3–4–99
Vol. 64 No. 42
Pages 10387–10554

federal register

Thursday
March 4, 1999

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

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

DEPARTMENT OF TRANSPORTATION

Federal Aviation Administration

14 CFR Part 71

[Airspace Docket No. 94–ASW–03]

Revision of Class E Airspace; Oakdale, LA

AGENCY: Federal Aviation Administration (FAA), DOT.

ACTION: Final rule.

SUMMARY: This action revises the Class E airspace extending upward from 700 feet above ground level (AGL) at Allen Parish Airport, Oakdale, LA. The relocation of Restricted Area, R–3806 has made this rule necessary. This action is intended to provide adequate controlled airspace extending upward from 700 feet or more above the surface for aircraft executing the nondirectional radio beacon (NDB) standard instrument approach (SIAP) at Allen Parish Airport, Oakdale, LA.

EFFECTIVE DATE: 0901 UTC, May 20, 1999.

FOR FURTHER INFORMATION CONTACT: Donald J. Day, Airspace Branch, Air Traffic Division, Southwest Region, Federal Aviation Administration, Fort Worth, TX 76193–0520, telephone 817–222–5593.

SUPPLEMENTARY INFORMATION:

History

On August 23, 1994, a proposal to amend 14 CFR part 71 to revise Class E airspace at Oakdale, LA, was published in the **Federal Register** (59 FR 43307). The proposal was to revise controlled airspace extending upward from 700 feet AGL at Allen Parish Airport, Oakdale, LA. The relocation of Restricted Area, R–3806 has made this rule necessary. The intended effect of the proposal was to provide adequate Class E airspace to contain aircraft executing the NDB SIAP at Allen Parish Airport, Oakdale, LA.

Interested parties were invited to participate in this rulemaking proceeding by submitting written comments on the proposal to the FAA. No comments to the proposal were received. The rule is adopted as proposed with the exception of minor editorial changes.

The coordinates for this airspace docket are based on North American Datum 83. Designated Class E airspace areas are published in Paragraph 6005 of FAA Order 7400.9F, dated September 10, 1998, and effective September 16, 1998, which is incorporated by reference in 14 CFR 71.1. The Class E airspace designation listed in this document will be published subsequently in the order.

The Rule

This amendment to 14 CFR Part 71 revises Class E airspace, at Oakdale, LA, extending upward from 700 feet above the surface within a 6.5-mile radius of the Allen Parish Airport, Oakdale, LA.

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

List of Subjects in 14 CFR Part 71

Airspace, Incorporation by reference, Navigation (air).

Adoption of the Amendment

In consideration of the foregoing, the Federal Aviation Administration amends 14 CFR Part 71 as follows:

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

1. The authority citation for 14 CFR Part 71 continues to read as follows:

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

§ 71.1 [Amended]

2. The incorporation by reference in 14 CFR 71.1 of the Federal Aviation Administration Order 7400.9F, *Airspace Designations and Reporting Points,* dated September 10, 1998, and effective September 16, 1998, is amended as follows:

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

* * * * *

ASW LA E5 Oakdale, LA [Revised]

Allen Parish Airport, LA
(Lat. 30°45′00″ N., long. 092°41′18″ W.)

That airspace extending upward from 700 feet above the surface within a 6.5-mile radius of Allen Parish Airport.

* * * * *

Issued in Fort Worth, TX, on February 25, 1999.

Albert L. Viselli,

Acting Manager, Air Traffic Division, Southwest Region.

[FR Doc. 99–5389 Filed 3–3–99; 8:45 am]

BILLING CODE 4910–13–M

DEPARTMENT OF COMMERCE

Bureau of Economic Analysis

15 CFR Part 806

[Docket No. 990106005–9055–02]

RIN 0691–AA32

Direct Investment Surveys: Raising Exemption Level for Annual Survey of Foreign Direct Investment in the United States

AGENCY: Bureau of Economic Analysis, Commerce.

ACTION: Final rule.

SUMMARY: These final rules amend 15 CFR Part 806.15 by raising the exemption level for reporting in the Annual Survey of Foreign Direct

Investment in the United States (Form BE–15. The survey is a mandatory survey conducted by the Bureau of Economic Analysis (BEA), U.S. Department of Commerce, under the authority of the International Investment and Trade in Services Survey Act. These changes bring the survey into conformity with the Benchmark Survey of Foreign Direct Investment in the United States—1997 (Form BE–12) and reduce reporting burden on small respondents. The revised rules raise the exemption level for the survey to $30 million on the BE–15(SF) short form, up from $10 million (measured by the Company's total assets, sales, or net income or loss); on the survey's long form, the exemption level is raised to $100 million, up from $50 million. In addition, the revised survey bases industry coding on the North American Industry Classification System (NAICS) in place of the U.S. Standard Industrial Classification system that was formerly used, and modifies the detail collected on the composition of external financing of the reporting enterprise, on research and development expenditures, and on the operations of foreign-owned businesses in individual States.

EFFECTIVE DATE: These rules will be effective April 5, 1999.

FOR FURTHER INFORMATION CONTACT: R. David Belli, Chief, International Investment Division (BE–50), Bureau of Economic Analysis, U.S. Department of Commerce, Washington, DC 20230; phone 202–606–9800.

SUPPLEMENTARY INFORMATION: In the January 14, 1999 **Federal Register,** Volume 64, No. 9, pages 2454–2455, the Bureau of Economic Analysis published a notice of proposed rulemaking to amend 15 CFR part 806.15 by raising the exemption level for reporting in the annual survey of foreign direct investment in the United States. No comments on the proposed rule were received. Thus, this final rule is the same as the proposed rule.

The Annual Survey of Foreign Direct Investment in the United States (Form BE–15) is part of BEA's regular data collection program for foreign direct investment in the United States. The surveys are mandatory and are conducted pursuant to the International Investment and Trade in Services Survey Act (22 U.S.C. 3101–3108, as amended). The annual survey is necessary to provide reliable, useful, and timely measures of foreign direct investment in the United States. The survey covers all affiliates above a size-exemption level and collects annual data on the financial structure and operations of nonbank U.S. affiliates of foreign companies needed to update similar data for the universe of U.S. affiliates collected once every 5 years in the BE–12 benchmark survey. The data are used to derive annual estimates of the operations of U.S. affiliates of foreign companies, including their balance sheets; income statements; property, plant, and equipment; external financing; employment and employee compensation; merchandise trade; sales of goods and services; taxes; and research and development (R&D) activity. The data will also be used to measure the economic significance of foreign direct investment in the United States and to analyze its effect on the U.S. economy. Finally, they will be used in formulating, and assessing the impact of, U.S. policy on foreign direct investment.

The revisions to the survey will bring it into conformity with the Benchmark Survey of Foreign Direct Investment in the United States—1997 (BE–12) and will be effective beginning with the 1998 annual survey. The BE–12 is BEA's quinquennial census of foreign direct investment in the United States; it collects annual data and is intended to cover the universe of U.S. affiliates. (A U.S. affiliate is a U.S. business enterprise in which a foreign person owns or controls ten percent or more of the voting stock, or an equivalent interest in an unincorporated business enterprise.) The new rules raise the exemption level for the survey to $30 million on the BE–15(SF) short form, up from $10 million (measured by the company's total assets, sales, or net income or loss), and increase the exemption level at which the long form is required to $100 million, up from $50 million. Both changes reduce burden for smaller companies. In addition, the survey bases industry coding on the North American Industry Classification System (NAICS) in place of the U.S. Standard Industrial Classification system, and modifies the detail collected on the composition of external financing of the reporting enterprise, on research and development expenditures, and on the operations of foreign-owned businesses in individual States.

Executive Order 12612

These proposed rules do not contain policies with Federalism implications sufficient to warrant preparation of a Federalism assessment under E.O. 12612.

Executive Order 12866

These proposed rules have been determined to be not significant for purposes of E.O. 12866.

Paperwork Reduction Act

The collection of information required in these final rules has been approved by OMB (OMB No. 0608–0034).

Notwithstanding any other provisions of law, no person is required to respond to, nor shall any person be subject to a penalty for failure to comply with, a collection of information subject to the requirements of the Paperwork Reduction Act unless that collection displays a currently valid Office of Management and Budget Control Number; such a Control Number (0608–0034) has been displayed. Public reporting burden for this collection of information is estimated to vary from 2 hours to 550 hours per response with an average of 26 hours per response, including time for reviewing instructions, searching existing data sources, gathering and maintaining the data needed, and completing and reviewing the collection of information.

Send comments regarding this burden estimate or any other aspect of this collection of information, including suggestions for reducing this burden to: Director, Bureau of Economic Analysis (BE–1), U.S. Department of Commerce, Washington, DC 20230; and to the Office of Management and Budget, O.I.R.A., Paperwork Reduction Project 0608–0034, Washington, DC 20503.

Regulatory Flexibility Act

The Assistant General Counsel for Legislation and Regulation, Department of Commerce, has certified to the Chief Counsel for Advocacy, Small Business Administration, under provisions of the Regulatory Flexibility Act (5 U.S.C. 605(b)) that these final rules will not have a significant economic impact on a substantial number of small entities. Most small businesses are not foreign owned, and many that are will not be required to report because their assets, sales, and net income are each equal to or less than the $30 million exemption level at or below which reporting is not required. Also under these rules, companies with assets, sales, or net income above $30 million, but not above $100 million will report on the abbreviated BE–15(SF) short form, rather than on the BE–15(LF) long form. These provisions are intended to reduce the reporting burden on smaller companies.

List of Subjects in 15 CFR Part 806

Balance of payments, Economic statistics, Foreign instruments in United

States, Reporting and recordkeeping requirements.

J. Steven Landefeld,

Director, Bureau of Economic Analysis.

For the reasons set forth above, BEA amends 15 CFR Part 806 as follows:

PART 806—DIRECT INVESTMENT SURVEYS

1. The authority citation for 15 CFR Part 806 continues to read as follows:

Authority: 5 U.S.C. 301, 22 U.S.C. 3101–3108, and E.O. 11961 (3 CFR, 1977 Comp., p. 86), as amended by E.O. 12013 (3 CFR, 1977 Comp., p. 147), E.O. 12318 (3 CFR, 1981 Comp., p. 173), and E.O. 12518 (3 CFR, 1985 Comp., p. 348).

§ 806.15 [Amended]

2. Section 806.15(i) is amended as follows:

The exemption level of $10,000,000 in the first sentence is revised to read ''$30,000,000''; in the second sentence, the long form exemption level of $50,000,000 is revised to read ''$100,000,000''; and the short form exemption level ''at least one of the three items exceeds $10,000,000 but no one item exceeds $50,000,000 (positive or negative)'' is revised to read ''at least one of the three items exceeds $30,000,000 but no one item exceeds $100,000,000 (positive or negative).''

[FR Doc. 99–5342 Filed 3–3–99; 8:45 am]

BILLING CODE 3510–06–M

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Food and Drug Administration

21 CFR Part 520

Oral Dosage Form New Animal Drugs; Oxytetracycline Hydrochloride Soluble Powder

AGENCY: Food and Drug Administration, HHS.

ACTION: Final rule.

SUMMARY: The Food and Drug Administration (FDA) is amending the animal drug regulations to reflect approval of a supplemental abbreviated new animal drug application (ANADA) filed by Merial, Ltd. The supplemental ANADA provides for use of a larger package size of oxytetracycline hydrochloride soluble powder in the drinking water of chickens, turkeys, swine, cattle, and sheep for the treatment and control of various bacterial diseases.

EFFECTIVE DATE: March 4, 1999.

FOR FURTHER INFORMATION CONTACT: Patricia D. Leinbach, Center for Veterinary Medicine (HFV–142), Food and Drug Administration, 7500 Standish Pl., Rockville, MD 20855, 301–827–6965.

SUPPLEMENTARY INFORMATION: Merial, Ltd., 2100 Ronson Rd., Iselin, NJ 08830–3077, filed supplemental ANADA 200–144 that provides for use of a larger package size of oxytetracycline hydrochloride soluble powder in the drinking water of chickens, turkeys, swine, cattle, and sheep for the treatment and control of various bacterial diseases. The supplemental ANADA is approved as of December 16, 1998, and the regulations are amended in 21 CFR 520.1660d(a) and (b) to reflect the approval.

Furthermore, the regulations had not been previously amended to reflect the sponsor change from Rhone Merieux Canada, Inc., to Merial, Ltd. The regulation in § 520.1660d(b) is amended at this time to reflect the sponsor change.

Approval of this supplemental ANADA does not require additional safety and effectiveness data. Therefore, a freedom of information summary for approval of this supplemental application is not required.

The agency has determined under 21 CFR 25.33(a)(1) that this action is of a type that does not individually or cumulatively have a significant effect on the human environment. Therefore, neither an environmental assessment nor an environmental impact statement is required.

List of Subjects in 21 CFR Part 520

Animal drugs.

Therefore, under the Federal Food, Drug, and Cosmetic Act and under authority delegated to the Commissioner of Food and Drugs and redelegated to the Center for Veterinary Medicine, 21 CFR part 520 is amended as follows:

PART 520—ORAL DOSAGE FORM NEW ANIMAL DRUGS

1. The authority citation for 21 CFR part 520 continues to read as follows:

Authority: 21 U.S.C. 360b.

2. Section 520.1660d is amended by adding paragraphs (a)(9) and (b)(7), and by revising paragraph (b)(2) to read as follows:

§ 520.1660d Oxytetracycline hydrochloride soluble powder.

(a) * * *

(9) Each 2.73 grams of powder contains 1 gram of OTC HCl (packets: 9.87 and 19.75 oz; pails: 5 lb).

(b) * * *

(2) No. 017144 for use of OTC HCl concentration in paragraph (a)(4) of this section in chickens, turkeys, and swine.

* * * * *

(7) No. 050604 for use of OTC HCl concentration in paragraph (a)(9) of this section in chickens, turkeys, and swine.

* * * * *

Dated: February 24, 1999.

Woodrow M. Knight,

Acting Director, Office of New Animal Drug Evaluation, Center for Veterinary Medicine.

[FR Doc. 99–5280 Filed 3–3–99; 8:45 am]

BILLING CODE 4160–01–F

ENVIRONMENTAL PROTECTION AGENCY

40 CFR Part 58

[R4–9912; FRL–6237–6]

Modification of the Ozone Monitoring Season for Alabama, Florida, Georgia, Kentucky, Mississippi and Tennessee

AGENCY: Environmental Protection Agency.

ACTION: Final rule.

SUMMARY: The Environmental Protection Agency (EPA) is amending 40 CFR part 58, appendix D, section 2.5, to lengthen the ozone monitoring season in Alabama, Georgia, Kentucky, Mississippi and Tennessee from April 1 through October 31 to March 1 through October 31; and to shorten the ozone monitoring season for Florida from year round to March 1 through October 31.

EFFECTIVE DATE: This final rule is effective on March 4, 1999.

ADDRESSES: Copies of the material relating to this rule may be examined during normal business hours at the following locations: Environmental Protection Agency, Sam Nunn Atlanta Federal Center, Region 4 Air Planning Branch, 61 Forsyth Street, SW, Atlanta, Georgia 30303–3104; and Office of the Federal Register, 800 North Capitol Street, NW, Suite 700, Washington, DC.

FOR FURTHER INFORMATION CONTACT: Dick Schutt of the EPA Region 4 office at 404/562–9033 or e-mail at ''schutt.dick@epa.gov''.

SUPPLEMENTARY INFORMATION:

I. Background

On July 9, 1998, EPA released a new guidance document concerning ozone monitoring season selection and modification (''Guideline for Selecting and Modifying the Ozone Monitoring Season Based on an 8-Hour Ozone Standard,'' July 9, 1998. EPA–454/R–98–001). This guidance provides a basis

for adjusting the months in which ozone monitoring for the 8-hour ozone National Ambient Air Quality Standard (NAAQS) is required. In the guidance, EPA's Office for Air Quality Planning and Standards (OAQPS) evaluated the ozone monitoring data and seasons for each state, and provided a methodology for calculating new ozone monitoring seasons. On October 6, 1998, EPA Region 4 notified the Region 4 States of EPA's intent to revise the ozone monitoring season. Based on comments received in response to that letter and additional information from OAQPS, EPA Region 4 notified all Region 4 States, on February 18, 1999, of the decision to revise the ozone monitoring season for Alabama, Florida, Georgia, Kentucky, Mississippi and Tennessee and not to change the season for North Carolina and South Carolina. The ozone monitoring season as required by federal regulations can be found in the ''Ozone Monitoring Season by State'' table found in 40 CFR part 58, appendix D, section 2.5. This table is being updated by this action. Since 1990, there has been no exceedance of the 8-hour NAAQS (0.08 ppm) in North Carolina or South Carolina during the months of November through March. Therefore, the ozone monitoring season remains the same for those two States (April 1 through October 31). Since 1990, there has been no exceedance of the 8-hour NAAQS (0.08 ppm) in Alabama, Florida, Georgia, Kentucky, Mississippi, or Tennessee during the months of November through February. Therefore, the monitoring season was shortened for Florida and lengthened for Alabama, Georgia, Kentucky, Mississippi and Tennessee.

II. Summary of Action

EPA is approving a modification to the ozone monitoring season for Alabama, Florida, Georgia, Kentucky, Mississippi, and Tennessee. The ozone monitoring season is being shortened for Florida from year round to March 1-October 31. The season for Alabama, Georgia, Kentucky, Mississippi and Tennessee is being lengthened by one month to March 1-October 31. The season for these five States previously was April 1-October 31. EPA Region 4 is taking this action after reviewing all ambient ozone monitoring data [1] for all Region 4 States over an eight season period.

This rule will be effective March 4, 1999. EPA has determined that today's rule falls under the ''good cause'' exemption in section 553(b)(3)(B) of the Administrative Procedures Act (APA) which, upon finding ''good cause,'' authorizes agencies to dispense with public participation and section 553(d)(3) which allows an agency to make a rule effective immediately (thereby avoiding the 30-day delayed effective date otherwise provided for in the APA). Today's rule simply codifies provisions which are already in effect as a matter of law in Federal and approved State programs.

Under section 553 of the APA, an agency may find good cause where procedures are ''impractical, unnecessary, or contrary to the public interest.'' Public comment is ''unnecessary'' and ''contrary to the public interest'' since the affected parties, the state agencies, have already commented to EPA on this action. Immediate notice in the CFR benefits the public by initiating the ozone monitoring season on March 1, 1999, rather than waiting until the 2000 monitoring season.

III. 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 Executive Order 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, 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 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 is does not involve decisions intended to mitigate environmental health or safety risks.

D. Executive Order 13084

Under Executive Order 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, Executive Order 13084 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 E.O. 13084 do not apply to this rule.

[1] For this review EPA Region 4 used all available data as entered into EPA's Aerometric Information Retrieval System (AIRS) for the period 1990–1997.

