations also prohibit practices that may lead to consumer deception (27 CFR 4.39 and 27 CFR 7.29). The purpose of these provisions is to prevent practices that will result in consumer confusion and deception with regard to the quality and character of the alcohol beverage contained in the package. ATF likewise has authority under the Internal Revenue Code of 1986 to prescribe containers and labeling for alcohol beverages (26 USC 5368).

Apart from the separate sale of individual units, additional consumer deception issues have arisen from the aggregate packaging concept. In ''aggregate packaging,'' some producers have used unconventional alcohol beverage containers that are misleading as to the identity or character of products as alcohol beverages. Some of these smaller packages resemble products that consumers readily identify as coffee creamers, or children's frozen gelatin confections.

Supermarket shelves offer a variety of products such as yogurt, dairy creamers, ice cream, unfrozen popsicles, gelatins, and other similar products. Alcohol beverages packaged in similar containers either confuse the fact that they contain alcohol beverages or are otherwise novelty-type containers that encourage alcohol consumption by both eligible and underage consumers, trivialize the dangers associated with inappropriate alcohol consumption, or are easily confused with other food products.

Container manufacturers advertise that thinwall containers such as those currently used by certain alcohol beverage producers have a number of applications, such as kid's meals containers, sand buckets, candy containers, popcorn containers, ice cream, yogurt, processed cheese, and other similar uses. These containers are readily identified in the marketplace with non-alcohol products. Such packaging for alcohol beverages obscures the identity of the products as containing alcohol. Questions also arise as to the health dangers such misleading packaging might present to those who may be harmed by ingestion of alcohol products, either due to allergy or other health conditions.

ATF proposes to prohibit alcohol beverage containers that are likely to be confused with containers for other products, particularly non-alcohol food products. This change would serve to preclude the use of those containers that are likely to deceive the consumer as to its contents or mislead consumers by trivializing the dangers and risks associated with alcohol consumption.

ATF is also concerned about some containers of certain wines of less than 7 percent alcohol by volume. These containers, while not subject to the labeling requirements of the Federal Alcohol Administration Act, must bear labels as prescribed by regulations. The difficulty in determining that these are alcohol beverages raises administrative problems for both the government and the industry and retailers involved in the distribution of these products. For tax administration purposes, the type of alcohol beverage must be readily apparent. Regulation of container shapes and sizes protects the revenue by prohibiting generic containers that would otherwise camouflage the illegal

removal of non-tax-paid alcohol. Likewise, for wholesalers and retailers who are subject to special tax based on the categories of products they sell and who usually have local licenses that delineate the type of alcohol beverage they can sell, it is important that the markings, branding and labels are not misleading or confusing as to the true character of the alcohol beverage product.

These changes do not affect or prohibit those generic containers, such as aluminum cans, that meet the standards of fill and are labeled sufficiently to identify the product as an alcohol beverage.

These changes would prohibit any container that, through its material and shape, is not readily recognized as conveying an alcohol beverage or any container that is likely to be confused with a non-alcohol product. Through this effort, ATF seeks to standardize the type or appearance of containers that are authorized for use to contain alcohol beverages, so as to protect the consumer by preventing deception as to the identity and quality of the product.

2. Public Participation—Written Comments

Who May Comment on This Notice?

ATF asks for comments from consumers, industry members, trade associations, public interest and advocacy groups, State and local governments, and all other interested persons. We will carefully consider all comments we receive on or before April 12, 1999. We will also carefully consider comments we receive after that date if it is practical to do so, but we cannot assure consideration for late comments. ATF specifically requests comments on the clarity of this proposed rule and how it may be made easier to understand.

We are interested in any data or studies that deal with the impact of container design or shapes of containers. ATF particularly solicits public comment on the existence and degree of consumer deception as to the identity and quality of the product in containers which resemble non-alcohol conveyances or children's toys. We request relevant information and data from consumers, industry members, public interest advocacy groups, and all others interested. Also, we are interested in any alternative approaches that achieve the objectives outlined in this notice.

Will ATF Keep My Comment Confidential?

ATF cannot recognize any material in comments as confidential. All comments and materials may be disclosed to the public. If you consider your material to be confidential or inappropriate for disclosure to the public you should not include it in a comment. We may also disclose the name of any person who submits a comment.

Disclosure: Who May Review the Comments ATF Receives for This Notice?

Any interested person may inspect copies of this notice and all comments. You may inspect these documents during normal business hours in the ATF Reference Library, Room 6480, 650 Massachusetts Avenue, NW, Washington, DC.

How Do I Send Facsimile Comments?

You may submit comments of not more than three pages by facsimile transmission to (202) 927–8602. Facsimile comments must:

- be legible
- reference this notice number
- be 8½″ x 11″ in size
- contain a legible written signature
- be not more than three pages long.

We will not acknowledge receipt of facsimile transmissions. We will treat facsimile transmissions as originals.

How Do I Send Electronic Mail (E-mail) Comments?

You may submit comments by e-mail by sending the comments to nprm.notice.872@ atfhq.atf.treas.gov. You must follow these instructions. E-mail comments must:

- contain your name, mailing address, and e-mail address
- reference this notice number
- be legible when printed on not more than three pages 8½'' x 11'' in size

We will not acknowledge receipt of e-mail. We will treat e-mail as originals.

How Do I Send Comments to the ATF Internet Web Site?

You may also submit comments using the comment form provided with the online copy of the proposed rule on the ATF internet web site at http://www.atf.treas.gov/core/regulations/rules.htm

3. Regulatory Analyses and Notices

Is this a Significant Regulatory Action as Defined by Executive Order 12866?

This is not a significant regulatory action as defined in Executive Order 12866. A regulatory assessment is not required.

Does the Paperwork Reduction Act Apply to this Proposed rule?

The Paperwork Reduction Act of 1995 (44 USC 3507) and its implementing regulations (5 CFR Part 1320) do not apply to this notice because ATF is not proposing any requirements to collect information.

How does the Regulatory Flexibility Act Apply to this Proposed Rule?

Pursuant to § 7805(f) of the Internal Revenue Code, ATF has submitted these proposed rules to the Chief Counsel for Advocacy of the Small Business Administration for comment on its impact on small business.

Under the Regulatory Flexibility Act (5 USC 601 *et seq.*), ATF must consider whether a notice of proposed rulemaking would have a significant economic impact on a substantial number of small entities. The factual basis of this proposal does not create a burden on small entities.

- It will not impose, or otherwise cause, a significant increase in recordkeeping or other compliance burdens on a substantial number of small entities.
- It will not have significant secondary or incidental effects on a substantial number of small entities.

This proposal strengthens existing regulations that prohibit the use of unauthorized container sizes and that protect consumers from being misled about the identity, quality, or quantity of the product. ATF believes that because this proposal addresses only deceptive or confusing packaging, and not the products themselves, it will not burden sales or otherwise impose costs on distributors or retailers of alcoholic beverage products.

Accordingly, ATF certifies this proposed rule will not have a significant impact on a substantial number of small entities. ATF is not required to conduct an initial regulatory flexibility analysis.

Drafting Information: Who Wrote This Notice?

William H. Foster, Regulations Division, Bureau of Alcohol, Tobacco and Firearms wrote this notice.

List of Subjects

27 CFR Part 4

Advertising, consumer protection, customs duties and inspections, imports, labeling, packaging and containers, and wine.

27 CFR Part 5

Advertising, consumer protection, customs duties and inspections, imports, labeling, liquors, and packaging and containers.

27 CFR Part 7

Advertising, beer, consumer protection, customs duties and inspection, imports, and labeling.

Authority and Issuance

For the reasons discussed in the preamble, ATF proposes to amend 27 CFR Parts 4, 5, and 7, as follows.

PART 4—LABELING AND ADVERTISING OF WINE

Paragraph 1. The authority citation for 27 CFR Part 4 is revised to read as follows:

Authority: 26 USC 5368 and 27 USC 205.

Paragraph 2. ATF amends § 4.39 by adding a new paragraph (n) to read as follows:

§ 4.39 Prohibited practices.

* * * * *

(n) *Misleading bottles or containers.* Any container of wine (as defined in § 24.10 of this chapter) that, by virtue of the material from which it is composed or by its shape or design, or that by its ordinary and customary use is likely to mislead the consumer as to the alcohol character of the product, is prohibited. Such containers that are likely to be identified or perceived by consumers as conveying a non-alcohol product will be considered misleading, unless the Director determines that the information on the label adequately dispels any misleading impression.