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 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 this approval action 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 preexisting requirements under state or local law, and imposes no new requirements. Accordingly, no additional costs to state, local, or tribal governments, or to the private sector result from this action.

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 May 3, 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 58

Environmental protection, Air pollution control, Ozone, Reporting and recordkeeping requirements.

Dated: February 24, 1999.

A. Stanley Meiburg,

Acting Regional Administrator, Region 4.

Part 58, chapter I, title 40 of the Code of Federal Regulations is amended as follows:

PART 58—[AMENDED]

1. The authority citation for Part 58 continues to read as follows:

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

2. Part 58, Appendix D, section 2.5: the table is amended by revising the entries for Alabama, Florida, Georgia, Mississippi and Tennessee to read as follows:

Appendix D to Part 58—Network Design for State and Local Air Monitoring Stations (SLAMS), National Air Monitoring Stations (NAMS), and Photochemical Assessment Monitoring Stations (PAMS)

* * * * *

2.5 Ozone (O3) Design Criteria for SLAMS

* * *

OZONE MONITORING SEASON BY STATE

State	Begin month	End month
* * * * *		
Alabama	March	October.
* * * * *		
Florida	March	October.
Georgia	March	October.
* * * * *		
Kentucky	March	October.
* * * * *		
Mississippi	March	October.
* * * * *		
Tennessee	March	October.
* * * * *		

[FR Doc. 99–5382 Filed 3–3–99; 8:45 am]

BILLING CODE 6560–50–P

ENVIRONMENTAL PROTECTION AGENCY

40 CFR Parts 136 and 439

[FRL–6304–8]

RIN 2040–AA13

Pharmaceutical Manufacturing Category Effluent Limitations Guidelines, Pretreatment Standards, and New Source Performance Standards; Final Rule

AGENCY: Environmental Protection Agency (EPA).

ACTION: Final rule; correction

SUMMARY: EPA is correcting minor errors in the preamble and effluent limitations guidelines and standards for the pharmaceutical manufacturing point source category, which appeared in the **Federal Register** on September 21, 1998 (63 FR 50388).

EFFECTIVE DATE: These corrections shall become effective March 4, 1999. In accordance with 40 CFR 232, this rule will be considered promulgated for purposes of judicial review at 1:00 P.M. Eastern time on March 18, 1999.

FOR FURTHER INFORMATION CONTACT: Dr. Frank H. Hund, Office of Water Engineering and Analysis Division (4303), U. S. Environmental Protection Agency, 401 M St., SW, Washington, DC, 20460, (202) 260–7182, hund.frank@epamail.epa.gov.

SUPPLEMENTARY INFORMATION: In a final rule published on September 21, 1998 (63 FR 50388), EPA established final effluent limitations and standards for the pharmaceutical manufacturing point source category for the control of wastewater pollutants. The final rule contained minor typographical errors and errors in the rounding of several of the numerical limitations to a specific number of significant figures. This document corrects those errors.

Administrative Requirements

Under Executive Order 12866 (58 FR 51735, October 4, 1993), this action is not a ''significant regulatory action'' and is therefore not subject to review by the Office of Management and Budget. In addition, this action does not impose any enforceable duty, contain any unfunded mandate, or impose any significant or unique impact on small governments as described in the Unfunded Mandates Reform Act of 1995 (Pub. L. 104–4). This rule also does not require prior consultation with State, local, and tribal government officials as specified by Executive Order 12875 (58 FR 58093, October 28, 1993) or Executive Order 13084 (63 FR 27655, May 10, 1998), or involve special consideration of environmental justice related issues as required by Executive Order 12898 (59 FR 7629, February 16, 1994).

Because this action is not subject to the notice-and-comment requirements under the Administrative Procedure Act, 5 U.S.C. 553, or any other statute, it is not subject to the regulatory flexibility provisions of the Regulatory Flexibility Act (5 U.S.C. 601 *et seq.*). This rule also is not subject to Executive Order 13045 (62 FR 19885, April 23, 1997) because EPA interprets E.O. 13045 as applying only to those regulatory actions that are based on health and safety risks, such that the analysis required under section 5–501 of the Order has the potential to influence the regulation. This rule is not subject to E.O. 13045 because it does not establish an environmental standard intended to mitigate health or safety risks. EPA's compliance with these statutes and Executive Orders for the underlying rule is discussed in the **Federal Register** notice of September 21, 1998. This action contains no information collection requirements. Therefore, no information collection request has been submitted to the Office of Management and Budget (OMB) for review and approval under the Paperwork Reduction Act of 1980, 44 U.S.C. 1501, *et seq.*

The revisions in this final rule are not substantive. These revisions correct minor typographical errors and errors in the rounding of several numerical limitations. For this reason, EPA has determined that public participation in this action is unnecessary and constitutes good cause for issuing this rule without notice and comment. For the same reason, the Agency has determined that good cause exists to waive the requirement for a 30 day period before the amendments become effective and therefore the amendments will be immediately effective.

The Congressional Review Act (CRA), 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. Section 808 allows the issuing agency to make a rule effective sooner than otherwise provided by the CRA if the agency makes a good cause finding that notice and public procedure is impracticable, unnecessary or contrary to the public interest. This determination must be supported by a brief statement. 5 U.S.C. 808(2). As stated above, EPA has made such a good cause finding, including the reasons therefor, and established an effective date of March 4, 1999. 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 action is not a ''major rule'' as defined by 5 U.S.C. 804(2).

List of Subjects in 40 CFR Part 439

Environmental protection, Incorporation by reference, Reporting and recordkeeping requirements, Water pollution control.

Dated: February 22, 1999.

J. Charles Fox,

Assistant Administrator for Water.

The following corrections are made in FRL–6135–7, Final Effluent Limitations Guidelines and Standards for the Pharmaceutical Manufacturing Point Source Category, which was published in the **Federal Register** on September 21, 1998 (63 FR 50388).

1. On page 50392 column 1 line 38 ''BO_5'' is corrected to read ''BOD_5''. 11

2., 3., and 4. On page 50392 column 2 lines 3, 6, and 7 ''BO_5'' in each instance is corrected to read ''BOB_5''.

5., 6., 7., and 8. On page 50394 in column 2 lines 15, 19, 55, and 60, ''BOD_5'' in each instance is corrected to read ''BOD_5''.

9. On page 50398 column 1 line 47, the word ''plants'' is removed.

10. On page 50402 column 1 line 48, ''passthrough'' is corrected to read ''pass through''.

11. On page 50409 column 2 line 38, ''(July, 1998'' is corrected to read ''July, 1998''.

12. On page 50410 column 3 line 31, ''are'' is corrected to read ''were''.

13. On page 50412 column 1 line 34, ''XI.B.9.g'' is corrected to read ''VI.B.9.G''.

14. On page 50421 column 1 line 26, the word ''that'' is removed.

15. On page 50421 column 2 lines 60 and 61, the phrase ''Mass loading at the relevant point of measurement)'' is removed.

16. and 17. On page 50422 column 2 lines 44 and 49, remove the word ''proposed.''

18. On page 50422 column 3 line 21, remove the phrase ''being proposed today.''

19. On page 50423 column 3 line 62, remove the phrase ''which the discharge occur'' and replace with ''which the discharge will occur''.

20. On page 50426 column 1 line 5, the phrase ''part a determination'' is corrected to read ''part, a determination''.

§ 439.14 [Corrected]

21. On page 50427 in the table for § 439.14, the numerical value listed in the column entitled ''Average monthly discharge must not exceed'', corresponding to the entry ''24 Chloroform'' in the ''Regulated parameter'' column is changed from ''0.01'' to ''0.013''.

§ 439.15 [Corrected]

22. On page 50428 in the table continued from the previous page, the numerical value listed in the column entitled ''Maximum daily discharge'', corresponding to the entry ''17 Methyl Cellosolve'' in the ''Regulated parameter'' column is changed from ''25.0'' to ''100.0''.

23. On page 50428 in the table continued from the previous page, the numerical value listed in the column entitled ''Average monthly discharge must not exceed'', corresponding to the entry '' 17 Methyl Cellosolve'' in the ''Regulated parameter'' column is changed from ''10.2'' to ''40.6''.

24. On page 50428 in the table continued from the previous page, the numerical value listed in the column entitled ''Average monthly discharge must not exceed'', corresponding to the entry ''27 Chloroform'' in the ''Regulated pollutant'' column is changed from ''0.01'' to ''0.013''.

§ 439.16 [Corrected]

25. On page 50429 in the table continued from the previous page, the numerical value listed in the column entitled ''Average monthly discharge must not exceed'' corresponding to the entry ''10 Methyl Cellosolve'' in the ''Regulated parameter'' column is changed from ''9.7'' to ''59.7''.

26. On page 50429 in the table continued from the previous page, the numerical value listed in the column entitled ''Average monthly discharge must not exceed'' corresponding to the entry '' 13 Benzene'' in the ''Regulated parameter'' column is changed from ''0.6'' to ''0.7''.

27. On page 50429 in the table continued from the previous page, the numerical value listed in the column entitled ''Average monthly discharge must not exceed'', corresponding to the entry ''14 Toluene'' in the ''Regulated parameter'' column is changed from ''0.1'' to ''0.2''.

§ 439.17 [Corrected]

28. On page 50429 in the table in § 439.17, the numerical value listed in the column entitled ''Average monthly discharge must not exceed'', corresponding to the entry ''14 Toluene'' in the ''Regulated parameter'' column is changed from ''0.1'' to ''0.2''.

§ 439.26 [Corrected]

29. On page 50431 in the last line in column 1, the date ''October 22, 2001'' is replaced by ''September 21, 2001''.

30. On page 50431 in the table in § 439.26, change the entry ''Ethyl acetate'' in ''Regulated parameter'' column to ''3 Ethyl acetate''.

§ 439.34 [Corrected]

31. On page 50432 in the table in § 439.34, the numerical value listed in the column entitled ''Maximum daily discharge'', corresponding to the entry ''14 Methyl Cellosolve'' in the ''Regulated parameter'' column is changed from ''25.0'' to ''100.0''.

32. On page 50432 in the table in § 439.34, the numerical value listed in the column entitled ''Average monthly discharge must not exceed'', corresponding to the entry ''14 Methyl Cellosolve'' in the ''Regulated parameter'' column is changed from ''10.2'' to ''40.6''.

33. On page 50432 in the table in § 439.34, the numerical value listed in the column entitled ''Maximum daily discharge'', corresponding to the entry ''16 Triethyl amine'' in the ''Regulated parameter'' column is changed from ''250.3'' to ''250.0''.

34. On page 50432 in the table in § 439.34, the numerical value listed in the column entitled ''Average monthly discharge must not exceed'' corresponding to the entry ''16 Triethyl amine'' in the ''Regulated parameter'' column is changed from ''101.5'' to ''102.0''.

35. On page 50432 in the table in § 439.34, the numerical value listed in the column entitled ''Average monthly discharge must not exceed'' corresponding to the entry ''24 Chloroform'' in the ''Regulated parameter'' column is changed from ''0.01'' to ''0.013''.

§ 439.35 [Corrected]

36. On page 50433 in the table in § 439.35, the entry listed in the column entitled ''Regulated parameter'', ''18 Methyl Sulfoxide'' is changed to read ''18 Dimethyl Sulfoxide''.

37. On page 50433 in the table in § 439.35, the numerical value listed in the column entitled ''Maximum daily discharge'' corresponding to the entry ''23 Xylenes'' in the ''Regulated parameter'' column is changed from ''0.02 to ''0.03''.

38. On page 50433 in the table in § 439.35, the numerical value listed in the column entitled ''Average monthly discharge must not exceed'' corresponding to the entry ''27 Chloroform'' in the ''Regulated parameter'' column is changed from ''0.01'' to ''0.013''.

39. On page 50433 in the table in § 439.35, the numerical value listed in the column entitled ''Average monthly discharge must not exceed'' corresponding to the entry ''29 Chlorobenzene'' in the ''Regulated parameter'' column is changed from ''0.05'' to ''0.06''.

§ 439.36 [Corrected]

40. On page 50434 in the table in § 439.36, the numerical value listed in the column entitled ''Average monthly discharge must not exceed'' corresponding to the entry ''10 Methyl Cellosolve'' in the ''Regulated parameter'' column is changed from ''54.7'' to ''59.7''.

41. On page 50434 in the table in § 439.36, the numerical value listed in the column entitled ''Average monthly discharge must not exceed'' corresponding to the entry ''14 Toluene'' in the ''Regulated parameter'' column is changed from ''0.1'' to ''0.2''.

§ 439.37 [Corrected]

42. On page 50435 in the table continued from the previous page, the numerical value listed in the column entitled ''Average monthly discharge must not exceed'' corresponding to the entry ''14 Toluene'' in the ''Regulated parameter'' column is changed from ''0.1'' to ''0.2''.

Appendix A to Part 439—Tables

43. On page 50437 Table 1 should appear as follows with certain Regulated Parameters identified with footnote designations.

TABLE 1.—SURROGATE PARAMETERS FOR DIRECT DISCHARGERS

[Utilizing biological treatment technology]

Regulated parameters	Treatability class
Amyl alcohol	Alcohols.
Ethanol [1]	
Isopropanol [1]	
Methanol [1]	
Phenol	
Isobutyraldehyde [1]	Aldehydes.
n-Heptane [1]	Alkanes.
n-Hexane [1]	
Diethylamine [1]	Amines.
Triethylamine	
Benzene	Aromatics.
Toluene [1]	

TABLE 1.—SURROGATE PARAMETERS FOR DIRECT DISCHARGERS—Continued

[Utilizing biological treatment technology]

Regulated parameters	Treatability class
Xylenes [1]	
Chlorobenzene	
o-Dichlorobenzene	
Chloroform [1]	Chlorinated Alkanes.
Methylene chloride [1]	
1,2-Dichloroethane [1]	
Ethyl acetate [1]	Esters.
Isopropyl acetate	
n-Amyl acetate	
n-Butyl acetate	
Methyl formate	
Tetrahydrofuran [1]	Ethers.
Isopropyl ether	
Acetone [1]	Ketones.
4-Methyl-2-pentanone (MIBK)	
Ammonia (aqueous)	Miscellaneous. [2]
Acetonitrile	
Methyl Cellosolve	
Dimethyl Sulfoxide	

[1] These parameters may be used as a surrogate to represent other parameters in the same treatability class.
[2] Surrogates have not been identified for the ''Miscellaneous'' treatability class.

44. On page 50437 Table 2 should appear as follows with certain Regulated Parameters with footnote designations:

TABLE 2.—SURROGATE PARAMETERS FOR INDIRECT DISCHARGERS

[Utilizing steam stripping treatment technology]

Regulated parameters	Treatability class
Benzene	
Toluene [1]	
Xylenes	
n-Heptane	High strippability.
nHexane	
Chloroform [1]	
Methylene chloride [1]	
Chlorobenzene	
Methyl cellosolve	
Ammonia (aqueous) [1]	
Diethyl amine	
Triethyl amine	
Acetone [1]	
4-Methyl-2-pentanone (MIBK)	
n-Amyl acetate	
n-Butyl acetate [1]	Medium strippability.
Ethyl acetate	
Isopropyl acetate	
Methyl formate	
Isopropyl ether	
Tetrahydrofuran [1]	
1,2–Dichloroethane	
o-Dichlorobenzene	

[1] These paramaters may be used as a surrogate to represent other parameters in the same treatability class.

[FR Doc. 99–5106 Filed 3–3–99; 8:45 am]

BILLING CODE 6560–50–P

FEDERAL MARITIME COMMISSION

46 CFR part 565

[Docket No. 98–25]

Amendments to Regulations Governing Restrictive Foreign Shipping Practices, and New Regulations Governing Controlled Carriers

AGENCY: Federal Maritime Commission.

ACTION: Final rule; correction.

SUMMARY: The Federal Maritime Commission published in the **Federal Register** of February 18, 1999, a final rule making changes and corrections to existing regulations to update and improve them, and to bring them into conformity with the Ocean Shipping Reform Act of 1998. Inadvertently, § 565,10 was mistitled.

FOR FURTHER INFORMATION CONTACT:

Thomas Panebianco, General Counsel, Federal Maritime Commission, 800 North Capitol Street N.W., Washington, D.C. 20573–0001, (202) 523–5740.

SUPPLEMENTARY INFORMATION: The Federal Maritime Commission (''Commission'') published a final rule in the **Federal Register** of February 18, 1999 (64 FR 8007) which, among other changes, implemented rules addressing controlled carriers. The Commission inadvertently mistitled § 565.10 ''Suspension procedures period and replacement rates.'' The correct title for this section is ''Suspension procedures, period of suspension, and replacement rates.''

In Docket No. 98–25, published on February 18, 1999 (64 FR 8007), make the following corrections:

On page 8011, in the first column, in the table of contents, replace ''565.10 Suspension procedures period and replacement rates'' with ''565.10 Suspension procedures, period of suspension, and replacement rates.''

On page 8012, in the second column, replace ''565.10 Suspension procedures period and replacement rates'' with ''565.10 Suspension procedures, period of suspension, and replacement rates.''

Bryant L. VanBrakle,

Secretary.

[FR Doc. 99–5330 Filed 3–3–99; 8:45 am]

BILLING CODE 6730–01–M

FEDERAL COMMUNICATIONS COMMISSION

47 CFR Part 90

[WT Docket No. 97–153, RM–8584, RM–8623, RM–8680, RM–8734; FCC 99–9]

Private Land Mobile Radio Services

AGENCY: Federal Communications Commission.

ACTION: Final rule.

SUMMARY: The Commission has released this document that adopts several amendments to the Private Land Mobile Radio Services rules. This document was prepared in response to the Commission's *Notice of Proposed Rulemaking* in this proceeding regarding eliminating certain frequency coordination requirements in the Business Radio Service, the transmission of safety alerting signals on Radiolocation Service frequencies, and modifying construction and loading requirements for private, non-Specialized Mobile Radio systems operating in the 800 and 900 MHz bands. The adopted rules will reduce the regulatory burden on licensees, and will promote more efficient and flexible use of the private land mobile radio frequency spectrum.

DATES: Effective April 5, 1999.

FOR FURTHER INFORMATION CONTACT:

Gene Thomson, Policy and Rules Branch, Public Safety and Private Wireless Division, Wireless Telecommunications Bureau, (202) 418–0680.

SUPPLEMENTARY INFORMATION: This is a summary of the Commission's *Report and Order*, WT Docket No. 97–153, FCC 99–9, adopted January 28, 1999, and released February 19, 1999. The full text of this *Report and Order* is available for inspection and copying during normal business hours in the FCC Reference Center, Room 246, 1919 M Street N.W., Washington, D.C. The complete text may be purchased from the Commission's copy contractor, ITS, Inc., 1231 20th St. N.W., Washington, D.C. 20036, telephone (202) 857–3800. The complete (but unofficial) text is also available on the Commission's Internet site at <http://www.fcc.gov/Bureaus/Wireless/Notices/1999/index.html> under the file name ''fcc999txt'' in ASCII text and ''fcc999.wp'' in Word Perfect format.

Synopsis of the Report and Order

1. The Commission has released a *Report and Order* that adopts several amendments to part 90 of the rules concerning the Private Land Mobile Radio Services. These amendments were proposed in a *Notice of Proposed Rulemaking* contained in 62 FR 46468 (September 3, 1997). The rule changes include: (1) the elimination of frequency coordination requirements for five low-power frequencies in the Industrial/Business Pool; (2) permitting the transmission of alerting signals for a safety warning system operating at 24.10 GHz in the Radiolocation Service; and (3) extending the construction period requirement for private, non-Specialized Mobile Radio systems operating in the 800 and 900 MHz bands from eight months to twelve months.

Administrative Matters

Final Regulatory Flexibility Analysis

2. As required by the Regulatory Flexibility Act (''RFA''), the Commission has prepared this present Final Regulatory Flexibility Analysis (''FRFA'') which conforms to the RFA.

A. Need for, and Objectives of, the Adopted Rules

3. To reduce regulatory requirements, the Commission has adopted rules to: (1) amend part 90 of its rules to increase the construction period applicable to non-Specialized Mobile Radio, 800 and 900 MHz land mobile radio systems from eight months to one year; (2) delete the frequency coordination requirement before a station can be licensed for mobile operation on five low power frequencies in the 150–174 MHz band; and (3) permit the use of frequencies in the Radiolocation Service 24.05–24.25 GHz band for the transmission of alerting signals to warn motorists of hazardous driving conditions. These rule changes will permit licensees more time to construct their systems, and will promote more flexible use of land mobile spectrum. We believe these changes will encourage growth of land mobile systems and enhance telecommunications offerings for consumers, producers and new entrants.

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

4. No comments were submitted specifically in response to the Initial Regulatory Flexibility Analysis. We expect, however, that our actions will benefit all entities subject to these rule changes, including small businesses.

C. Description and Estimate of the Number of Small Entities to Which Rules Will Apply

5. The RFA directs agencies to provide a description of and, where feasible, an estimate of the number of small entities that may be affected by

the proposed rules, if adopted. The RFA generally defines the term ''small entity'' as having the same meaning as the terms ''small business,'' ''small organization,'' and ''small governmental jurisdiction.'' In addition, the term ''small business'' has the same meaning as the term ''small business concern'' under the Small Business Act. A small business concern is one 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).

6. The adopted rules apply to businesses and local government entities that operate radio systems for their own internal use in the PLMR services. PLMR systems serve an essential role in a vast range of industrial, business, land transportation, and public safety activities. These radios are used by companies of all sizes operating in all U.S. business categories. Because of the vast array of PLMR users, the Commission has not developed nor would it be possible to develop a definition of small businesses specifically applicable to PLMR users. Therefore, for the purpose of determining whether a licensee is a small business as defined by the Small Business Administration (SBA), each licensee would need to be evaluated within its own business area. Therefore, the appropriate definition for PLMRS small businesses is SBA's definition for radiotelephone (wireless) companies. That definition provides that a small entity is a radiotelephone company employing no more than 1,500 persons.

7. We sought comment on the number of small businesses which could be impacted by the proposed rules. We noted that the Commission's 1994 Annual Report indicates that at the end of fiscal year 1994 there were approximately 292,000 PLMR stations and 5.4 million transmitters operating in the 800, 900 MHz and 24 GHz bands. Further, because any entity engaged in a business activity is eligible to hold a PLMR license, the adopted rules could potentially impact every small business in the U.S. There are far fewer than 292,000 licensees among the 292,000 PLMR stations. We do not have data specifying the number of these licensees that have 1,500 employees or fewer and are not dominant in their field of operation, and thus are unable at this time to estimate with greater precision the number of such entities that might qualify as small business concerns under the SBA's definition. In reality, however, the number of small businesses affected by the change in the construction period rule and the elimination of the frequency coordination requirement for five VHF low power frequencies, is expected to be very small.

8. As noted, the RFA also includes small governmental entities as a part of the regulatory flexibility analysis. The definition of a small governmental entity is one with a population of less than 50,000. There are 85,006 governmental entities in the nation. This number includes such entities as states, counties, cities, utility districts, and school districts. There are no figures available on what portion of this number has populations of fewer than 50,000. However, this number includes 38,978 counties, cities, and towns, and of those, 37,566, or 96 percent, have populations of fewer than 50,000. The Census Bureau estimates that this ratio is approximately accurate for all governmental entities. Thus, of the 85,006 governmental entities, we estimate that 96 percent, or 81,600 are small entities that may be affected by our adopted rule to permit public safety licensees (local government entities) to use the frequency 24.10 GHz for transmitting traffic safety alerting signals. The decision whether or not to use this frequency would be made by each local governmental agency.

D. Description of Projected Reporting, Recordkeeping and Other Compliance Requirements

9. The extension of the construction period from 8 to 12 months for 800 and 900 MHz non-Specialized Mobile Radio licensees will ease the regulatory burden on these licensees. The deletion of the frequency coordination requirement for certain frequencies in the 150–174 MHz band will eliminate the frequency coordination fees that applicants were required to pay before receiving a license from the Commission. No new requirements would be imposed as a result of the actions adopted in this rule making proceeding. Thus, costs to certain applicants for the preparation and filing of license applications would be reduced.

E. Steps Taken To Minimize Significant Economic Impact on Small Entities and Significant Alternatives Considered

10. In the IRFA, we indicated that an alternative to our proposed rule to extend the construction period from 8 months to 12 months for 800 and 900 MHz non-SMR licensees would be to permit a longer than 12 month construction period for small entities. We requested comments on whether a longer construction period is necessary for small entities or whether the current waiver process is sufficient. No comments were submitted in response to our request. No commenters raised any alternatives to any of our proposals. We believe that changing from an eight month to a twelve month construction period will ease the regulatory burden on small businesses by reducing the need for small business to request extensions of the construction period.

Report to Congress: The Commission will send a copy of this *Report and Order,* WT Docket No. 97–153, including this FRFA, in a report to be sent to Congress pursuant to the Small Business Regulatory Enforcement Fairness Act, see 5 U.S.C. 801(a)(1)(A). In addition, the Commission will send a copy of the *Report and Order,* WT Docket No. 97–153, including the FRFA, to the Chief Counsel for Advocacy of the Small Business Administration. A summary of the *Report and Order,* WT Docket No. 97–153, including the FRFA, will also be published in the **Federal Register**.

Ordering Clauses

11. Accordingly, *it is ordered* that, pursuant to the authority of Sections 4(i), 303(r), and 332(a)(2) of the Communications Act of 1934, as amended, 47 U.S.C. 154(i), 303(r), and 332(a)(2), part 90 of the Commission's Rules, 47 CFR part 90 *is* amended as set forth in the attached *Rule Changes.*

12. *It is further ordered* that the rule changes adopted herein will become effective April 5, 1999.

13. *It is further ordered* that the Commission's Office of Public Affairs, Reference Operations Division, *shall send* a copy of this *Report and Order,* WT Docket No. 97–153, including the Final Regulatory Flexibility Analysis, to the Chief Counsel for Advocacy of the Small Business Administration.

List of Subjects in 47 CFR Part 90

Communications equipment, Radio.

Federal Communications Commission.

Magalie Roman Salas,

Secretary.

Rule Changes

For the reasons discussed in the preamble, the Federal Communications Commission amends 47 CFR part 90 as follows:

PART 90—PRIVATE LAND MOBILE RADIO SERVICES

1. The authority citation for Part 90 continues to read as follows:

Authority: Sections 4, 303, and 332, 48 Stat. 1066, 1082, as amended: 47 U.S.C. 154, 303, and 332, unless otherwise noted.

2. Section 90.20 is amended by revising paragraph (f)(4) to read as follows:

§ 90.20 Public Safety Pool.

* * * * *

(f) * * *

(4) A licensee of a radio station in this service may operate radio units for the purpose of determining distance, direction, speed, or position by means of a radiolocation device on any frequency available for radiolocation purposes without additional authorization from the Commission, provided type accepted equipment or equipment authorized pursuant to §§ 90.203(b)(4) and (b)(5) of this part is used, and all other rule provisions are satisfied. A licensee in this service may also operate, subject to all of the foregoing conditions and on a secondary basis, radio units at fixed locations and in emergency vehicles that transmit on the frequency 24.10 GHz, both unmodulated continuous wave radio signals and modulated FM digital signals for the purpose of alerting motorists to hazardous driving conditions or the presence of an emergency vehicle. Unattended and continuous operation of such transmitters will be permitted.

3. Section 90.35 is amended by adding paragraph (d)(7) to read as follows:

§ 90.35 Industrial/Business Pool.

* * * * *

(d) * * *

(7) A railroad licensee, i.e., a licensee eligible for frequencies listed in § 90.35(b)(3) of this section that are coordinated by the railroad coordinator (LR), may operate radio units at fixed locations and in moving railroad locomotives/cars that transmit on the frequency 24.10 GHz, both unmodulated continuous wave radio signals and modulated FM digital signals for the purpose of alerting motorists to the presence of an approaching train. Unattended and continuous operation of such transmitters will be permitted without additional authorization from the Commission, provided type accepted equipment or equipment authorized pursuant to §§ 90.203(b)(4) and (b)(5) of this part is used, and all other rule provisions are satisfied.

4. Section 90.103 is amended by revising paragraph (c)(22) to read as follows:

§ 90.103 Radiolocation Service.

* * * * *

(c) * * *

(22) For frequencies 2455 MHz, 10,525 MHz, and 24,125 MHz, only unmodulated, continuous wave (NON) emission shall be employed. The frequency 24.10 GHz, and frequencies in the 24.20–24.25 GHz band may use NON emission along with an ancillary FM digital emission. The frequency 24.10 GHz will be used for the purpose of alerting motorists of hazardous driving conditions and the presence of emergency vehicles. Equipment operating on 24.10 GHz must keep the deviation of the FM digital signal within ± 5 MHz. Equipment operating on this frequency must have a frequency stability of at least 2000 ppm and is exempt from the requirements of §§ 90.403(c), 90.403(f), and 90.429 of this part.

* * * * *

5. Section 90.175 is amended by revising paragraph (i)(5) to read as follows:

§ 90.175 Frequency coordination requirements.

* * * * *

(i) * * *

(5) Applications in the Industrial/Business Pool requesting a frequency designated for itinerant operations, and applications requesting operation on 154.570 MHz, 154.600 MHz, 151.820 MHz, 151.880 MHz, and 151.940 MHz.

* * * * *

6. Section 90.633 is amended by revising paragraphs (c) and (d) to read as follows:

§ 90.633 Conventional systems loading requirements.

* * * * *

(c) Except as provided in § 90.629 of this part, licensees of conventional systems must place their authorized stations in operation not later than one year after the date of grant of the system license.

(d) If a station is not placed in operation within one year, except as provided in Section 90.629 of this part, the license cancels automatically. For purposes of this section, a base station is not considered to be in operation unless at least one associated mobile station is also in operation.

* * * * *

7. Section 90.651 is amended by revising paragraph (c) to read as follows:

§ 90.651 Supplemental reports required of licensees authorized under this subpart.

* * * * *

(c) Licensees of conventional systems must report the number of mobile units placed in operation within twelve months of the date of the grant of their license. Such reports shall be filed within 30 days from that date.

* * * * *

[FR Doc. 99–5216 Filed 3–3–99; 8:45 am]

BILLING CODE 6712–01–P

DEPARTMENT OF COMMERCE

National Oceanic and Atmospheric Administration

50 CFR Part 679

[Docket No. 981222313–8320–02; I.D. 022699C]

Fisheries of the Exclusive Economic Zone Off Alaska; Species in the Rock Sole/Flathead Sole/''Other Flatfish'' Fishery Category by Vessels Using Trawl Gear in Bering Sea and Aleutian Islands Management Area

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

ACTION: Closure.

SUMMARY: NMFS is closing directed fishing for species in the rock sole/flathead sole/''other flatfish'' fishery category by vessels using trawl gear in the Bering Sea and Aleutian Islands management area (BSAI). This action is necessary to prevent exceeding the first seasonal apportionment of the 1999 Pacific halibut bycatch allowance specified for the trawl rock sole/flathead sole/''other flatfish'' fishery category.

DATES: Effective 1200 hrs, Alaska local time (A.l.t.), February 26, 1999, until 1200 hrs, A.l.t., March 30, 1999.

FOR FURTHER INFORMATION CONTACT: Andrew Smoker, 907–586-7228.

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

The Interim 1999 Harvest Specifications of Groundfish (64 FR 50, January 4, 1999) established the first seasonal apportionment of halibut bycatch mortality specified for the BSAI trawl rock sole/flathead sole/''other flatfish'' fishery category, which is defined at § 679.21(e)(3)(iv)(B)(*2*), as 184 metric tons.

In accordance with § 679.21(e)(7)(v), the Administrator, Alaska Region, NMFS (Regional Administrator), has determined that the first seasonal apportionment of the 1999 halibut bycatch allowance specified for the trawl rock sole/flathead sole/''other flatfish'' fishery in the BSAI has been caught. Consequently, the Regional Administrator is closing directed fishing for species in the rock sole/flathead sole/''other flatfish'' fishery category by vessels using trawl gear in the BSAI.

Maximum retainable bycatch amounts may be found in the regulations at § 679.20(e) and (f).

This action responds to the best available information recently obtained from the fishery. It must be implemented immediately to prevent exceeding the first seasonal apportionment of the 1999 halibut bycatch allowance specified for the trawl rock sole/flathead sole/''other flatfish'' fishery category. Providing prior notice and an opportunity for public comment on this action is impracticable and contrary to the public interest. The fleet will soon take the apportionment. Further delay would only result in the first seasonal apportionment of the 1999 halibut bycatch allowance being exceeded. NMFS finds for good cause that the implementation of this action cannot be delayed for 30 days. Accordingly, under U.S.C. 553(d), a delay in the effective date is hereby waived.

Classification

This action is required by 50 CFR 679.21 and is exempt from review under E.O. 12866.

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

Dated: February 26, 1999.

Bruce C. Morehead,

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

[FR Doc. 99–5284 Filed 3–1–99; 9:57 am]

BILLING CODE 3510–22–F

DEPARTMENT OF COMMERCE

National Oceanic and Atmospheric Administration

50 CFR Part 679

[Docket No. 981021264–9016–02; I.D. 022699A]

Fisheries of the Exclusive Economic Zone Off Alaska; Atka Mackerel in the Central Aleutian District and Bering Sea subarea of the Bering Sea and Aleutian Islands

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

ACTION: A closure and an opening.

SUMMARY: NMFS is prohibiting directed fishing for Atka mackerel in the Central Aleutian District of the Bering Sea and Aleutian Islands management area (BSAI). This action is necessary to prevent exceeding the 1999 interim harvest specification of Atka mackerel. NMFS is also opening fishing with trawl gear in Steller sea lion critical habitat in the Central Aleutian District for species for which directed fisheries are open.

DATES: Effective 1200 hrs, Alaska local time (A.l.t.), March 1, 1999, until superseded by the Final 1999 Harvest Specification for Groundfish, which will be published in the **Federal Register**.

FOR FURTHER INFORMATION CONTACT: Andrew Smoker, 907–586-7228.

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

The Interim 1999 Harvest Specifications (64 FR 50, January 4, 1999) as amended by the final rule implementing season and area apportionment of Atka mackerel total allowable catch (TAC) (64 FR 3446, January 22, 1999) established 9,520 metric tons (mt) as the Atka mackerel TAC in the Central Aleutian District of the BSAI. See § 679.20(c)(2)(ii).

In accordance with § 679.20(d)(1)(i), the Administrator, Alaska Region, NMFS (Regional Administrator), has determined that the 1999 interim harvest specification for Atka mackerel in the Central Aleutian District will be reached. The Regional Administrator is establishing a directed fishing allowance of 9,270 mt, and is setting aside the remaining 250 mt as bycatch to support other anticipated groundfish fisheries. In accordance with § 679.20(d)(1)(iii), the Regional Administrator finds that this directed fishing allowance has been reached. NMFS is prohibiting directed fishing for Atka mackerel in the Central Aleutian District of the BSAI.

Maximum retainable bycatch amounts may be found in the regulations at § 679.20(e) and (f).

On February 13, 1999, NMFS prohibited trawling within Steller sea lion critical habitat in the Central Aleutian District because the 1999 critical habitat percentage of the interim harvest specifications of Atka mackerel allocated to the Central Aleutian District had been reached (FR 64 8013, February 18, 1999). Regulations at § 679.22(a)(8)(iii)(C) authorize opening Steller sea lion critical habitat in the Central Aleutian District to fishing with trawl gear after NMFS closes Atka mackerel to directed fishing within that district. NMFS is opening critical habitat in the Central Aleutian District to fishing with trawl gear for species open to directed fishing.

Classification

This action responds to the interim TAC limitations and other restrictions on the fisheries established in the 1999 interim harvest specifications for groundfish for the BSAI. It must be implemented immediately to prevent overharvesting the 1999 interim harvest specification of Atka mackerel in the Central Aleutian District of the BSAI. A delay in the effective date is impracticable and contrary to the public interest. Further delay would only result in overharvest. NMFS finds for good cause that the implementation of this action should not be delayed for 30 days. Accordingly, under 5 U.S.C. 553(d), a delay in the effective date is hereby waived.

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

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

Dated: February 26, 1999.

Bruce C. Morehead,

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

[FR Doc. 99–5283 Filed 3–1–99; 9:57 am]

BILLING CODE 3510–22–F

DEPARTMENT OF COMMERCE

National Oceanic and Atmospheric Administration

50 CFR Part 679

[Docket No. 990115017–9017–01; I.D. 022699B]

Fisheries of the Exclusive Economic Zone Off Alaska; Pollock by Vessels Catching Pollock for Processing by the Inshore Component in the Bering Sea Subarea

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

ACTION: Inseason adjustment; request for comments.

SUMMARY: NMFS is prohibiting directed fishing for pollock by vessels catching pollock for processing by the inshore component in the Bering Sea subarea (BS) of the Bering Sea and Aleutian Islands management area (BSAI). NMFS adjusts the time of closure to prevent the underharvest of the interim 1999 A2 season pollock total allowable catch (TAC) specified to the inshore component in the BS of the BSAI.

DATES: Effective 2400 hrs, Alaska local time (A.l.t.), February 28, 1999, until 1200 hrs, A.l.t., August 1, 1999.

ADDRESSES: Comments should be mailed to Susan J. Salveson, Assistant Regional Administrator, Sustainable Fisheries Division, NMFS, P.O. Box 21668, Juneau AK 99802–1668.