Paragraph 3. ATF amends § 4.73 by adding a new paragraph (d) to read as follows:

§ 4.73 Metric standards of fill.

* * * * *

(d) The standards of fill prescribed in paragraph (a) of this section apply to the container in direct contact with the wine and may not be satisfied by an aggregation of multiple containers into a single unit.

PART 5—LABELING AND ADVERTISING OF DISTILLED SPIRITS

Paragraph 4. The authority citation for 27 CFR Part 5 continues to read as follows:

Authority: 26 U.S.C. 5301, 7805, 27 U.S.C. 205.

Paragraph 5. ATF amends § 5.42 by adding a new paragraph (c) to read as follows:

§ 5.42 Prohibited practices.

* * * * *

(c) *Misleading bottles or containers.* Any container that, by virtue of the material from which it is composed or by its shape or design, or that by its ordinary and customary use is likely to mislead the consumer as to the alcohol character of the product, is prohibited. Containers that are likely to be identified or perceived by consumers as conveying a non-alcohol product will be considered misleading, unless the Director determines that the information on the label adequately dispels any misleading impression.

Paragraph 6. ATF amends § 5.47a by adding a new paragraph (a)(3) to read as follows:

§ 5.47a Metric standards of fill (distilled spirits bottled after December 31, 1979).

(a) * * *

(3) The standards of fill prescribed in paragraphs (a)(1) and (a)(2) of this section apply to the container in direct contact with the distilled spirits and may not be satisfied by an aggregation of multiple smaller containers into a single unit.

* * * * *

PART 7—LABELING AND ADVERTISING OF MALT BEVERAGES

Paragraph 7. The authority citation for 27 CFR Part 7 continues to read as follows:

Authority: 27 U.S.C. 205.

Paragraph 8. ATF amends § 7.29 by adding a new paragraph (i) to read as follows:

§ 7.29 Prohibited practices.

* * * * *

(i) *Misleading bottles or containers.* Any container that, by virtue of the material from which it is composed or by its shape or design, or that by its ordinary and customary use is likely to mislead the consumer as to the alcohol character of the product, is prohibited. Containers that are likely to be identified or perceived by consumers as conveying a non-alcohol product will be considered misleading, unless the Director determines that the information on the label adequately dispels any misleading impression.

Signed: January 20, 1999.

John W. Magaw,

Director.

Approved: January 22, 1999.

John P. Simpson,

Deputy Assistant Secretary (Regulatory, Tariff and Trade Enforcement).

[FR Doc. 99–3009 Filed 2–5–99; 8:45 am]

BILLING CODE 4810–31–P

Federal Register

Tuesday
February 9, 1999

Part V

Department of Health and Human Services

Office of Public Health and Science; Announcement of Availability of Funds for Family Planning Research Grant; Notice

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Office of Public Health and Science; Announcement of Availability of Funds for Family Planning Research Grant

AGENCY: Office of Population Affairs, OPHS, HHS.

ACTION: Notice.

SUMMARY: The Office of Population Affairs requests applications for a grant under the family planning and population research program, authorized under section 1004(2) of title X of the Public Health Service (PHS) Act. This notice announces the availability of approximately $300,000 to $350,000 in funding for one (1) year of a proposed five-year research project; it is anticipated that $300,000 to $350,000 will be available annually for funding the remaining years of the project.

DATES: Applications must be submitted on or before April 12, 1999, as evidenced by a legibly dated receipt from a commercial carrier or U.S. Postal Service postmark and received in time for orderly processing.

ADDRESSES: Application kits may be obtained from and applications must be submitted to the Office of Population Affairs, Grants Management Office at the following address: 4350 East-West Highway, Suite 200, Bethesda, MD 20814.

FOR FURTHER INFORMATION CONTACT:

Technical Information: Grants Management Office, (301) 594–4012.

Program Information: Eugenia Eckard, (301) 594–4008.

SUPPLEMENTARY INFORMATION: Title X of the Public Health Service Act, 42 U.S.C. 300 *et seq.*, authorizes the Secretary of Health and Human Services to award grants for projects for research in biomedical, contraceptive development, behaviorial, and program implementation fields related to family planning and population. (Catalog of Federal Domestic Assistance Number 13.974.) Many persons have observed that gaps exist in the array of data and analyses needed by administrators, planners and researchers in the field of family planning. The need for such data is likely to increase. The purpose of this proposed grant is to increase the availability of data and research-based information which will be useful to family planning administrators and providers, researchers and officials of local, State and Federal governments to improve the delivery of family planning services to persons needed and desiring such services.

One grant with a project period of five years will be made to a public or private nonprofit organization to conduct data analyses and related research on issues of interest to the family planning field. This should include developing estimates and assessments on such topics as progress in attaining national Healthy People objectives for family planning (see below), the need for family planning services, the population currently being served, characteristics of served and underserved populations, and scope of services provided in family planning programs. In order to be competitive, an application should (1) describe a set of information needs in the field of family planning in the United States deemed by the applicant to represent the most pressing data gaps for the efficient and effective provision of family planning services, (2) propose a methodology and process for tabulating program data reported by Title X grantees for each year of this project and providing a descriptive analytical annual report of these program data, and (3) propose a coherent five-year program of research, data analysis estimation and/or assessment designed to fill these needs in a practical and creative manner. The application should outline the frequency of any particular proposed analyses (i.e., continuously, annually, biennially, or once during the five-year project period of this grant), describe the methodologies to be used, and propose a plan to make accessible the products of this project to the Office of Population Affairs as well as to the audience intended, (i.e., administrators, providers and researchers), including via the Internet, for the five-year period of the project. The application should reflect a good understanding of the systems by which family planning services are provided, a familiarity with research, data collection systems and analyses in the area of family planning and population studies supported by other sources, a discussion of the relationship of the studies proposed for support under this grant to studies, research and analyses supported by other sources, explanation of the relevance and importance of the analytic and research activities proposed for support under this grant, and a justification of the expected utility of the analytic products expected from this effort. Applicants should propose a schedule for work for the projected five-year life of this project. It is recognized that other research, changing conditions, or new priorities may cause some activities proposed, particularly for the later years of this project, to be superseded in importance, and modifications in actual work plans may need to be negotiated between the successful applicant and the Office of Population Affairs, if this situation does in fact develop. Future years of funding are also contingent on a determination by HHS that continued funding is in the best interest of the government.

Although the purpose of this announcement is to encourage applicants to develop and propose analytic strategies which they will pursue if supported under this announcement, the areas described below represent some of the topics appropriate for inclusion in a proposal:

A. Estimates and Characteristics of Clients Served and Population in Need

1. Estimates of the size and geographic distribution of the population at risk of unintended pregnancy;
2. Estimates of the size and geographic distribution of the population in need of subsidized family planning services;
3. Characteristics, in terms of age, race and income or poverty status of the two populations listed above (1 and 2);
4. Estimates of the size, geographic distribution and characteristics of populations in need of family planning services but currently not being served.

B. Patterns and Trends in Delivery of Family Planning Services

1. Patterns of family planning and reproductive health care service delivery among the varied sources of family planning services (clinics, physicians' offices, etc.) and patterns in sources of financing;
2. Patterns of integration of family planning with related services including sexually transmitted diseases (STD) services, HIV prevention, substance abuse and cancer screening;
3. Patterns and trends in providing services to adolescents, including use of school settings, special clinics, special protocols;
4. Patterns and trends in the training, recruitment and retention of clinic personnel;
5. The trends and patterns of family planning services to males and the role and influence of males in contraceptive decision-making and pregnancy prevention reproductive health;
6. Utilization of outreach, follow-up and case management strategies in provision of services to hard to reach clients such as substance abusers, persons at high STD/HIV risk, and adolescents.

The principal purpose of this project is not to collect original data, and

applications which propose to place major emphasis on collection of original data are unlikely to be funded. However, if it is relevant and it can be demonstrated that appropriate data do not exist elsewhere, some collection of original data is not precluded.

The Title X program is intended to address the health needs of all men and women, including all subgroups as characterized by age, class, race and ethnicity. Members of minority groups should be included in all proposed research unless a clear and compelling rationale or justification establishes that such inclusion is inappropriate. Applicants should approach their research and analysis with considerations of class, race, and ethnicity in mind whenever possible.