FOR FURTHER INFORMATION CONTACT: Andrew Smoker, 907–586-7228.

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

In accordance with § 679.20(a)(5)(i)(C)(1), the revised interim 1999 TAC amounts for pollock in the Bering Sea subarea (64 FR 3437, January 22, 1999), and Section 206(b)(1) of the American Fisheries Act, the interim A2 season TAC of pollock specified as a directed fishing allowance for the inshore component for harvest within the BS is 52,452 metric tons.

Current information shows the catching capacity of vessels catching pollock for processing by the inshore component is in excess of 5,000 mt per day.

Section 679.23(b) specifies that the time of all openings and closures of fishing seasons other than the beginning and end of the calendar fishing year is 1200 hrs, A.l.t. The Administrator, Alaska Region, NMFS, has determined that the remaining portion of the allocation to the inshore component would be underharvested if a 1200 hrs closure were allowed to occur. NMFS, in accordance with § 679.25(a)(1)(i), is adjusting the season for pollock by vessels catching pollock for processing by the inshore component in the BS by closing directed fishing at 2400 hrs, A.l.t., February 28, 1999. NMFS is taking this action to prevent the underharvest of the pollock allocation to vessels catching pollock for processing by the inshore component in the BS of the BSAI as authorized by § 679.25(a)(2)(i)(C). In accordance with § 679.25(a)(2)(iii), NMFS has determined that closing the season at 2400 hrs on February 27, 1999, is the least restrictive management adjustment to harvest the pollock allocated to vessels catching pollock for processing by the inshore component in the BS of the BSAI and will allow other fisheries to continue in noncritical areas and time periods.

Maximum retainable bycatch amounts may be found in the regulations at § 679.20(e) and (f).

This action responds to the best available information recently obtained from the fishery. Without this inseason adjustment, the pollock allocation for vessels catching pollock for processing by the inshore component in the BS of the BSAI would be underharvested, resulting in an economic loss of more than $500,000. Under § 679.25(c)(2), interested persons are invited to submit written comments on this action to the above address until fifteen days from the date of publication. This action is required by § 679.22 and is exempt from review under E.O. 12866.

Classification

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

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

Dated: February 26, 1999.

Bruce C. Morehead,

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

[FR Doc. 99–5282 Filed 3–1–99; 9:57 am]

BILLING CODE 3510–22–F

Proposed Rules

Federal Register
Vol. 64, No. 42
Thursday, March 4, 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.

DEPARTMENT OF AGRICULTURE

Animal and Plant Health Inspection Service

9 CFR Parts 1 and 3

[Docket No. 98–106–2]

Animal Welfare; Petition for Rulemaking

AGENCY: Animal and Plant Health Inspection Service, USDA.

ACTION: Notice of extension of comment period.

SUMMARY: We are extending the comment period for our notice of a petition for rulemaking received by the Secretary of Agriculture. The petition, sponsored by several petitioners, requests that the Secretary amend the definition of ''animal'' in the Animal Welfare Act regulations to remove the current exclusion of rats and mice bred for use in research and birds and ''grant such other relief as the Secretary deems just and proper.'' This extension will provide interested persons with additional time to prepare and submit comments on the petition.

DATES: Consideration will be given only to comments on Docket No. 98–106–1 that are received on or before May 28, 1999.

ADDRESSES: Please send your comment and three copies to: Docket No. 98–106–1, Regulatory Analysis and Development, PPD, APHIS, Suite 3C03, 4700 River Road, Unit 118, Riverdale, MD 20737–1238.

Please state that your comment refers to Docket No. 98–106–1.

You may read any comments that we receive on this docket in our reading room. The reading room is located in room 1141 of the USDA South Building, 14th Street and Independence Avenue, SW., Washington, DC. Normal reading room hours are 8 a.m. to 4:30 p.m., Monday through Friday, except holidays. To be sure someone is there to help you, please call (202) 690–2817 before coming.

APHIS documents published in the **Federal Register**, and related information, including the names of organizations and individuals who have commented on APHIS rules, are available on the Internet at http://www.aphis.usda.gov/ppd/rad/webrepor.html.

Any person who wishes to submit a comment electronically must use a form located on the Internet at http://comments.aphis.usda.gov. Electronically submitted comments need only be submitted once. These comments are available for public viewing at the same Internet address.

FOR FURTHER INFORMATION CONTACT: Dr. Jerry DePoyster, Senior Veterinary Medical Officer, AC, APHIS, 4700 River Road Unit 84, Riverdale, MD 20737–1228, (301) 734–7833.

SUPPLEMENTARY INFORMATION:

Background

On January 28, 1999, we published in the **Federal Register** (64 FR 4356–4367, Docket No. 98–106–1) a notice of petition and request for comments regarding a petition for rulemaking received by the Secretary of Agriculture. The petition, sponsored by several petitioners, requests that the Secretary take two actions: (1) Initiate rulemaking proceedings to amend the definition of ''animal'' in the Animal Welfare Act (AWA) regulations to remove the current exclusion of rats and mice bred for use in research and birds, and (2) ''grant such other relief as the Secretary deems just and proper.'' The AWA regulations are contained in title 9 of the Code of Federal Regulations (CFR), parts 1 through 3; the definitions of terms used in the AWA regulations are at 9 CFR 1.1.

Comments on the petition were required to be received on or before March 29, 1999. We have received a request to extend the period during which comments will be accepted. In response, we are extending the comment period on Docket No. 98–106–1 for an additional 60 days. This action will allow interested persons additional time to prepare and submit comments.

Authority: 7 U.S.C. 2131–2159; 7 CFR 2.22, 2.80, and 371.2(g).

Done in Washington, DC, this 26th day of February 1999.

Joan M. Arnoldi,

Acting Administrator, Animal and Plant Health Inspection Service.

[FR Doc. 99–5359 Filed 3–3–99; 8:45 am]

BILLING CODE 3410–34–P

DEPARTMENT OF AGRICULTURE

Animal and Plant Health Inspection Service

9 CFR Part 113

[Docket No. 97–103–1]

Viruses, Serums, Toxins, and Analogous Products; Update of Incorporation by Reference for Rabies Vaccine

AGENCY: Animal and Plant Health Inspection Service, USDA.

ACTION: Proposed rule.

SUMMARY: We are proposing to amend the regulations pertaining to the standard requirements for rabies vaccine, killed virus, so that they incorporate the latest edition of a guide to laboratory techniques. The regulations currently refer to the previous edition of that guide, which was published in 1973. This proposed action would ensure that the latest edition of the guide is incorporated by reference and used in conducting potency tests during the production of rabies vaccines.

DATES: Consideration will be given only to comments received on or before May 3, 1999.

ADDRESSES: Please send an original and three copies of your comments to Docket No. 97–103–1, Regulatory Analysis and Development, PPD, APHIS, Suite 3C03, 4700 River Road Unit 118, Riverdale, MD 20737–1238. Please state that your comments refer to Docket No. 97–103–1. Comments received may be inspected at USDA, room 1141, South Building, 14th Street and Independence Avenue SW., Washington, DC, between 8 a.m. and 4:30 p.m., Monday through Friday, except holidays. Persons wishing to inspect comments are requested to call ahead on (202) 690–2817 to facilitate entry into the comment reading room.

FOR FURTHER INFORMATION CONTACT: Dr. David A. Espeseth, Special Assistant to

the Deputy Administrator, Veterinary Services, Center for Veterinary Biologics, Licensing and Policy Development, VS, APHIS, 4700 River Road Unit 148, Riverdale, MD 20737–1231, (301) 734–8245.

SUPPLEMENTARY INFORMATION:

Background

The regulations in 9 CFR part 113 pertain to standard requirements for the preparation of veterinary biological products. A standard requirement consists of test methods, procedures, and criteria established by the Animal and Plant Health Inspection Service (APHIS) to determine that a veterinary biological product is pure, safe, potent, and efficacious and not worthless, dangerous, contaminated, or harmful.

''Laboratory Techniques in Rabies,'' which is a guide to laboratory techniques for rabies research and diagnosis and for the production of vaccine and immunoglobulin and which is published by the World Health Organization (WHO), is incorporated by reference into the Code of Federal Regulations at 9 CFR 113.209(b)(1). In 1996, the WHO published a fourth edition of ''Laboratory Techniques in Rabies'' (edited by F.X. Meslin, M.M. Kaplan, and H. Koprowski), but the incorporation by reference in § 113.209(b)(1) still refers to the 1973 third edition of that guide. Therefore, we are proposing to amend the regulations in § 113.209(b)(1) so that they refer to the fourth edition of ''Laboratory Techniques in Rabies'' in order for the latest version to be incorporated by reference and used.

The regulations in § 113.209(b)(1) currently refer to potency tests conducted in accordance with the ''NIH Test For Potency'' contained in the third edition of ''Laboratory Techniques in Rabies.'' Because the fourth edition of ''Laboratory Techniques in Rabies'' provides two different methods of conducting the NIH test—a ''standard test'' and a ''modified NIH test''—we would amend § 113.209(b)(1) to specify that it is the standard NIH test for potency that must be used.

With regard to potency tests, the third sentence of § 113.209(b)(1) currently states that the volumetric method of calculation must be used and that the challenge dose must contain between 5 and 50 LD_{50}. The required challenge dose has been changed in the fourth edition and is now between 12 and 50 LD_{50}. That change in the international standard came about as a result of extensive statistical work that showed the 12 and 50 LD_{50} range to be a more sound measurement for the challenge dose in an animal test system. Because the standard NIH test is a volumetric method, it is not necessary to specify that the volumetric method of calculation be used. Further, because the criteria for an appropriate challenge are fully described in the fourth edition of ''Laboratory Techniques in Rabies,'' it is also not necessary to describe the challenge dose. Therefore, we are proposing to remove the third sentence of § 113.209(b)(1).

The fourth edition of ''Laboratory Techniques in Rabies'' states that the Challenge Virus Standard (CVS) to be used as the challenge in the NIH test is available from the national control authority, which in the United States is APHIS' Center for Veterinary Biologics-Laboratory (CVB–L). A pool of CVS material at a given passage level is established at the CVB–L, which supplies seed from this pool to all producers of inactivated veterinary rabies vaccine. For use as the challenge material, the producer makes one mouse passage from the seed supplied by the CVB–L. This ensures that all producers are using challenge material at the same passage level. As stated in the fourth edition, in a valid NIH test for calculating potency, the reference vaccine dilutions must be such that at the lowest dilution (highest dose) 70 percent of the mice survive after challenge, and at the highest dilution (lowest dose) 70 percent of the mice die after challenge.

The fourth edition of ''Laboratory Techniques in Rabies'' also indicates that each country's national control authority should supply the reference vaccine for the NIH test. The national control authority is responsible for preparing a national reference vaccine that is calibrated against the International Standard. For U.S. producers of veterinary rabies vaccine, the supplier of the reference vaccine is the CVB–L. The reference produced by the CVB–L is calibrated against the current WHO International Standard to a final potency of 1.0 International Unit per mL (IU/mL). This reference vaccine is available upon request from the CVB–L.

Miscellaneous

In updating the incorporation by reference, we would also revise § 113.209(b)(1) so that it conforms to the requirements of the Office of the Federal Register (OFR) regarding the proper language of incorporation. Specifically, we would amend that paragraph to provide, in accordance with the OFR's regulations in 1 CFR 51.9(b), information regarding the publication's authors and its reference number; state that the incorporation by reference has been approved by the Director of the Federal Register in accordance with 5 U.S.C. 552(a); and state that copies of ''Laboratory Techniques in Rabies'' may be obtained from WHO and may be reviewed at APHIS' offices in Riverdale, MD, or at the Office of the Federal Register in Washington, DC.

We would also remove an outdated footnote in § 113.209(d)(3). That outdated footnote refers the reader to ''footnote 1 to § 113.129(b),'' but § 113.129 and its footnote no longer exist in part 113. (Section 113.129 was redesignated as § 113.209 in a final rule published in the **Federal Register** on August 31, 1990 (55 FR 35556–35563, Docket No. 89–151).) However, the now-absent footnote did provide details regarding the incorporation by reference that is the subject of this proposed rule. Therefore, we are proposing to replace the footnote in § 113.209(d)(3) with text informing the reader that the fourth edition of ''Laboratory Techniques in Rabies'' is incorporated by reference at § 113.209(b)(1).

Executive Order 12866 and Regulatory Flexibility Act

This proposed rule has been reviewed under Executive Order 12866. The rule has been determined to be not significant for the purposes of Executive Order 12866 and, therefore, has not been reviewed by the Office of Management and Budget.

In accordance with the Regulatory Flexibility Act, we have considered the potential impacts of this proposed action on small entities. We have identified four producers of rabies vaccine as the entities potentially affected by this proposed rule. Those producers fall into one of two standard industrial classification (SIC) categories, either SIC 2836 (Biological Products, Except Diagnostic Substances) or SIC 2834 (Pharmaceutical Preparations). According to Small Business Administration (SBA) criteria, a business in SIC 2836 is considered to be a small entity if it has 500 or fewer employees, and a business in SIC 2834 is considered to be a small entity if it has 750 or fewer employees. Under those criteria, none of the four producers identified are small entities.

''Laboratory Techniques in Rabies'' is a guide to laboratory techniques for rabies research and diagnosis and for the production of vaccine and immunoglobulin that is incorporated by reference into the standard requirements regulations in 9 CFR 113.209(b)(1). This proposed rule would amend those regulations so that the language used in the guide's incorporation by reference is correct and to ensure that the current

edition of the guide is incorporated by reference and used.

The testing required under § 113.209(b)(1) would remain the same as is currently conducted. However, some retesting may be required due to change in the international standard for the LD_{50} of the challenge dose. We expect that the cost of a retest, which is estimated to be approximately $2,400 for the mice and animal care, would have minimal economic impact on the producers of rabies vaccines, none of which are small entities under SBA criteria.

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

Executive Order 12372

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

Executive Order 12988

This proposed rule has been reviewed under Executive Order 12988, Civil Justice Reform. It is not intended to have retroactive effect. This rule would not preempt any State or local laws, regulations, or policies, unless they present an irreconcilable conflict with this rule. The Virus-Serum-Toxin Act does not provide administrative procedures which must be exhausted prior to a judicial challenge to the provisions of this rule.

Paperwork Reduction Act

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

List of Subjects in 9 CFR Part 113

Animal biologics, Exports, Imports, Incorporation by reference, Reporting and recordkeeping requirements.

Accordingly, we would amend 9 CFR part 113 as follows:

PART 113—STANDARD REQUIREMENTS

1. The authority citation for part 113 would continue to read as follows:

Authority: 21 U.S.C. 151–159; 7 CFR 2.22, 2.80, and 371.2(d).

2. In § 113.209, paragraphs (b)(1) and (d)(3) would be revised to read as follows:

§ 113.209 Rabies Vaccine, Killed Virus.

* * * * *

(b) * * *

(1) The preinactivation virus titer must be established as soon as possible after harvest by at least five separate virus titrations. A mean relative potency value of the vaccine to be used in the host animal potency test must be established by at least five replicate potency tests conducted in accordance with the standard NIH test for potency in chapter 37 of ''Laboratory Techniques in Rabies,'' Fourth Edition (1996), edited by F.X. Meslin, M.M. Kaplan, and H. Koprowski, World Health Organization, Geneva, Switzerland (ISBN 92 4 154479 1). The provisions of chapter 37 of ''Laboratory Techniques in Rabies,'' Fourth Edition (1996), are the minimum standards for achieving compliance with this section and are incorporated by reference. These provisions state that the challenge virus standard to be used as the challenge in the NIH test and the reference vaccine for the test are available from the national control authority. In the United States, that authority is the Animal and Plant Health Inspection Service's Center for Veterinary Biologics-Laboratory, located at 1800 Dayton Avenue, P.O. Box 844, Ames, IA 50010; phone (515) 239–8331; fax (515) 239–8673. 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 the World Health Organization Publications Center USA, 49 Sheridan Avenue, Albany, NY 12210. Copies may be inspected at the Animal and Plant Health Inspection Service, Center for Veterinary Biologics, Licensing and Policy Development, 4700 River Road, Riverdale, MD, or at the Office of the Federal Register, 800 North Capitol Street, NW., suite 700, Washington, DC.

* * * * *

(d) * * *

(3) *Potency test.* Bulk or final container samples of completed product from each serial must be tested for potency by tests conducted in accordance with the standard NIH test for potency in Chapter 37 of ''Laboratory Techniques in Rabies,'' Fourth Edition (1996), which is incorporated by reference at paragraph (b)(1) of this section. The relative potency of each serial must be at least equal to that used in an approved host animal immunogenicity test.

* * * * *

Done in Washington, DC, this 26th day of February 1999.

Joan M. Arnoldi,

Acting Administrator, Animal and Plant Health Inspection Service.

[FR Doc. 99–5358 Filed 3–3–99; 8:45 am]

BILLING CODE 3410–34–P

DEPARTMENT OF AGRICULTURE

Food Safety and Inspection Service

9 CFR Part 391

[Docket No. 98–052P]

Fee Increase for Inspection Services

AGENCY: Food Safety and Inspection Service, USDA.

ACTION: Proposed rule.

SUMMARY: The Food Safety and Inspection Service (FSIS) is proposing to increase the fees that FSIS charges meat and poultry establishments, plants, importers, and exporters for providing voluntary inspection, identification, and certification services; laboratory services; and overtime and holiday services. These fee increases are based on the Agency's analysis of its projected costs for Fiscal Year 1999, which identified increased FSIS expenses as a result of national and locality pay raises for Federal employees, and increased travel and overhead costs. The fee increases are being proposed in order to generate the additional revenue that FSIS is required to recover as a result of its projected increased costs.

FSIS also is proposing to reduce the fee it charges for the Accredited Laboratory Program. The Agency's analysis of projected costs for calendar year 1999 has identified decreased operational costs for this program. The Agency is proposing to reduce its fee so that only the actual costs of this program are recovered from the industry.

DATES: Written comments must be received by April 5, 1999.

ADDRESSES: Submit an original and two copies of written comments concerning this proposed rule to: FSIS Docket Clerk, Docket #98–052P, Room 102-Cotton Annex Building, FSIS, U.S. Department of Agriculture, Washington, DC 20250–3700. Persons that want to present oral comments should, as permitted under the Poultry Products Inspection Act, contact Michael B. Zimmerer at (202) 720–3367. FSIS' cost analysis and the comments that it receives will be available for public inspection in the FSIS Docket Room from 8:30 a.m. to 1 p.m. and 2 p.m. to 4:30 p.m., Monday through Friday.

FOR FURTHER INFORMATION CONTACT: Mr. Michael B. Zimmerer, Director, Financial Management Division, Office of Management, Food Safety and Inspection Service, U.S. Department of Agriculture, Washington, DC 20250–3700, (202) 720–3367.