The PHS is committed to achieving the health promotion and disease prevention objectives of Healthy People 2000 and 2010, a PHS-led national activity for setting priority areas. This announcement is related to the priority area of family planning. Potential applicants may obtain a copy of Healthy People 2000 (Full Report: Stock No. 017–001–00474–0) or Healthy People 2000 (Summary Report: Stock No. 017–001–00473–1) through the Superintendent of Documents, Government Printing Office, Washington, DC 20402–9325 (Telephone: (202) 783–3238) or draft of Healthy People 2010 (http://www.health.gov/healthypeople).

Application Submission Procedures and Review Criteria

Applications submitted under this announcement are governed by the regulations set out at 42 CFR part 52. Potential applicants should ensure that their applications meet the applicable requirements of the regulation.

Applicants should request a legibly dated receipt from a commercial carrier or U.S. Postal Service postmark. Private metered postmarks will not be acceptable as proof of timely mailing. Late applications will not be accepted for review. Applications which do not conform to the requirement of this program announcement also will not be accepted for review. Applicants will be notified, and the applications will be retired. Requests for applications may also be faxed to (301) 594–5980 or e-mailed to opa@osophs.dhhs.gov.

Applications in response to this solicitation will be reviewed on a nationwide basis and in competition with other submitted applications. The review process will take into account the applicant's familiarity with and access to relevant data sets in the areas of family planning and population studies, and demonstrated ability to analyze data and present it in a manner useful to researchers, administrators and family planning providers. The award of a grant will take into account the extent to which the organization's proposal represents a comprehensive plan for developing data analyses, estimates and assessments useful to planners and providers of family planning services, local, State and Federal administrators and researchers in the areas of family planning and population studies, according to the following criteria:

A. The extent to which the proposal presents a coherent and well-justified plan for data analysis and research for the five-year term of the grant;

B. The extent to which the application reflects a good understanding of the systems for provision of family planning services in the United States and familiarity with data systems and relevant research;

C. The extent to which the applicant organization demonstrates the ability to analyze data and make these analyses accessible to providers, planners, administrators and researchers in the area of family planning;

D. The extent to which the application creatively and efficiently proposes to use existing data and analyses, and to fill knowledge gaps by proposing analyses, research, estimations and assessment tasks to fill the gaps;

E. The extent to which the application provides for periodic reporting;

F. Competency of proposed staff in relation to the research proposed;

G. Adequacy of proposed methodology to carry out analyses and feasibility of the project;

H. Reasonableness of proposed budget in relation to the proposed project, amount of grant funds necessary for completion of project, and adequacy of applicant's resources available for the project.

Applications will be reviewed by an Objective Review Committee and recommended for funding. In making the award decision the Deputy Assistant Secretary for Population Affairs (DASPA) will take into consideration the priority score, the resourcefulness of the applicant, the methodological merits of the proposal, and the availability of funds.

Review Under Executive Order 12372

Applicants under this announcement are exempt from the review requirements of Executive Order 12372, State Review of Applications for Federal Financial Assistance, as implemented by 45 CFR part 100.

When a final funding decision has been made, each applicant will be notified by letter of the outcome. The official document notifying an applicant that a project application has been approved for funding is the Notice of Grant Award, which specifies to the grantee the amount of money awarded, the purposes of the grant, and the terms and conditions of the grant award.

Dated: January 21, 1999.

Denese O. Shervington,

Deputy Assistant Secretary for Population Affairs.

[FR Doc. 99–3043 Filed 2–8–99; 8:45 am]

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Reader Aids

Federal Register

Vol. 64, No. 26

Tuesday, February 9, 1999

CUSTOMER SERVICE AND INFORMATION

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General Information, indexes and other finding aids	**202–523–5227**
Laws	**523–5227**

Presidential Documents

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FEDERAL REGISTER PAGES AND DATES, FEBRUARY

4777–4956 1
4957–5148 2
5149–5584 3
5585–5708 4
5709–5926 5
5927–6186 8
6187–6494 9

CFR PARTS AFFECTED DURING FEBRUARY

At the end of each month, the Office of the Federal Register publishes separately a List of CFR Sections Affected (LSA), which lists parts and sections affected by documents published since the revision date of each title.

3 CFR

Proclamations:
7164 5583
7165 5585
7166 6181

Administrative Orders:
Presidential Determinations:
No. 99-10 of January 25, 1999 5923

Executive Orders:
11987 (Revoked by EO 13112) 6183
13112 6183

5 CFR

2641 5709

7 CFR

301 4777
956 4928
1065 4957

8 CFR

244 4780
274a 6187

10 CFR

Proposed Rules:
35 5721
50 5623

11 CFR

Proposed Rules:
100 5200

12 CFR

701 5927
904 5929

Proposed Rules:
584 5982

13 CFR

Ch. III 5348

Proposed Rules:
107 6256

14 CFR

25 6120
34 5556
39 ..... 4959, 5093, 5149, 5587, 5588, 5590, 5592, 5710, 6189
71 ..... 4782, 4783, 4784, 5150, 5151, 5712, 5930, 6138
91 5152
93 5152
97 ..... 5154, 5594
121 5152
135 5152

Proposed Rules:
39 ..... 4791, 5985, 6259
71 ..... 4793, 4794, 4795, 4796, 4797, 4799, 4800, 5093

15 CFR

772 5931
774 5931

17 CFR

232 5865
240 5865
249 5865
270 5156

Proposed Rules:
210 6251
15 5200
17 5200
228 6261
229 6261
230 6261
240 6261
249 6261
260 6261
275 5722
279 5722

18 CFR

284 5157

Proposed Rules:
37 5206

20 CFR

Proposed Rules:
655 5725
656 5725

21 CFR

5 4964
177 4785
522 5595
556 5158
558 ..... 4965, 5158, 5596

Proposed Rules:
876 5987
1020 6288

22 CFR

514 6191

Proposed Rules:
50 5725
51 5725

23 CFR

Proposed Rules:
180 5996

24 CFR

291 6470
990 5570

Proposed Rules:
990 6138

25 CFR

542 4966

26 CFR

1.....5597, 5713
54.....5160
301.....4967
602 .....4967, 5160, 5597, 5713
Proposed Rules:
1 .....4801, 5012, 5015
53.....5727
54.....5237

27 CFR

Proposed Rules:
4.....6486
5.....6486
7.....6486

28 CFR

2.....5611

30 CFR

913.....6191
948.....6201
Proposed Rules:
914.....6150
935.....6005

31 CFR

501.....5614

32 CFR

235.....6218

33 CFR

117.....4786, 4787, 5717, 6220
165.....5935
Proposed Rules:
100.....4812, 4814
117.....6290
165.....6006
173.....4816

36 CFR

Proposed Rules:
1228.....4818

37 CFR

255.....6221

40 CFR

51.....5188
52 .....5936, 6223, 6226, 6228, 6231
61.....5574
62.....6234
63.....5189
136.....4975
180.....5190
Proposed Rules:
52 .....5015, 6008, 6292, 6293
60.....5728
62.....6294
79.....6294
63.....5251
83.....6008
90.....5251
91.....5251
262.....4818
435.....5488
745.....5258

41 CFR

101–47.....5615

43 CFR

Proposed Rules:
3800.....6422

44 CFR

64.....4978

45 CFR

301.....6237
302.....6237
303.....6237
304.....6237
305.....6237
1309.....5939
Proposed Rules:
1309.....6013
1641.....5728

46 CFR

1.....4981
10.....4981

47 CFR

0.....4984, 5950
2.....4984, 6138
11.....5950
15.....4984
25.....4984
64.....4999
68.....4984
73 .....5718, 5719, 5720
76.....5950
80.....6253
100.....5951
Proposed Rules:
73 .....5623, 5624, 5625, 5626, 5736, 5737, 5738, 5739, 5740, 6020, 6296
74.....6296

48 CFR

511.....4788
516.....4788
542.....4788
552.....4788
705.....5005
706.....5005
709.....5005
716.....5005
722.....5005
731.....5005
732.....5005
745.....5005
747.....5005
752.....5005
1804.....5620
1807.....5620
1808.....5620
1813.....5620
1816.....5620
1819.....5620
1827.....5620
1832.....5620
1833.....5620
1836.....5620
1844.....5620
1852.....5620
1853.....5620

49 CFR

23.....5096
26.....5096
555.....5866
581.....5866
800.....5621
835.....5621
1002.....5191
1312.....5194
Proposed Rules:
192.....5018
195.....5018
244.....4833
261.....5996
571 .....4834, 5259, 6021
583.....6021
640.....5996

50 CFR

17.....5957, 5963
600.....5093
622.....5195
648.....5196
679 .....4790, 5198, 5720
Proposed Rules:
226.....5740
648.....5754
679.....5868, 6025

REMINDERS

The items in this list were editorially compiled as an aid to Federal Register users. Inclusion or exclusion from this list has no legal significance.