SUPPLEMENTARY INFORMATION:

Background

The Federal Meat Inspection Act (FMIA) and the Poultry Products Inspection Act (PPIA) provide for mandatory Federal inspection of the slaughter of certain livestock and poultry and of the processing of certain livestock and poultry products. The cost of this inspection (excluding such inspection performed on holidays or on an overtime basis) is borne by FSIS.

In addition to mandatory inspection, FSIS provides a range of voluntary inspection, certification, and identification services. Under the Agricultural Marketing Act of 1946, as amended (7 U.S.C. 1621 *et seq.*), FSIS provides these services to assist in the orderly marketing of various animal products and byproducts. These services include the certification of technical animal fats and the inspection of exotic animal products. FSIS is required to recover the costs of voluntary inspection, certification, and identification services.

FSIS also provides certain voluntary laboratory services which establishments or others may request FSIS to perform. The cost of these services, which are provided under the Agricultural Marketing Act of 1946, as amended (7 U.S.C. 1621 *et seq.*), must be recovered by FSIS. Laboratory services are provided for four types of analytic testing. These are: microbiological testing, residue chemistry tests, food composition tests, and some pathology testing.

Each year, FSIS reviews the fees that it charges for providing voluntary inspection, identification, and certification services; laboratory services; and overtime and holiday services and performs a cost analysis to determine whether the fees it has established are adequate to recover the costs that FSIS will incur in providing the services. In its analysis of projected costs for Fiscal Year (FY) 1999, FSIS has identified increases in the costs that it will incur in providing voluntary inspection, identification, and certification services; laboratory services; and overtime and holiday services. These increased costs are attributable to the average national and locality pay raise for Federal employees of 3.1% effective January 1999 and projected increased travel and overhead costs of 1.9% for FY 1999 resulting from inflation.

Accordingly, FSIS is proposing to amend 9 CFR section 391.2 to increase the base time rate for providing voluntary inspection, identification, and certification services from $32.88 per hour, per program employee, to $37.00 per hour, per program employee. FSIS is also proposing to amend section 391.3 to increase the rate for providing overtime and holiday services from $33.76 per hour, per program employee, to $36.84 per hour, per program employee. Additionally, FSIS is proposing to amend section 391.4 to increase the rate for laboratory services from $48.56 per hour, per program employee, to $50.88 per hour, per program employee. These rates and the proposed increase are reported in Table 1.

TABLE 1.—INSPECTION SERVICE TYPE AND CURRENT AND PROPOSED RATES FOR FY 1999

Service type	Current rate $/hour	Proposed FY 1999 rate $/hour	Proposed increase $/hour
Base time	32.88	37.00	4.12
Overtime & Holidays	33.76	36.84	3.08
Laboratory	48.56	50.88	2.32

Source: USDA/FSIS/Office of Management/Financial Management Division.

In its analysis of projected costs for FY 1999, FSIS has identified a decrease in the cost of operating the Accredited Laboratory Program (ALP). This projected decreased cost of $1,000 per accreditation results from a number of factors including a projected decrease in accreditations sought and maintained, as well as more efficient operating practices by FSIS. Therefore, FSIS is proposing to amend section 391.5 of the regulations to reduce the fee charged for original accreditations and renewals from $2,500 per accreditation, to $1,500 per accreditation per year. Laboratory accreditation fees that cover the costs of the ALP are mandated by section 1327 (7 U.S.C. 138f) of the Food, Agriculture, Conservation, and Trade Act of 1990 (Public Law 101–624), as amended (the 1990 Farm Bill).

Executive Order 12866 and Regulatory Flexibility Act

This proposed rule has been determined to be not significant and was not reviewed by the Office of Management and Budget (OMB) under Executive Order 12866. The proposed fee increases for voluntary inspection, identification, and certification services; laboratory services; and overtime and holiday inspection services are primarily the result of increases in the salaries of Federal employees established by Congress under the Federal Employees Pay Comparability Act of 1990. The proposed increase also includes projected increased travel costs and overhead costs. This Section analyzes the economic impact of these increased costs on the meat and poultry industry.

Economic Impact

The Administrator, Food Safety and Inspection Services, has determined that this action will not have a significant economic impact on a substantial number of small entities as defined by the Regulatory Flexibility Act (5 U.S.C. 601). The fee increases provided for in this document will result in only a minimal increase in the costs currently borne by those entities that choose to voluntarily utilize certain inspection services. These services are generally used by large establishments. Small establishments generally do not seek these services. This is most likely the result of a number of factors, including the cost of services. Nevertheless, FSIS is required to recover the full cost of the services provided by it.

Table 2 shows the economic impact of the proposed fee increases, other than those for laboratory services. This impact has been estimated by

multiplying the expected number of hours of base time or overtime service to be provided by their respective incremental rates estimated in Table 1. FSIS does not have the data needed to estimate the impact of increases in the laboratory service rates because the number of hours of this service that will be provided are difficult to predict. Table 2 shows that total reimbursements to FSIS are estimated to be $7,676,936 in FY 1999.

TABLE 2.—ESTIMATED ECONOMIC IMPACT OF PROPOSED INCREASE IN RATES

Service type	Incremental rate $/hour.	Estimated hours used	Reimbursement or impact ($)
Overtime & Holidays	$3.08	2,355,000	$7,253,400
Base	4.12	102,800	423,536
Total Reimbursement			7,676,936

The economic impact of the increase in the fees on small businesses in the meat and poultry industries would depend on the structure of these industries. Data from the U.S. Bureau of the Census, Survey of Industries, 1994, for example, indicate that the beef industry has more small firms and establishments than the poultry industry. Using the U.S. Small Business Administration's definition of a small business (fewer than 500 employees), 96 percent of the 1,226 firms comprising the beef industry are small. Similarly, 90 percent of the individual meat establishments or plants in this industry are small. In 1994, these small businesses accounted for 19 percent of total employment in this industry. Their share of payroll was 18 percent of the total payroll of $2.777 billion, and their revenues were 16 percent of the total revenues of $55.814 billion.

FSIS believes that small establishments would not be affected adversely by the proposed fee increases for four reasons. First, the use of the services is voluntary, and, therefore, establishments do not have to utilize these services. Second, establishments that seek FSIS' services are likely to have determined that the costs of voluntary inspection services would be less than the benefits they would get from the additional revenues they would realize as a result of services provided. Third, the industry is likely to pass through the increased costs to consumers without significantly losing market share because price elasticity of demand for meat and poultry is inelastic. For example, Huang (1993) analyzed demand for meats and other animal proteins consisting of products, including beef and poultry and concluded that the price elasticity was (−0.36), i.e., an increase in price of beef or poultry products by one percent would be associated with a decrease in its demand by only 0.36 percent. (Huang, Kao S., *A Complete System of U.S. Demand for Food.* USDA/ERS Technical Bulletin No. 1821, 1993, p. 24). In short, consumers are unlikely to reduce their demand for meat and poultry significantly when prices are increased for these products by only a few pennies per pound. Finally, the supply of meat and poultry products is likely to be very price elastic because of the existence of hundreds of firms in these industries. Any single producer cannot raise the price of its products above those of the rest of the industry without losing its market share significantly.

The decrease in the accredited laboratory program fee reflects a projected decrease in operational costs which may be passed through to users of the laboratory services. To the extent that these fees are reduced, their economic impact would be reduced.

Executive Order 12988

This proposed rule has been reviewed under Executive Order 12988, Civil Justice Reform. This proposed rule is not intended to have retroactive effect. States and local jurisdictions are preempted by the Federal Meat Inspection Act (FMIA) and the Poultry Products Inspection Act (PPIA) from imposing any marking, labeling, packaging, or ingredient requirements on federally inspected livestock and poultry products that are in addition to, or different than, those imposed under the FMIA and PPIA. States and local jurisdictions may, however, exercise concurrent jurisdiction over livestock and poultry products that are outside official establishments for the purpose of preventing the distribution of livestock and poultry products that are misbranded or adulterated under the FMIA and PPIA, or, in the case of imported articles, that are not at such an establishment, after their entry into the United States.

State or local laws, regulations, or policies are preempted by the Agricultural Marketing Act of 1946, as amended, if they present irreconcilable conflict with the provisions of this rule proposed under the Agricultural Marketing Act of 1946, as amended.

If this proposed rule is adopted, administrative proceedings will not be required before parties may file suit in court challenging this rule. However, the administrative procedures specified in 9 CFR 306.5 and 381.35 of the FMIA and PPIA regulations, respectively, must be exhausted prior to any judicial challenge of the application of the provisions of this proposed rule, if the challenge involves any decision of an FSIS employee relating to inspection services provided under the FMIA or PPIA.

List of Subjects in 9 CFR Part 391

Fees and charges, Government employees, Meat inspection, Poultry products.

For the reasons set out in the preamble, 9 CFR Part 391 is proposed to be amended as set forth below:

PART 391—FEES AND CHARGES FOR INSPECTION SERVICES AND LABORATORY ACCREDITATION

1. The authority citation for Part 391 continues to read as follows:

Authority: 7 U.S.C. 138f; 7 U.S.C. 394, 1622 and 1624; 21 U.S.C. 451 *et seq.*; 21 U.S.C. 601–695; 7 CFR 2.18 and 2.53.

2. Sections 391.2, 391.3, 391.4 and 391.5 are revised to read as follows:

§ 391.2 Base time rate.

The base time rate for inspection services provided pursuant to §§ 350.7, 351.8, 351.9, 352.5, 354.101, 355.12, and 362.5 shall be $37.00 per hour, per program employee.

§ 391.3 Overtime and holiday rate.

The overtime and holiday rate for inspection services provided pursuant to §§ 307.5, 350.7, 351.8, 351.9, 352.5, 354.101, 355.12, 362.5 and 381.38 shall be $36.84 per hour, per program employee.

§ 391.4 Laboratory services rate.

The rate for laboratory services provided pursuant to §§ 350.7, 351.9, 352.5, 354.101, 355.12 and 362.5 shall be $50.88 per hour, per program employee.

§ 391.5 Laboratory accreditation fees.

(a) The annual fee for the initial accreditation and maintenance of accreditation provided pursuant to §§ 318.21 and 381.153 shall be $1,500 per accreditation.

* * * * *

Done at Washington, DC, on February 25, 1999.

Thomas J. Billy,

Administrator.

[FR Doc. 99–5318 Filed 3–3–99; 8:45 am]

BILLING CODE 3410–DM–P

NUCLEAR REGULATORY COMMISSION

10 CFR Part 63

Public Meetings on Proposed Licensing Criteria for the Disposal of High-Level Radioactive Wastes in a Proposed Geologic Repository at Yucca Mountain, Nevada

AGENCY: Nuclear Regulatory Commission.

ACTION: Notice of public meetings.

SUMMARY: The Nuclear Regulatory Commission (NRC) recently proposed licensing criteria for disposal of spent nuclear fuel and high-level radioactive wastes in the proposed geologic repository at Yucca Mountain, Nevada. The Nuclear Waste Policy Act of 1982 (NWPA) gives the NRC regulatory responsibility and the Department of Energy (DOE) operational responsibility for high-level waste disposal. The proposed regulations would establish the criteria and standards against which NRC will evaluate a DOE license application for the Yucca Mountain site. The proposed criteria will apply specifically and exclusively to the proposed repository at Yucca Mountain. The proposed requirements are designed to implement a health-based, safety objective for long-term repository performance that is fully protective of public health and safety, and the environment, and is consistent with national and international recommendations for radiation protection standards.

The proposed rule was published in the **Federal Register** on February 22, 1999 (64 FR 8640), for a 75-day comment period. The following meetings have been scheduled in the State of Nevada to: (1) Engage the public in a discussion of the proposed rule; (2) outline the roles and responsibilities of government and the public in the licensing process; and (3) ensure that the process for developing the final rule gives full consideration to the views and concerns of the public. Copies of the proposed rule will be available at the public meeting and can also be obtained from Judy Goodwin, U.S. Nuclear Regulatory Commission, Washington, DC 20555–0001.

The meetings will open with an NRC presentation on the proposed rule, followed by comments from DOE and the U.S. Environmental Protection Agency (invited). The public discussion will begin with a panel of representatives of the major interests affected by the proposed regulations, including local county governments, the State of Nevada, Native American tribes, the Nevada Nuclear Waste Task Force, and the Nuclear Waste Study Committee. The meetings will be facilitated by Francis X. Cameron, Special Counsel for Public Liaison, of the NRC.

DATES: The first public meeting will be held on Tuesday, March 23, 1999, from 7:00 pm to 9:30 pm. The second public meeting will be held on Thursday, March 25, 1999, fron 7:00 pm to 9:30 pm.

ADDRESSES: The first meeting will be held at the Richard Tam Alumni Center at the University of Nevada, Las Vegas, Nevada. The second meeting will be held at the Beatty Community Center in Beatty, Nevada.

FOR FURTHER INFORMATION CONTACT: Francis X. Cameron, Special Counsel for Public Liaison, Office of the General Counsel, U.S. Nuclear Regulatory Commission, Washington, DC 20555–0001, or by telephone: (301) 415–1642, or by e-mail: *fxc@nrc.gov*.

SUPPLEMENTARY INFORMATION: Members of the public who are unable to attend the meeting are invited to send written comments on the proposed rule to Secretary, U.S. Nuclear Regulatory Commission, Washington, DC 20555–0001, Attention: Rulemakings and Adjudications Staff. Comments may be hand-delivered to 11555 Rockville Pike, Rockville, Maryland between 7:30 am and 4:15 pm on Federal workdays. Comments may also be provided via the NRC's interactive rulemaking web site through the NRC home page *(http://www.nrc.gov*) This site provides the availability to upload comments as files (any format), if your web browser supports that function. For information about the interactive rulemaking site, contact Ms. Carol Gallagher by telephone: (301) 415–5905, or by e-mail: CAG@nrc.gov.

Dated at Rockville, Maryland this 26th day of February, 1999.

For the Nuclear Regulatory Commission.

John T. Greeves,

Director, Division of Waste Management, Office of Nuclear Material Safety and Safeguards.

[FR Doc. 99–5336 Filed 3–3–99; 8:45 am]

BILLING CODE 7590–01–P

FEDERAL ELECTION COMMISSION

11 CFR Parts 2, 4 and 5

[Notice 1999–5]

Electronic Freedom of Information Act Amendments

AGENCY: Federal Election Commission.

ACTION: Notice of proposed rulemaking.

SUMMARY: The Electronic Freedom of Information Act Amendments of 1996, which amend the Freedom of Information Act, are designed to make government documents more accessible to the public in electronic form. The amendments are also intended to expedite and streamline the process by which agencies disclose information generally. The Commission is proposing amendments to its Freedom of Information Act regulations both to comply with these new requirements and to address issues that have arisen since the rules were originally adopted.

DATES: Comments must be received on or before April 5, 1999.

ADDRESS: All comments should be addressed to Susan E. Propper, Assistant General Counsel, and must be submitted in either written or electronic form. Written comments should be sent to the Federal Election Commission, 999 E Street, NW, Washington, DC 20463. Faxed comments should be sent to (202) 219–3923, with printed copy follow-up. Electronic mail comments should be sent to EFOIA@fec.gov. Commenters sending comments by electronic mail should include their full name, electronic mail address and postal service address within the text of their comments. Comments that do not contain the full name, electronic mail address and postal service address of the commenter will not be considered.

FOR FURTHER INFORMATION CONTACT: Ms. Susan E. Propper, Assistant General Counsel, or Ms. Rita A. Reimer, Attorney, 999 E Street, NW, Washington, DC 20463, (202) 694–1650 or (800) 424–9530.

SUPPLEMENTARY INFORMATION: The Freedom of Information Act (''FOIA'')

provides for public access to all federal agency records except those that are protected from release by specified exemptions. 5 U.S.C. 552. In 1996, Congress enacted the ''Electronic Freedom of Information Act Amendments of 1996'' (''EFOIA''), Pub. L. 101–231, 110 Stat. 2422. EFOIA extends coverage of the FOIA to electronic records and makes other changes in FOIA procedures that are intended to expedite and streamline the process by which agencies disclose information.

The Commission's rules implementing the FOIA are found at 11 CFR part 4. The proposed revisions to the Commission's FOIA rules would in part conform these rules to the new EFOIA requirements. In addition, the Commission is proposing changes that reflect issues that have arisen since the rules were originally enacted.

Electronic Records

The main thrust of EFOIA is to require agencies to make covered records available by electronic means. Specifically, for records created on or after November 1, 1996, EFOIA requires each agency to make such records available, including computer telecommunications, within one year after that date. 5 U.S.C. 552(a)(2)(E). The Commission has in place a home page on the World Wide Web, www.fec.gov, and is utilizing this site to comply with these new requirements.

EFOIA also requires covered agencies to provide requested records in any form or format requested, if the record is readily reproducible by the agency in that form or format. Each agency must make reasonable efforts to maintain its records in forms or formats that are reproducible electronically, and to search for requested records in electronic form or format, except when such efforts would significantly interfere with the operation of the agency's automated information system. 5 U.S.C. 552(a)(3)(B), (C).

The Commission is proposing new § 4.7(b)(2) to comply with this new requirement. The new language would require requests for Commission records to specify the preferred form or format, including electronic formats, of the response. The Commission would accommodate requesters as to form or format if the record was readily available in that form or format. If a requester did not specify the form or format of the response, the Commission would respond in the form or format in which the document was most accessible to the Commission.

Definitions

EFOIA adds new definitions of the terms ''search'' and ''record'' to reflect these revisions. *Search* means to review, manually or by automated means, agency records for the purpose of locating those records which are responsive to a FOIA request. 5 U.S.C. 552(a)(3)(D). *Record* and any other term used in reference to information includes any information that would be an agency record subject to FOIA requirements when maintained by an agency in any format, including an electronic format. 5 U.S.C. 552(f)(2). The Commission is proposing to include these definitions in revised § 4.1(h) and new § 4.1(o), respectively.

Also, consistent with new 5 U.S.C. 552(1)(2)(D) and (E), the Commission is proposing to revise 11 CFR 4.4 to reflect new material that is to be made available under FOIA. The new categories, to be included in revised §§ 4.4(a) (4) and (5), would include copies of all records which have been released to any person in response to an earlier FOIA request and which the Commission determines have become or are likely to become the subject of subsequent requests for substantially the same records; and a general index of these records.

Time Limit for Responding to Requests

EFOIA lengthened the time within which agencies must respond to FOIA requests from ten to twenty working days. 5 U.S.C. 552(a)(6)(A)(i). Proposed § 4.7(c) would conform the Commission's current regulations to this new time limit.

The FOIA at 5 U.S.C. 552(a)(6)(B) permits agencies, upon written notice to the requester, to extend the time limit for responding to a request or deciding an appeal of a denial of a request for not more than ten working days, if ''unusual circumstances'' exist for the extension. EFOIA did not revise the definition of ''unusual circumstances,'' but it did revise that section to permit agencies to further extend the response time by notifying the requesters and providing them with an opportunity to either limit the scope of the request so that no extension is needed, or to arrange with the agency an alternative time frame for processing the request. 5 U.S.C. 552(a)(6)(B)(ii). Proposed § 4.7(c)(2) would implement this new procedure.