RULES GOING INTO EFFECT FEBRUARY 9, 1999

ENVIRONMENTAL PROTECTION AGENCY

Air programs; approval and promulgation; State plans for designated facilities and pollutants:

Maine; published 12-11-98

INTERIOR DEPARTMENT

Surface Mining Reclamation and Enforcement Office

Permanent program and abandoned mine land reclamation plan submissions:

Illinois; published 2-9-99

West Virginia; published 2-9-99

JUSTICE DEPARTMENT

Immigration and Naturalization Service

Immigration:

Aliens—

Employment eligibility verification; acceptable receipts; published 2-9-99

COMMENTS DUE NEXT WEEK

AGRICULTURE DEPARTMENT

Animal and Plant Health Inspection Service

Exportation and importation of animals and animal products:

African horse sickness; disease status change—

Qatar; comments due by 2-16-99; published 1-14-99

Plant-related quarantine, domestic:

Karnal bunt disease—

Compensation; comments due by 2-16-99; published 12-17-98

Plant-related quarantine, foreign:

Solid wood packing material from China; comments due by 2-16-99; published 12-17-98

AGRICULTURE DEPARTMENT

Rural Utilities Service

Telecommunications standards and specifications:

Materials, equipment, and construction—

Customer access locations; service installation standard; comments due by 2-19-99; published 12-21-98

COMMERCE DEPARTMENT

Economic Analysis Bureau

International services surveys:

Foreign direct investments in U.S.—

Annual survey; exemption levels; comments due by 2-16-99; published 1-14-99

COMMERCE DEPARTMENT

Export Administration Bureau

Encryption items; comments due by 2-16-99; published 12-31-98

COMMERCE DEPARTMENT

National Oceanic and Atmospheric Administration

Fishery conservation and management:

Alaska; fisheries of Exclusive Economic Zone—

Fishing participation credit; comments due by 2-18-99; published 1-19-99

Caribbean, Gulf, and South Atlantic fisheries—

Gulf of Mexico reef fish; comments due by 2-16-99; published 12-18-98

DEFENSE DEPARTMENT

Federal Acquisition Regulation (FAR):

Historically underutilized business zone (HUBZone) empowerment contracting program; comments due by 2-16-99; published 12-18-98

ENERGY DEPARTMENT

Energy Efficiency and Renewable Energy Office

Consumer products; energy conservation program:

Clothes washers—

Energy conservation standards; comments due by 2-16-99; published 1-11-99

ENVIRONMENTAL PROTECTION AGENCY

Air pollutants, hazardous; national emission standards:

Oil and natural gas production and natural gas transmission and storage; comments due by 2-16-99; published 1-15-99

Air pollution; standards of performance for new stationary sources:

Solid waste landfills that commenced construction prior to May 30, 1991 and have not been modified or reconstructed since May 30, 1991; comments due by 2-16-99; published 12-16-98

Air programs:

Ambient air quality surveillance—

Washington and Oregon; ozone monitoring season modification; comments due by 2-19-99; published 1-20-99

Washington and Oregon; ozone monitoring season modification; comments due by 2-19-99; published 1-20-99

Air quality implementation plans; approval and promulgation; various States:

Illinois; comments due by 2-16-99; published 1-15-99

Louisiana; comments due by 2-16-99; published 1-14-99

Hazardous waste:

Lead-based paint debris; toxicity characteristic rule; temporary suspension; comments due by 2-16-99; published 12-18-98

Pesticides; tolerances in food, animal feeds, and raw agricultural commodities:

Bifenthrin; comments due by 2-16-99; published 12-16-98

Copper ammonium complex; comments due by 2-16-99; published 12-16-98

Tralkoxydim; comments due by 2-16-99; published 12-16-98

Superfund program:

National oil and hazardous substances contingency plan—

National priorities list update; comments due by 2-16-99; published 12-17-98

Toxic substances:

Lead-based paint activities—

Lead-based paint debris; management and disposal; comments due by 2-16-99; published 12-18-98

FEDERAL COMMUNICATIONS COMMISSION

Common carrier services:

Fixed satelite service and terrestrial system in Ku-band; comments due by 2-16-99; published 1-12-99