Aggregation of Requests

EFOIA authorizes agencies to promulgate regulations providing for the aggregation of related requests by the same requester or a group of requesters acting in concert when the requests would, if treated as a single request, present ''unusual circumstances.'' 5 U.S.C. 552(a)(6)(B)(iv). Such circumstances include the need to search for and collect the requested records from diverse locations; the need to search for, collect, and examine voluminous separate and distinct records which are demanded in a single request; and the need to consult with another agency or among two or more Commission offices that each have a substantial subject matter interest in the records. 5 U.S.C. 552(a)(6)(B)(iii) (former section 552(a)(6)(B)); 11 CFR 4.7(c). Proposed § 4.7(d) would implement this new provision. As EFOIA requires, the proposed regulation provides that requests will be aggregated only when the Commission ''reasonably believes that such requests actually constitute a single request'' and the requests ''involve clearly related matters.''

Expedited Processing of Certain Requests

EFOIA requires each agency to promulgate regulations providing for the expedited processing of FOIA requests in cases of ''compelling need'' and in other cases, if any, determined by the agency. 5 U.S.C. 552(a)(6)(E)(1). The statute specifies two categories of ''compelling need.'' The first is where a failure to obtain requested records on an expedited basis could reasonably be expected to pose an imminent threat to the life or physical safety of an individual. The second involves a request made by a person primarily engaged in disseminating information who shows there is an urgent need to inform the public concerning actual or alleged federal government activity. 5 U.S.C. 552(a)(6)(E)(v). The statute also sets out procedures for handling requests for expedited processing and for the judicial review of agency denials of such requests. 5 U.S.C. 552(a)(6)(E)(ii)–(iv).

Proposed § 4.7(g) would implement EFOIA's expedited processing requirements. The Commission emphasizes that, in keeping with Congress' express intent that the specified criteria for compelling need ''be narrowly applied,'' expedited processing would be granted only in those truly extraordinary cases that meet the specific statutory requirements. H.R. Rep. No. 795, 104th Cong., 2d Sess. 26 (1996) (''House Report''). The legislative history makes it clear that ''the expedited process procedure is intended to be limited to circumstances in which a delay in obtaining information can reasonably be foreseen to cause a significant adverse consequence to a recognized interest.'' *Id*.

A requester seeking expedited processing under the ''imminent threat'' category of the ''compelling need'' definition would have to show that the failure to obtain the requested information expeditiously threatens the life or safety of an individual, and that the threat is ''imminent.''

That an individual or his or her attorney needs information for an approaching litigation deadline would not be a ''compelling need'' under this provision.

A requester seeking expedited processing under the second, ''urgency to inform,'' category would have to show that he or she is ''primarily engaged in disseminating information;'' there is an ''urgency to inform the public'' about the information requested; and the information relates to an ''actual or alleged federal government activity.''

To meet the first ''urgency to inform'' criterion, the requester would have to show that his or her principal occupation was disseminating information to the public. As the legislative history makes clear, ''(a) requester who only incidentally engages in information dissemination, besides other activities, would not satisfy this requirement.'' *Id*.

To meet the second ''urgency to inform'' criterion, the requester would have to show more than a general interest in the ''public's right to know.'' *See id*. Rather, as explained in the legislative history, a requester must show that a delay in the release of the requested information would ''compromise a significant *recognized* interest,'' and that the requested information ''pertain(s) to a matter of *current* exigency to the American public.'' *Id*. (emphasis added). It would, therefore, be insufficient to base a showing of ''compelling need'' on a reporter's desire to inform the public of something he or she believes might be of public concern if it were publicized. Rather, a reporter must show that the information pertains to a subject currently of significant interest to the public and that delaying the release of the information would harm the public's ability to assess the subject governmental activity.

The final ''urgency to inform'' criterion would make it clear that the information would have to relate to the activities of the Commission and its staff. A request for expedited processing could thus be considered for information relating, for example, to a Commission decision. The Commission generally would not, however, grant a request for expedited processing of information that the Commission has collected regarding specific campaigns or campaign committees.

EFOIA also authorizes agencies to expand the categories of requests qualifying for expedited processing beyond the two specified in the statute. 5 U.S.C. 552(a)(6)(E)(i)(II). While it welcomes comments on this point, the Commission does not at this time believe that further categories are currently necessary or appropriate. As the legislative history explains, ''Given the finite resources generally available for fulfilling FOIA requests, unduly generous use of the expedited processing procedure would unfairly disadvantage other requesters who do not qualify for its treatment.'' House Report at 26.

As required by EFOIA at 5 U.S.C. 552(a)(6)(E)(iii), proposed 11 CFR 4.7(g)(5) provides that the Commission would process requests to grant expedited processing ''as soon as practicable.'' The Commission will also give priority to these requests.

Estimates of the Volume of Materials Denied

EFOIA requires that agency responses denying information include an estimate of the volume of any responsive documents the agency is withholding. 5 U.S.C. 552(a)(6)(F). EFOIA additionally requires that when an agency withholds only a portion of a record, the response indicate the amount of information deleted on the released record; and that, where possible, this be noted at the place of the deletion. 5 U.S.C. 552(b)(9). Proposed § 4.5(c) would implement this new requirement.

Multitrack Processing

EFOIA authorizes agencies to promulgate regulations providing for multitrack processing of requests for records based on the amount of work and/or time involved in processing requests. 5 U.S.C. 552(a)(6)(D)(i). This would expedite the production of records where little work or time is required. The statute further permits agencies to include in their regulations a provision granting a FOIA requester whose request does not qualify for the fastest multitrack processing an opportunity to limit the scope of the request in order to qualify for faster processing. 5 U.S.C. 552(a)(6)(D)(ii).

The Commission believes that multitrack processing is the most efficient and fair way to process FOIA requests. If requests were processed on a strict first in, first out basis, easily filled requests would be processed only after earlier received, complex requests for dozens of documents located in offices throughout the Commission.

Other (Non-EFOIA) Proposed Amendments

The Commission is proposing to delete the reference to ''the Secretary of the Senate, the Clerk of the House, or their designees ex officio'' from the definition of ''Commissioner'' found at 11 CFR 4.1(b). These offices were declared unconstitutional in *FEC v. NRA Political Victory Fund*, 6 F.3d 821 (D.C.Cir. 1993), *cert. dismissed for want of jurisdiction*, 115 S.Ct. 537 (1994). The Commission is further proposing to make this technical revision to its ''Sunshine'' regulations at 11 CFR 2.2(b), and to its rules governing access to Public Disclosure Division Documents at 11 CFR 5.1(b).

The Commission is also proposing that the first sentence of 11 CFR 4.7(c) be revised to conform with 5 U.S.C. 552(a)(6)(A). The statutory language provides that each agency shall determine within twenty days after the receipt of a FOIA request whether to comply with it. However, the current regulation states that the Commission will provide the requested records within ten days (now twenty days, under EFOIA). Given the Commission's workload and the volume of FOIA requests, the Commission believes the statutory timeframe is more realistic than that included in the current rules.

Finally, the Commission is proposing to restructure and revise 11 CFR 4.4(a), which deals with the availability of records under FOIA. The current provision covers both 5 U.S.C. 552(a)(2) and 552(a)(3). Section 552(a)(2) encompasses final opinions, including concurring and dissenting opinions, as well as orders, made in the adjudication of cases; statements of policy and interpretations which have been adopted by the Commission but are not published in the **Federal Register**; and administrative staff manuals and instructions to staff that affect a member of the public. Section 552(a)(3) includes all other documents covered by the FOIA, that is, all documents not subject to one or more of the exceptions set forth at 5 U.S.C. 552(b).

Current 11 CFR 4.4(a)(1)–(3) refers to material covered by 5 U.S.C. 552(a)(2), while §§ 4.4(a)(4)–(15) list other agency documents. However, the listing may be underinclusive, as it may not include all covered documents. It is also overinclusive, since it includes materials that are also available from the Commission's Public Disclosure Division. *See* 11 CFR 4.4(b). The Commission is proposing to replace the current list of covered documents with

a simple statement in new § 4.4(b) that, in accordance with 5 U.S.C. 552(a)(3), the Commission will make available, upon proper request, all non-exempt Agency records, or portions of records, that have not previously been made public pursuant to 5 U.S.C. 552(a)(1) and (a)(2). Accordingly, proposed §§ 4.4(a)(1)–(3) would follow the language of 5 U.S.C. 552(a)(2), and that of the current rules, while §§ 4.4(a)(4)–(15) would be replaced with a new §§ 4.4(a)(4) encompassing the materials referred to in 5 U.S.C. 552(a)(3).

The Commission believes it would be a better use of agency resources to treat separately those records required to be made available under the FECA, *see* 11 CFR part 5, and those which may be obtained only through use of the FOIA. It is well established that records which an agency has previously made available to the public under section 552(a)(2) need not be released again in response to a FOIA request made pursuant to section 552(a)(3). *Department of Justice* v. *Tax Analysts,* 492 U.S. 136, 152 (1989).

Accordingly, current § 4.4(b), which notes that public access to the materials listed in current §§ 4.4(a)(3) and (a)(10)–(1)(13) are also available under the FECA from the Public Disclosure Division, would be repealed. In addition, § 4.4(a)(4), dealing with letter requests for guidance and the Commission's responses thereto; § 4.4(a)(5), minutes of Commission meetings; § 4.4(a)(6), material routinely prepared for public distribution; and § 4.4(a)(14), audit reports discussed in public session, would be moved to 11 CFR 5.4(a), as this information is available from the Commission's Public Disclosure Division. Section 4.4(a)(7), proposals submitted in response to a request for proposals under Federal Procurement Regulations; § 4.4(a)(8), contracts for goods and services entered into by the Commission; and § 4.4(a)(13), studies published by the Commission's Office of Election Administration, would be deleted, as this material is covered by the new general language in proposed § 4.4(b). Finally, § 4.4(a)(9), statements and certifications required by the Government in the Sunshine Act, 5 U.S.C. 552b, would be repealed, as these documents are already covered by the Commission's Sunshine regulations, 11 CFR part 2. The Commission is proposing to make corresponding changes to its rules at 11 CFR part 5, ''Access to Public Disclosure Division Documents.''

Comments are also welcome on any other aspect of the Commission's FOIA rules, whether or not impacted by the new EFOIA requirements.

Certification of No Effect Pursuant to 5 U.S.C. 605(b) (Regulatory Flexibility Act)

The attached proposed rules would not, if promulgated, have a significant economic impact on a substantial number of small entities. Most of the proposed changes conform to statutory amendments that expand the options available to covered entities seeking to obtain records from the Commission under the Freedom of Information Act, while others would clarify the Commission's current rules in this area. Therefore the rules would not have a significant economic effect on a substantial number of small entities.

List of Subjects

11 CFR Part 2

Sunshine Act.

11 CFR Part 4

Freedom of Information.

11 CFR Part 5

Archives and Records.

For the reasons set forth in the preamble, it is proposed to amend Subchapter A, Chapter I of Title 11 of the Code of Federal Regulations as follows:

PART 2—SUNSHINE REGULATIONS; MEETINGS

1. The authority citation for part 2 would continue to read as follows:

Authority: Sec. 3(a), Pub. L. 94–409, 5 U.S.C. 552b.

2. Section 2.2 would be amended by revising paragraph (b) to read as follows:

§ 2.2 Definitions.

* * * * *

(b) *Commissioner* or *Member. Commissioner* or *Member* means an individual appointed to the Federal Election Commission pursuant to 2 U.S.C. 437c and section 101(e) of Pub. L. 94–283, but does not include a proxy or other designated representative of a Commissioner.

* * * * *

PART 4—PUBLIC RECORDS AND THE FREEDOM OF INFORMATION ACT

3. The authority citation for part 4 would continue to read as follows:

Authority: 5 U.S.C. 552, as amended.

4. Section 4.1 would be amended by revising paragraphs (b) and (h) and adding new paragraph (o) to read as follows:

§ 4.1 Definitions.

As used in this part:

* * * * *

(b) *Commissioner* means an individual appointed to the Federal Election Commission pursuant to 2 U.S.C. 437c(a).

* * * * *

(h) *Search* means all time spent reviewing, manually or by automated means, Commission records for the purpose of locating those records which are responsive to a request, including page-by-page or line-by-line identification of material within documents. Search time does not include review of material in order to determine whether the material is exempt from disclosure.

* * * * *

(o) Record and any other term used in 11 CFR part 104 in reference to information includes any information that would be a Commission record subject to the requirements of this part when maintained by the Commission in any format, including an electronic format.

5. Section 4.4 would be amended by revising paragraphs (a), (b), and the first sentence of paragraph (c) to read as follows:

§ 4.4 Availability of records.

(a) In accordance with 5 U.S.C. 552(a)(2), the Commission shall make the following materials available for public inspection and copying:

(1) Statements of policy and interpretation which have been adopted by the Commission;

(2) Administrative staff manuals and instructions to staff that affect a member of the public;

(3) Opinions of Commissioners rendered in enforcement cases, General Counsel's Reports and non-exempt 2 U.S.C. 437g investigatory materials will be placed on the public record of the Agency no later than 30 days from the date on which a respondent is notified that the Commission has voted to close such an enforcement file.

(4) Copies of all records, regardless of form or format, which have been released to any person under paragraph (a) of this section and which, because of the nature of their subject matter, the agency determines have become or are likely to become the subject of subsequent requests for substantially the same records; and

(5) A general index of the records referred to paragraph (a)(4) of this section.

(b) In accordance with 5 U.S.C. 552(a)(3), the Commission shall make available, upon proper request, all non-

exempt Agency records, or portions of records, not previously made public pursuant to 5 U.S.C. 552(a)(1) and (a)(2).

(c) The Commission shall maintain and make available current indexes and supplements providing identifying information regarding any matter issued, adopted or promulgated after April 15, 1975 as required by 5 U.S.C. 552(a)(2)(C) and (E). * * *

6. Section 4.5 would be amended by revising paragraph (c) to read as follows:

§ 4.5 Categories of exemptions.

* * * * *

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

* * * * *

7. Section 4.7 would be amended by redesignating paragraph (b) as paragraph (b)(1); adding new paragraph (b)(2); revising the first sentence of paragraph (c); redesignating paragraph (d) as paragraph (h); redesignating paragraph (e) as paragraph (i); and adding new paragraphs (d), (e), (f) and (g), to read as follows:

§ 4.7 Requests for records.

* * * * *

(b)(1) * * *

(2) Requests for Commission records and copies thereof shall specify the preferred form or format (including electronic formats) of the response. The Commission will accommodate requesters as to form or format if the record is readily available in that form or format. When requesters do not specify the form or format of the response, the Commission will respond in the form or format in which the document is most accessible to the Commission.

(c) The Commission shall determine within twenty working days after receipt of a request, or twenty working days in the case of an appeal, whether to comply with such request, unless in unusual circumstances the time is extended or subject to § 4.9(f)(3) of this part, which governs advance payments. * * *

(d) If the Commission determines that an extension of time greater than ten working days is necessary to respond to a request satisfying the ''unusual circumstances'' specified in paragraph (c) of this section, the Commission shall so notify the requester and give the requester an opportunity to limit the scope of the request so that it may be processed within the time limit prescribed in paragraph (c) of this section, or arrange with the Commission an alternative time frame for processing the request or a modified request.

(e) The Commission may aggregate and process as a single request requests by the same requester, or a group of requesters acting in concert, if the Commission reasonably believes that the requests actually constitute a single request which would otherwise satisfy the unusual circumstances specified in paragraph (c) of this section, and the requests involve clearly related matters.

(f) The Commission uses a multitrack system to process requests under the Freedom of Information Act that is based on the amount of work and/or time involved in processing requests. Requests for records are processed in the order they are received within each track. Upon receipt of a request for records, the Commission will determine which track is appropriate for the request. The Commission may contact requesters whose requests do not appear to qualify for the fastest tracks and provide such requesters the opportunity to limit their requests so as to qualify for a faster track. Requesters who believe that their requests qualify for the fastest tracks and who wish to be notified if the Commission disagrees may so indicate in the request and, where appropriate and feasible, will also be given an opportunity to limit their requests.

(g) The Commission will consider requests for the expedited processing of requests in cases where the requester demonstrates a compelling need for such processing.

(1) The term compelling need means:

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

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

(2) Requesters for expedited processing must include in their requests a statement setting forth the basis for the claim that a ''compelling need'' exists for the requested information, certified by the requester to be true and correct to the best of his or her knowledge and belief.

(3) The Commission will determine whether to grant a request for expedited processing and notify the requester of such determination within ten days of receipt of the request.

(4) Denials of requests for expedited processing may be appealed as set forth in § 4.8 of this part. The Commission will expeditiously determine any such appeal.

(5) The Commission will process as soon as practicable the documents responsive to a request for which expedited processing is granted.

* * * * *

PART 5—ACCESS TO PUBLIC DISCLOSURE DIVISION DOCUMENTS

9. The authority citation for part 5 would continue to read as follows:

Authority: 2 U.S.C. 437f(d), 437g(a)(4)(B)(ii), 438(a), and 31 U.S.C. 9701.

10. Section 5.1 would be amended by revising paragraph (b) to read as follows:

§ 5.1 Definitions.

* * * * *

(b) *Commissioner* means an individual appointed to the Federal Election Commission pursuant to 2 U.S.C. 437c(a).

* * * * *

11. Section 5.4 would be amended by revising paragraph (a)(4) and adding paragraphs (a)(5) through (a)(9) to read as follows:

§ 5.4 Availability of records.

(a) * * *

(4) Opinions of Commissioners rendered in enforcement cases and General Counsel's Reports and non-exempt 2 U.S.C. 437g investigatory materials will be placed on the public record of the Agency no later than 30 days from the date on which a respondent is notified that the Commission has voted to close such an enforcement file.

(5) Letter requests for guidance and responses thereto.

(6) The minutes of Commission meetings.

(7) Material routinely prepared for public distribution, e.g. campaign guidelines, FEC Record, press releases, speeches, notices to candidates and committees.

(8) Audit reports (if discussed in open session).

(9) Agendas for Commission meetings.

* * * * *

Dated: February 28, 1999.

Scott E. Thomas,

Chairman, Federal Election Commission.

[FR Doc. 99–5219 Filed 3–3–99; 8:45 am]

BILLING CODE 6715–01–P

DEPARTMENT OF TRANSPORTATION

Federal Aviation Administration

14 CFR Part 71

[Airspace Docket No. 99–ASW–01]

Proposed Establishment of Class D and Class E Airspace; Sugar Land, TX

AGENCY: Federal Aviation Administration (FAA), DOT.

ACTION: Notice of proposed rulemaking.

SUMMARY: This notice proposes to establish Class D and Class E airspace extending upward from the surface to and including 2,600 feet mean sea level (MSL), within a 4.2-mile radius of the Sugar Land/Hull Airport at Sugar Land, TX. A non-federal air traffic control tower has been in operation since April 1995. The Class D airspace will revert to Class E airspace when the control tower is not in operation. The intended effect of this proposal is to provide adequate controlled airspace for aircraft operating in the vicinity of Sugar Land/Hull Airport, Sugar Land, TX.

DATES: Comments must be received on or before May 3, 1999.

ADDRESSES: Send comments on the proposal in triplicate to Manager, Airspace Branch, Air Traffic Division, Federal Aviation Administration, Southwest Region, Docket No. 99–ASW–01, Fort Worth, TX 76193–0520. The official docket may be examined in the Office of the Regional Counsel, Southwest Region, Federal Aviation Administration, 2601 Meacham Boulevard, Fort Worth, TX, between 9:00 a.m. and 3:00 p.m., Monday through Friday, except Federal holidays. An informal docket may also be examined during normal business hours at the Airspace Branch, Air Traffic Division, Federal Aviation Administration, Southwest Region, 2601 Meacham Boulevard, Fort Worth, TX.

FOR FURTHER INFORMATION CONTACT: Donald J. Day, Airspace Branch, Air Traffic Division, Federal Aviation Administration, Southwest Region, Fort Worth, TX 76193–0520; telephone: (817) 222–5593.

SUPPLEMENTARY INFORMATION:

Comments Invited

Interested parties are invited to participate in this proposed rulemaking by submitting such written data, views, or arguments as they may desire. Comments that provide the factual basis supporting the views and suggestions presented are particularly helpful in developing reasoned regulatory decisions on the proposal. Comments are specifically invited on the overall regulatory, aeronautical, economic, environmental, and energy-related aspects of the proposal. Communications should identify the airspace docket number and be submitted in triplicate to the address listed under the caption **ADDRESSES.** Commenters wishing the FAA to acknowledge receipt of their comments on this notice must submit, with those comments, a self-addressed, stamped, postcard containing the following statement: ''Comments to Airspace Docket No. 99–ASW–01.'' The postcard will be date and time stamped and returned to the commenter. All communications received on or before the specified closing date for comments will be considered before taking action on the proposed rule. The proposal contained in this notice may be changed in the light of comments received. All comments submitted will be available for examination in the Office of the Regional Counsel, Southwest Region, Federal Aviation Administration, 2601 Meacham Boulevard, Fort Worth, TX, both before and after the closing date for comments. A report summarizing each substantive public contact with FAA personnel concerned with this rulemaking will be filed in the docket.

Availability of NPRM's

Any person may obtain a copy of this Notice of Proposed Rulemaking (NPRM) by submitting a request to the Operations Branch, Air Traffic Division, Federal Aviation Administration, Southwest Region, Fort Worth, TX 76193–0520. Communications must identify the notice number of this NPRM. Persons interested in being placed on a mailing list for future NPRM's should also request a copy of Advisory Circular No. 11–2A that describes the application procedure.

The Proposal

The FAA is considering an amendment to 14 CFR part 71 to establish Class D and Class E airspace, controlled airspace extending upward from the surface to and including 2,600 feet MSL, at Sugar Land/Hull Airport, Sugar Land, TX. A non-federal air traffic control tower has been in operation since April 1995 and the Sugar Land/Hull Airport has experienced significant air traffic growth in the past few years. The Class D airspace will revert to Class E airspace when the control tower is not in operation. The intended effect of this proposal is to provide adequate Class D and Class E airspace for aircraft operating in the vicinity of Sugar Land/Hull Airport, Sugar Land, TX.

The coordinates for this airspace docket are based on North American Datum 83. Designated Class D and E airspace areas are published in Paragraph 5000 and 6002 of FAA Order 7400.9F, dated September 10, 1998, and effective September 16, 1998, which is incorporated by reference in 14 CFR 71.1. The Class D and Class E airspace designations listed in this document would be published subsequently in the order.

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

List of Subjects in 14 CFR Part 71

Airspace, Incorporation by reference, Navigation (air).

The Proposed Amendment

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

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

1. The authority citation for 14 CFR part 71 continues to read as follows:

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

§ 71.1 [Amended]

2. The incorporation by reference in 14 CFR 71.1 of the Federal Aviation Administration Order 7400.9F, *Airspace Designations and Reporting Points,* dated September 10, 1998, and effective September 16, 1998, is amended as follows:

Paragraph 5000 Class D airspace areas.

* * * * *

ASW TX D Houston Sugar Land/Hull Airport, TX [New]

Sugar Land, Sugar Land/Hull Airport, TX

(Lat. 29°37′20″N., long. 095°39′24″W.)

That airspace extending upward from the surface to and including 2,600 feet MSL within a 4.2-mile radius of Sugar Land/Hull Airport. This Class D airspace is effective during the specific dates and times established in advance by a Notice to Airmen. The effective date and time will thereafter be continuously published in the Airport/Facility Directory.

* * * * *

Paragraph 6002 Class E airspace areas extending upward from the surface of the earth.

* * * * *

ASW TX E3 Houston Sugar/ Land/Hull Airport, TX [New]

Sugar Land, Sugar Land/Hull Airport, TX
(Lat. 29°37′20″N., long. 095°39′24″W.)

That airspace extending upward from the surface within a 4.2-mile radius of Sugar Land/Hull Airport. This Class E airspace is effective during the specific dates and times established in advance by a Notice to Airmen. The effective date and time will thereafter be continuously published in the Airport/Facility Directory.

* * * * *

Issued in Fort Worth, TX on February 25, 1999.

Albert L. Viselli,

Acting Manager, Air Traffic Division, Southwest Region.

[FR Doc. 99–5393 Filed 3–3–99; 8:45 am]

BILLING CODE 4910–13–M

DEPARTMENT OF TRANSPORTATION

Federal Aviation Administration

14 CFR Part 71

[Airspace Docket No. 99–ASW–02]

Proposed Revision of Class D and Class E Airspace; Cannon AFB, Clovis, NM

AGENCY: Federal Aviation Administration (FAA), DOT.

ACTION: Notice of proposed rulemaking.

SUMMARY: This notice proposes to revise Class D and Class E airspace extending upward from the surface to and including 6,800 feet mean sea level (MSL), within a 4.6-mile radius of the Cannon Air Force Base (AFB), NM. The Class D airspace will revert to Class E airspace when the control tower is not in operation. The intended effect of this proposal is to provide adequate controlled airspace for aircraft operating in the vicinity of Cannon AFB, NM.

DATES: Comments must be received on or before May 3, 1999.

ADDRESSES: Send comments on the proposal in triplicate to Manager, Airspace Branch, Air Traffic Division, Federal Aviation Administration, Southwest Region, Docket No. 99–ASW–02, Fort Worth, TX 76193–0520. The official docket may be examined in the Office of the Regional Counsel, Southwest Region, Federal Aviation Administration, 2601 Meacham Boulevard, Fort Worth, TX, between 9:00 a.m. and 3:00 p.m., Monday through Friday, except Federal holidays. An informal docket may also be examined during normal business hours at the Airspace Branch, Air Traffic Division, Federal Aviation Administration, Southwest Region, 2601 Meacham Boulevard, Fort Worth, TX.

FOR FURTHER INFORMATION CONTACT: Donald J. Day, Airspace Branch, Air Traffic Division, Federal Aviation Administration, Southwest Region, Fort Worth, TX 76193–0520; telephone: (817) 222–5593.

SUPPLEMENTARY INFORMATION:

Comments Invited

Interested parties are invited to participate in this proposed rulemaking by submitting such written data, views, or arguments as they may desire. Comments that provide the factual basis supporting the views and suggestions presented are particularly helpful in developing reasoned regulatory decisions on the proposal. Comments are specifically invited on the overall regulatory, aeronautical, economic, environmental, and energy-related aspects of the proposal. Communications should identify the airspace docket number and be submitted in triplicate to the address listed under the **ADDRESSES.** Commenters wishing the FAA to acknowledge receipt of their comments on this notice must submit, with those comments, a self-addressed, stamped, postcard containing the following statement: ''Comments to Airspace Docket No. 99–ASW–02.'' The postcard will be date and time stamped and returned to the commenter. All communications received on or before the specified closing date for comments will be considered before taking action on the proposed rule. The proposal contained in this notice may be changed in the light of comments received. All comments submitted will be available for examination in the Office of the Regional Counsel, Southwest Region Federal Aviation Administration, 2601 Meacham Boulevard, Fort Worth, TX, both before and after the closing date for comments. A report summarizing each substantive public contact with FAA personnel concerned with this rulemaking will be filed in the docket.

Availability of NPRM's

Any person may obtain a copy of this Notice of Proposed Rulemaking (NPRM) by submitting a request to the Operations Branch, Air Traffic Division, Federal Aviation Administration, Southwest Region, Fort Worth, TX 76193–0520. Communications must identify the notice number of this NPRM. Persons interested in being placed on a mailing list for future NPRM's should also request a copy of Advisory Circular No. 11–2A that describes the application procedure.

The Proposal

The FAA is considering an amendment to 14 CFR part 71 to revise Class D and Class E airspace, controlled airspace extending upward from the surface to and including 6,800 feet MSL, at Cannon AFB, NM. The Class D airspace will revert to Class E airspace when the control tower is not in operation. The intended effect of this proposal is to provide adequate controlled airspace for aircraft operating in the vicinity of Cannon AFB, NM.

The coordinates for this airspace docket are based on North American Datum 83. Designated Class D and Class E airspace areas are published in Paragraphs 5000 and 6002 of FAA Order 7400.9F, dated September 10, 1998, and effective September 16, 1998, which is incorporated by reference in 14 CFR 71.1. The Class D and Class E airspace designations listed in this document would be published subsequently in the order.

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

List of Subjects in 14 CFR Part 71

Airspace, Incorporation by reference, Navigation (air).

The Proposed Amendment

In consideration of the foregoing, the Federal Aviation Administration

proposes to amend 14 CFR part 71 as follows:

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

1. The authority citation for 14 CFR part 71 continues to read as follows:

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

§ 71.1 [Amended]

2. The incorporation by reference in 14 CFR 71.1 of the Federal Aviation Administration Order 7400.9F, *Airspace Designations and Reporting Points*, dated September 10, 1998, and effective September 16, 1998, is amended as follows:

Paragraph 5000 Class D airspace areas.

* * * * *

ASW NM D Clovis, NM [Revised]

Clovis, Cannon AFB, NM
(Lat. 34°22′58″N., long. 103°19′20″W.)
Cannon ILS Localizer
(Lat. 34°22′25″N., long. 103°20′09″W.)
Cannon TACAN
(Lat. 34°22′51″N., long. 103°19′21″W.)

That airspace extending upward from the surface to and including 6,800 feet MSL within a 4.6-mile radius of Cannon AFB and within 1.8 miles each side of the Cannon ILS Localizer northeast course extending from the 4.6-mile radius to 5.1 miles northeast of the airport and within 1.8 miles each side of the 304° radial of the Cannon TACAN extending from the 4.6-mile radius to 5.1 miles northwest of the airport. This Class D airspace is effective during the specific dates and times established in advance by a Notice to Airmen. The effective date and time will thereafter be continuously published in the Airport/Facility Directory.

* * * * *

Paragraph 6002 Class E airspace areas extending upward from the surface of the earth.

* * * * *

ASW NM E2 Closvis, NM [Revised]

Clovis, Cannon AFB, NM
(Lat. 34°22′58″N., long. 103°19′20″W.)
Cannon ILS Localizer
(Lat. 34°22′25″N., long. 103°20′09″W.)
Cannon TACAN
(Lat. 34°22′51″N., long. 103°19′21″W.)

That airspace extending upward from the surface within a 4.6-mile radius of Cannon AFB and within 1.8 miles each side of the Cannon ILS Localizer northeast course extending from the 4.6-mile radius to 5.1 miles northeast of the airport and within 1.8 miles each side of the 304° radial of the Cannon TACAN extending from the 4.6-mile radius to 5.1 miles northwest of the airport. This Class E airspace is effective during the specific dates and times established in advance by a Notice to Airmen. The effective date and time will thereafter be continuously published in the Airport/Facility Directory.

* * * * *

Issued in Fort Worth, TX on February 25, 1999.

Albert L. Viselli,

Acting Manager, Air Traffic Division, Southwest Region.

[FR Doc. 99–5392 Filed 3–3–99; 8:45 am]

BILLING CODE 4910–13–M

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Health Care Financing Administration

42 CFR Parts 447, 457, and 45 CFR Parts 92 and 95

[HCFA–2114–P]

RIN 0938–AI65

State Child Health; State Children's Health Insurance Program Allotments and Payments to States

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

ACTION: Proposed rule.

SUMMARY: This proposed rule sets forth the methodologies and procedures to determine the Federal fiscal year allotments of Federal funds available to individual States, Commonwealths and Territories for the new State Children's Health Insurance Program (CHIP) established under title XXI of the Social Security Act. This rule also proposes the allotment, payment, and grant award process that will be used for the States, the Commonwealths and Territories to claim and receive Federal financial participation (FFP) for expenditures under the State Children's Health Insurance Program and related Medicaid program provisions.

Established by section 4901 of the Balanced Budget Act of 1997 (Pub. L. 105–33) and amended by technical amendments made by Pub. L. 105–100, the State Children's Health Insurance Program provides Federal matching funds to States to initiate and expand health insurance coverage to uninsured, low-income children. Aggregate Federal funding is limited to a fixed amount for each Federal fiscal year. This aggregate amount is divided into allotments for each State. State allotments are determined based on a statutory formula that divides the total available appropriation among all States with approved child health plans. Once determined, the amount of a State's allotment for a fiscal year is available for 3 years.

We are publishing this proposed rule in accordance with the provisions of sections 2104 and 2105 the Act that relate to allotments and payments to States under title XXI.

DATES: Written comments will be considered if we receive them at the appropriate address, as provided below, no later than 5:00 p.m. on May 3, 1999.

ADDRESSES: Mail written comments (one original and three copies) to the following address: Health Care Financing Administration, Department of Health and Human Services, Attention: HCFA–2114–P, PO Box 7517, Baltimore, MD 21207–0517.

If you prefer, you may deliver your written comments (one original and three copies) to one of the following addresses:

Room 443–G, Hubert H. Humphrey Building, 200 Independence Avenue, SW, Washington, DC, or

Room C5–09–27, Central Building, 7500 Security Boulevard, Baltimore, Maryland.

If you wish to submit written comments on the information collection requirements contained in this proposed rule, you may submit written comments to the following:

Allison Eydt, HCFA Desk Officer, Office of Information and Regulatory Affairs, Room 3001, New Executive Office Building, Washington, DC 20503; and

Health Care Financing Administration, Office of Information Services, Security and Standards Group, Division of HCFA Enterprise Standards, Room N2–14–26, 7500 Security Boulevard, Baltimore, MD 21244–1850, ATTN: Louis Blank, HCFA–2114–P.

FOR FURTHER INFORMATION CONTACT: Richard Strauss, (410) 786–2019

SUPPLEMENTARY INFORMATION:

Comments, Procedures, Availability of Copies, and Electronic Access

Because of staff and resource limitations, we cannot accept comments by facsimile (FAX) transmission. In commenting, please refer to file code HCFA–2114–P. Comments received timely will be available for public inspection as they are received, generally beginning approximately 3 weeks after publication of a document, in Room 443–G of the Department's office at 200 Independence Avenue, SW., Washington, DC, on Monday through Friday of each week from 8:30 to 5 p.m. (phone: (202) 690–7890).

Copies: To order copies of the **Federal Register** containing this document, send your request to: New Orders, Superintendent of Documents, PO Box

371954, Pittsburgh, PA 15250–7954. Specify the date of the issue requested and enclose a check or money order payable to the Superintendent of Documents, or enclose your Visa or Master Card number and expiration date. Credit card orders can also be placed by calling the order desk at (202) 512–1800 or by faxing to (202) 512–2250. The cost for each copy is $8. As an alternative, you can view and photocopy the **Federal Register** document at most libraries designated as Federal Depository Libraries and at many other public and academic libraries throughout the country that receive the **Federal Register**.

This **Federal Register** document is also available from the Federal Register online database through GPO Access, a service of the U.S. Government Printing Office. Free public access is available on a Wide Area Information Server (WAIS) through the Internet and via asynchronous dial-in. Internet users can access the database by using the World Wide Web; the Superintendent of Documents home page address is http://www.access.gpo.gov/nara__docs/, by using local WAIS client software, or by telnet to swais.access.gpo.gov, then login as guest (no password required). Dial-in users should use communications software and modem to call 202–512–1661; type swais, then login as guest (no password required).

I. Background

Section 490l of the Balanced Budget Act of 1997 (BBA), Public Law 105–33, as amended by Public Law 105–100, added Title XXI to the Social Security Act (the Act). Title XXI authorizes a new State Children's Health Insurance Program (CHIP) to assist State efforts to initiate and expand child health assistance to uninsured, low-income children. Child health assistance is provided primarily for obtaining health benefits coverage through (1) obtaining coverage that meets requirements specified in the law under section 2103 of the Act; or (2) expanding benefits under the State's Medicaid plan under title XIX of the Act; or (3) a combination of both.

Under title XXI, funds are appropriated to carry out this basic purpose. Section 2104(a) of the Act specifies appropriated amounts for each fiscal year to be used to provide allotments to each State. Section 2104 of the Act provided for the total amount of funds available nationally for each Federal fiscal year and sets forth a general methodology to calculate the State specific allotments.

Section 2105 of the Act requires the Secretary to make payments to each State with an approved State child health plan from its available allotment equal to a certain percentage (referred to as the enhanced Federal medical assistance percentage (EFMAP)) of the State expenditures under the plan. These expenditures are primarily for child health assistance for targeted low-income children that meet the health benefits coverage requirements in section 2103 of the Act. Section 2105 of the Act authorizes the Secretary to establish a process for making payments to States for State expenditures under their title XXI programs. Under this section, no more than 10 percent of a State's total expenditures may be used for the total costs of: other child health assistance for targeted low-income children; health services initiatives; outreach; and administrative costs.

This proposed rule will implement these title XXI State CHIP and related title XIX Medicaid program financial provisions, including the allotment process, the payment process, financial reporting requirements, and the grant award process.

II. Provisions of the Proposed Rule

A. Overview

Under our proposal, the new regulations for the Children's Health Insurance Program would be set forth in regulations at 42 CFR part 457 subchapter D. We note that some sections and subparts would be reserved for regulations currently under development related to other statutory requirements of the Children's Health Insurance Program. We intend to address these and other statutory requirements in subsequent **Federal Register** documents.