Frequency allocations and radio treaty matters:

3650-3700 MHz government transfer band; comments due by 2-16-99; published 1-14-99

Radio and television broadcasting:

Broadcast and cable equal employment opportunity rules and policies; revision; comments due by 2-18-99; published 1-14-99

FEDERAL EMERGENCY MANAGEMENT AGENCY

Preparedness:

Offsite radiological emergency preparedness program; services fee; comments due by 2-16-99; published 12-15-98

GENERAL SERVICES ADMINISTRATION

Federal Acquisition Regulation (FAR):

Historically underutilized business zone (HUBZone) empowerment contracting program; comments due by 2-16-99; published 12-18-98

HEALTH AND HUMAN SERVICES DEPARTMENT

Food and Drug Administration

Food additives:

Adhesive coatings and components—

Silver chloride-coated titanium dioxide; comments due by 2-16-99; published 1-15-99

INTERIOR DEPARTMENT

Reclamation Bureau

Farm operations in excess of 960 acres, information requirements; and formerly excess land eligibility to receive non-full cost irrigation water; comments due by 2-18-99; published 1-19-99

INTERIOR DEPARTMENT

Surface Mining Reclamation and Enforcement Office

Surface coal mining and reclamation operations:

Ownership and control mining operations; definitions, permit requirements, enforcement actions, etc.; comments due by 2-19-99; published 12-21-98

JUSTICE DEPARTMENT

Drug Enforcement Administration

Records, reports, and exports of listed chemicals:

Chemical mixtures that contain regulated chemicals; comments due by 2-15-99; published 11-12-98

JUSTICE DEPARTMENT
Prisons Bureau
Inmate control, custody, care, etc.:
Sex offender release notification; designation of offenses; comments due by 2-16-99; published 12-16-98

LABOR DEPARTMENT
Employment and Training Administration
Nonimmigrants on H-1B visas employed in specialty occupations and as fashion models; labor condition applications and employer requirements
Wage recordkeeping requirements; comments due by 2-19-99; published 2-5-99

LABOR DEPARTMENT
Mine Safety and Health Administration
Coal mine safety and health:
Underground mines—
Diesel particulate matter; occupational exposure; comments due by 2-16-99; published 10-19-98

LIBRARY OF CONGRESS
Copyright Office, Library of Congress
Copyright office and procedures:
Copyright protection; normal commercial exploitation or availability at reasonable price; notice to libraries and archives; comments due by 2-15-99; published 12-30-98

NATIONAL AERONAUTICS AND SPACE ADMINISTRATION
Federal Acquisition Regulation (FAR):
Historically underutilized business zone (HUBZone) empowerment contracting program; comments due by 2-16-99; published 12-18-98

SECURITIES AND EXCHANGE COMMISSION
Federal regulatory review:
Rules list and comment request; comments due by 2-15-99; published 12-31-98
Securities:
Cross-border tender offers, business combinations, and rights offerings; comments due by 2-16-99; published 12-15-98

STATE DEPARTMENT
Privacy Act; implementation; comments due by 2-16-99; published 1-6-99

TRANSPORTATION DEPARTMENT
Coast Guard
Boating safety:
Manufacturing requirements—
Recreational boats; hull identification numbers; comments due by 2-16-99; published 11-16-98

TRANSPORTATION DEPARTMENT
Federal Aviation Administration
Airmen certification:
Aircraft dispatchers; eligibility and certification requirements; comments due by 2-16-99; published 10-19-98
Airworthiness directives:
Airbus; comments due by 2-18-99; published 1-19-99
AlliedSignal Inc.; comments due by 2-15-99; published 12-22-98
Construcciones Aeronauticas, S.A.; comments due by 2-19-99; published 1-20-99
McCauley Propeller Systems; comments due by 2-16-99; published 12-18-98
Pratt & Whitney; comments due by 2-19-99; published 12-21-98
Class D and Class E airspace; comments due by 2-16-99; published 1-15-99
Class D and E airspace; comments due by 2-16-99; published 1-5-99
Class E airspace; comments due by 2-15-99; published 1-15-99

TREASURY DEPARTMENT
Internal Revenue Service
Estate and gift taxes:
Marital deduction; valuation of interest in property passing to surviving spouse; public hearing; comments due by 2-16-99; published 12-16-98