The overall existing regulations for the Medicaid program containing general financial and related provisions were used as a model for the Children's Health Insurance Program. In this regard, proposed regulations at §§ 457.200 through 457.238, subpart B, mirror existing Medicaid regulations related to program administration and conformed to the title XXI program. The most significant inclusion in these regulations would be our proposal to set forth proposed regulations at §§ 457.600 through 457.630, subpart F. This subpart would specify the methodologies and procedures to determine the Federal allotments, and the grant award process that will be used for payment to States.

The proposed organizational format for new part 457, subchapter D is as follows:

Subchapter D—Children's Health Insurance Programs (CHIPs)

Part 457—Allotments and Grants to States

Subpart A—[Reserved]

Subpart B—General Administration—Reviews and Audits; Withholding for Failure To Comply; Deferral and Disallowance of Claims; Reduction of Federal Medical Payments

Sec.

457.200 Program reviews.
457.202 Audits.
457.204 Withholding of payment for failure to comply with Federal requirements.
457.206 Administrative appeals under the State CHIP.
457.208 Judicial review.
457.210 Deferral of claims for FFP.
457.212 Disallowance of claims for FFP.
457.216 Treatment of uncashed or canceled (voided State CHIP checks).
457.218 Repayment of Federal funds by installments.
457.220 Public funds as the State share of financial participation.
457.222 FFP for equipment.
457.224 FFP: Conditions relating to cost sharing.
457.226 Fiscal policies and accountability.
457.228 Cost allocation.
457.230 FFP for State ADP expenditures.
457.232 Refunding of Federal share of CHIP overpayments to providers and referral of allegations of waste, fraud or abuse to the Office of Inspector General.
457.234 State plan requirements.
457.236 Audit of records.
457.238 Documentation of payment rates.

Subparts C through E—[Reserved]

Subpart F—Payment to States

457.600 Purpose and basis of this subpart.
457.602 Applicability.
457.606 Conditions for State allotments and Federal payments for a fiscal year.
457.608 Process and calculation of State allotments for a fiscal year.
457.610 Period of availability for State allotments for a fiscal year.
457.614 General payment process.
457.616 Application and tracking of payments against the fiscal year allotments.
457.618 Ten percent limit on certain Children's Health Insurance Program expenditures
457.622 Rate of FFP for State expenditures.
457.624 Limitations on certain payments for certain expenditures.
457.626 Prevention of duplicate payments.
457.628 Other applicable Federal regulations.
457.630 Grants procedures.

B. Program administration

Subpart B—General Administration—Reviews and Audits; Withholding for Failure to Comply; Deferral and Disallowance of Claims; Reduction of Federal Medical Payments

We would add new §§ 457.200 through 457.234 subpart B that would

specify the provisions necessary for program administration of the State CHIP plan.

1. Program Reviews (§ 457.200)

Section 457.200 would specify that HCFA reviews State and local administration of the State CHIP plan in order to determine whether the State is complying with the Federal requirements and provisions of its plan.

2. Audits (§ 457.202)

The Department's Office of Inspector General (OIG) periodically audits State operations. Section 457.202 would specify the purpose of these audits, OIG's audit reports, and action that a State agency may take on audit exceptions.

3. Withholding of Payment for Failure To Comply With Federal Requirements (§ 457.204)

Section 457.204 would specify the basis for withholding payment, noncompliance of a State plan and noncompliance practices.

4. Administrative Appeals Under the State CHIP (§ 457.206)

Section 457.206 would specify the three types of disputes that may be appealed under the State CHIP.

5. Judicial Review (§ 457.208)

A State dissatisfied with the Administrator's final determination approval of plan material or compliance with Federal requirements has a right to judicial review. In § 457.208, we would specify the procedure for judicial review.

6. Deferral of Claims for FFP (§ 457.210)

Section 457.210 would specify the requirements for deferral for payment of a claim or any portion of a claim for FFP. This section would also specify that the HCFA Regional Administrator must notify the State in writing of a deferral and the State's responsibility.

7. Disallowance of Claims for FFP (§ 457.212)

Section 457.212 would specify when the Regional Administrator or Administrator determines that a claim or portion of a claim is not allowable the State will be notified of the dissallowance and a right for reconsideration. This section would also specify the procedure for reviews of disallowances of FFP under CHIP, and implementation of reconsideration decisions.

8. Treatment of Uncashed or Canceled (voided) State CHIP Checks (§ 457.216)

Section 457.216 would specify the rule to ensure that States refund the amount of FFP related to checks not cashed after 180 days or canceled (voided) checks, issued by a State or a fiscal agent to CHIP payees under title XXI.

9. Repayment of Federal Funds (§ 457.218)

New § 457.218 would set forth the basic conditions when Federal payments have been made for claims that are later found to be unallowable. This section would specify the repayment schedule, quarterly repayment amounts, extended schedule and repayment process. It would also specify the process for offsetting of retroactive claims.

10. Public Funds as the State Share of Financial Participation (§ 457.220)

Section 457.220 would specify that public funds may be considered for the State's share in claiming FFP if they meet the conditions specified in this section of the regulations. These public funds may also be subject to the limitation on the use of donations and taxes that are set forth in Medicaid regulations, which we propose to incorporate for purposes of the CHIP in § 457.628 below. HCFA is considering whether there is a need to issue additional regulations for provider related-donations and health care related-taxes for CHIP.

11. FFP for Equipment (§ 457.222)

Section 457.222 would specify how claims for Federal financial participation in the cost of equipment under the State CHIP are determined, and the requirements concerning the management and how disposition of equipment under the State CHIP Program are prescribed.

12. FFP: Conditions Relating to Cost Sharing (§ 457.224)

New § 457.224 would specify the conditions for which no FFP in the State's expenditures for services is available or for which the amount of expenditures are reduced related to cost-sharing received by the State.

13. Fiscal Policies and Accountability (§ 457.226) and Cost Allocation (§ 457.228)

Section 457.226 would set forth fiscal policies and accountablity for a State that has a CHIP plan. Section 457.228 would require a State plan to provide that the single or appropriate State CHIP agency will have an approved cost allocation plan on file with the Department.

14. Federal Financial Participation for State ADP Expenditures (457.230)

Section 457.230 would specify that FFP is available for State ADP expenditures for the design, development, or installation of mechanized claims processing and information retrieval systems and for the operation of certain systems. This section would also specify where additional HHS regulations and HCFA procedures for implementing these regulations are specified.

15. Refunding of Federal Share of CHIP Overpayments to Providers and Referral of Allegations of Waste, Fraud or Abuse to the Office of Inspector General (§ 457.232)

Section 457.232 would specify how refunding of the Federal share of CHIP overpayments to providers will be handled. In addition, this section would specify that allegations or indications of waste, fraud and abuse with respect to the CHIP program must be referred to the Office of Inspector General.

16. State Plan Requirements (§ 457.234)

This section would specify that the State must provide that the requirements in this subpart are met.

17. Audits of Records (§ 457.236) and Documentation of Payment Rates (§ 457.238)

Sections 457.236 and 457.238 would specify that the CHIP agency must assure appropriate audit of records, and maintain documentation of payment rates and make it available to HHS.

C. Allotment Process

We would add new §§ 457.600 through 457.632, subpart F, that would implement the provisions of section 2104 of the Act, relating to the process for establishing the national total amounts available and the State specific allotments for a fiscal year, and section 2105 of the Act, relating to the process for making payments to States from their allotments. We would also add a new section on Medicaid presumptive eligibility at § 447.88 to subpart A, as discussed below.

1. Purpose, Basis and Applicability of This Part (§§ 457.600 and 457.602)

Section 457.600 specifies the purpose and basis of this new part.

Section 457.602 will specify that this subpart applies to the 50 States, the District of Columbia, and the Commonwealths and Territories.

2. Conditions for State Allotments for a Fiscal Year and Payments (§ 457.606)

In § 457.606, we specify the conditions necessary in order for a State to receive an allotment for a fiscal year and Federal payments for allowable State expenditures under its State child health plan. Specifically, a State will receive an allotment for a fiscal year only if HCFA has approved its State child health plan by the end of the fiscal year, and Federal payments are available only for the State's allowable expenditures under the approved State child health plan at an enhanced Federal medical assistance percentage. States could be at risk for expenditures made under a State child health plan that was submitted, but not yet approved.

Public Law 105–174, enacted on May 1, 1998, provides that if a State child health plan is approved by HCFA on or after October 1, 1998, and before October 1, 1999, the plan must be treated as having been approved for both FY 1998 and FY 1999. Thus, for example, if a State submits its initial child health plan during FY 1999 and the plan is approved in FY 1999, the State will receive a CHIP fiscal year allotment for both FY 1998 and FY 1999. However, a State's allotment for a fiscal year may only be used for CHIP and/or CHIP-related Medicaid expenditures that are allowable under the approved State child health plan or the Medicaid State plan. FFP would not be available for expenditures made in and claimed for periods prior to the effective date of the approved State child health plan or the Medicaid State plan. § 457.606 specifies the conditions contained in Public Law 105–174 relating to approval of State child health plans for FYs 1998 and 1999.

3. Process and Calculation of Allotments for a Fiscal Year (§ 457.608)

We specify in § 457.608 the provisions for determining the amounts of State allotments for a fiscal year. The total amount of the Federal funds available for the purpose of funding States' Title XXI programs is limited for each fiscal year nationally, and the statute provides a basis for determining State-specific allotments of this national total amount. There are two determinations involved in the overall allotment process. In the first determination, the total amounts available for allotment to the States, the District of Columbia, and the Commonwealths and Territories for a fiscal year are established. The second determination potentially involves three State specific allotment determinations by the Secretary for a fiscal year: the reserved allotment; the final allotment; and the redistribution of the amounts of unused fiscal year allotments from States that have not expended all of the amount of that fiscal year's allotment, to States that have fully expended the amount of their allotments for that fiscal year.

Section 457.608 specifies the methodology and formula for calculating the total amount available nationally for allotment to States and the District of Columbia for a fiscal year. Section 2104(a) of the Act specifies the total appropriated amount available nationally for allotment to each State and the District of Columbia with a State child health plan approved under this title based on the formula specified in section 2104(b)(1) of the Act. The total appropriations for each fiscal year, representing the total amounts available nationally for allotment to States are: $4.295 billion for FY 1998; $4.275 billion for fiscal years 1999 through 2001; $3.150 billion for fiscal years 2002 through 2004; $4.050 billion for fiscal years 2005 and 2006; and $5 billion for FY 2007. The total amount available nationally for allotment for each fiscal year is determined by subtracting certain amounts in a specified order, as specified in statute, from the total appropriation for all States for a given fiscal year. The example below illustrates the methodology used for calculating the total amount available nationally for allotment to States for FY 1998.

Total Allotment Available for FY 1998 for All States

Formula: $A_{TA} = S_{2104(a)} - T_{2104(c)} - D_{4921} - D_{4922}$

A_{TA} = National total amount available for allotment to all States and the District of Columbia for the fiscal year.

$S_{2104(a)}$ = Total appropriation for the fiscal year specified in section 2104(a) of the Act. Under section 2104(a)(1) of the Act for FY 1998, this is $4,295,000,000.

$T_{2104(c)}$ = Total allotment amount for a fiscal year available for allotment to the Commonwealths and Territories; determined under section 2104(c) of the Act as 0.25 percent of the total appropriation for the fiscal year. For FY 1998, this is: $.0025 \times \$4,295,000,000 = \$10,737,500$

D_{4921} = Amount of total grant for children with Type I Diabetes under section 4921 of Pub. L. 105–33. This is $30,000,000 for each of fiscal years 1998 through 2002.

D_{4922} = Amount of total grant for diabetes programs for Indians under section 4922 of Pub. L. 105–33. This is $30,000,000 for each of fiscal years 1998 through 2002.

In accordance with the above formula, the total amount available for allotment to the 50 States and the District of Columbia for fiscal year 1998 is $4,224,262,500, determined as follows:

$$A_{TA} = S_{2104(a)} - T_{2104(c)} - D_{4921} - D_{4922}$$
$$\$4,224,262,500 = \$4,295,000,000 - \$10,737,500 - \$30,000,000 - \$30,000,000$$

4. Individual State Allotments to the 50 States and District of Columbia

Section 2104(b) of the Act provides for allotments from the total amount available nationally to the 50 States and the District of Columbia. For fiscal years 1998 through 2000, each State with an approved State child health plan will receive an allotment based on two factors for the fiscal year: the number of children and the State cost factor.

Section 2104(b)(2) of the Act specifies that the number of children used in determining a State's allotment for a fiscal year is a determination of the number of low-income children (and of low income children who have no health insurance coverage) for a State for a fiscal year made on the basis of the arithmetic average of the number of such children, as reported and defined in the 3 most recent March supplements to the Current Population Survey (CPS) of the Bureau of the Census before the beginning of the fiscal year.

For fiscal years 1998 through 2000 the number of children factor used in calculating a State's allotment for a fiscal year is based on each State's total number of low-income children with no health insurance coverage. For fiscal year 2001, the number of children factor is the sum of: (1) 75 percent of the number of low-income children with no health insurance coverage; and (2) 25 percent of the number of low-income children in the State. For each succeeding fiscal year after 2001, the number of children factor is the sum of: (1) 50 percent of the number of low-income children with no health insurance coverage; and (2) 50 percent of the number of low-income children in the State.

Section 2104(b)(1)(A)(ii) and (b)(3) of the Act specifies that the State cost factor used in determining a State's allotment refers to geographic variations in State health costs and is based on the average of the annual wages per employee for the State or the District of Columbia, or for all States and the District of Columbia, for employees in

the health services industry (although SIC Code 8000 is referenced in the statute, the Bureau of Labor and Statistics is using the more general SIC code 80) as reported by the Bureau of Labor Statistics of the Department of Labor for each of the most recent 3 years before the beginning of the fiscal year involved.

As specified in the statute, the sources of the number of children and the annual average wages for employees in the health services industry are the Bureau of the Census and the Bureau of Labor Statistics, respectively. Both of the relevant sections of the Act refer to these data ''as reported and defined'' under the authorities of these Federal organizations for the 3 most recent years before the beginning of the fiscal year involved. In light of the clear language of the statute, in our calculations of the State allotments we will use the data regarding the number of children and the annual average wages as provided by the Bureau of the Census and the Bureau of Labor Statistics. That is, we will not make any adjustments or corrections to this data provided by the Bureau of the Census or the Bureau of Labor Statistics.

In order for HCFA to determine State CHIP allotments for a fiscal year within a reasonable time period at the beginning of the fiscal year, we intend to use the most recent official data that are available from the Bureau of the Census and Bureau of Labor Statistics, respectively, just prior to the beginning of the fiscal year on October 1. We will use this approach beginning with FY 2000, which begins on October 1, 1999.

We used a different approach for FY 1998 and FY 1999. In calculating the FY 1998 reserved CHIP allotments, which were published in the **Federal Register** on September 12, 1997, we used the most recent official data that were available from the Bureau of the Census and Bureau of Labor Statistics, respectively, prior to the *September* 1 before the beginning of FY 1998 (that is, through *August 31,* 1997).

In particular, through August 31, 1997, the only official data available from the Bureau of the Census on the numbers of children were data from the 3 March CPSs conducted in March 1994, 1995, and 1996 that reflected data for the 3 calendar years 1993, 1994, and 1995. If we had waited for the official data available from the Bureau of the Census through September 30, 1997, we would have had to delay publication of the FY 1998 CHIP allotments until after the beginning of FY 1998. Since this was a new program, we believed that for the first year States needed to be able to plan in advance.

Section 457.608 specifies that in determining a fiscal year allotment, we will use the most recent official data that are available from the Bureau of the Census and the Bureau of Labor Statistics prior to the October 1 before the beginning of the fiscal year.

HCFA does not modify or adjust the Bureau of Census compilation of CPS data on the number of children. HCFA is, however, incorporating a correction made by the Bureau of Census to more accurately reflect underlying reported CPS data. The Bureau of Census recognized that the data collected and reported on the numbers of children in the March Supplements to the CPS were not accurately reflected in the compilation provided to HCFA for the September 12, 1997 calculation of the FY 1998 reserved allotments. In particular, children who had access to services through the Indian Health Services (IHS), but no other health insurance coverage, were identified in the compiled number of children as having health insurance coverage. The Bureau of Census has adjusted the compiled numbers of children to reflect the fact that the data shows that these children do not actually have health insurance coverage. In light of this adjustment to more accurately reflect reported CPS data, HCFA recalculated and republished the FY 1998 reserved allotments in the **Federal Register** on February 8, 1999 (64 FR 6102). This is consistent with the express incorporation of this Bureau of Census adjustment into the FY 1999 allotment calculation under Public Law 105–277.

In accordance with Pub. L. 105–277, the FY 1999 reserved allotments were based on the same data as the revised FY 1998 reserved allotments. These reserved allotments were also published in the **Federal Register** on February 8, 1999 (64 FR 6102).

Specifically, for FY 1999, the Number of Children for each State (provided in thousands) was determined and provided by the Bureau of the Census based on the arithmetic average of the number of low-income children and low-income children with no health insurance as calculated from the 1994, 1995 and 1996 March supplements to the CPS, as adjusted in August 1998. The State Cost Factor was calculated based on the final State Cost Factor data for each of the most recent 3 years before the beginning of the fiscal year, through August 31, 1997 available from BLS. This is the same data that was used in the calculation of the FY 1998 allotments.

In accordance with section 2104(b)(4) of the Act, § 457.608(e) specifies that each State, (including the District of Columbia) with an approved State plan will receive a minimum allotment for a fiscal year of $2 million. This section also provides that in the event that a State's allotment as determined by the formula described above is below this $2 million minimum, it will be increased to $2 million; and the increase will be offset by a pro rata reduction in allotments to other States so that the total amount of allotments to all States in a fiscal year does not exceed the total amount available nationally for allotment to the States and the District of Columbia.

We specify in § 457.608(f) the formula for determining individual allotments for the 50 States and the District of Columbia. The formula for determining each State's allotment of the total available allotment is indicated in section 2104(b)(1) of the Act. The example below shows the methodology for determining each State allotment amount for FY 1998.

5. Formula for Calculating the State Allotment for a Fiscal Year (§ 457.608(d))

The methodology for determining the State allotment for a fiscal year is in accordance with the following formula:

$$SA_i = \frac{C_i \times SCF_i}{\sum\left(C_i \times SCF_i\right)} \times A_{TA}$$

SA_i = Allotment for a State for a fiscal year.

C_i = *Number of children* in a State (section 2104(b)(1)(A)(i)) for a fiscal year.

This number is based on the number of low-income children for a State for a fiscal year and the number of low-income children for a State for a fiscal year with no health insurance coverage for the fiscal year determined on the basis of the arithmetic average of the number of such children as reported and defined in the 3 most recent March supplements to the Current Population Survey of the Bureau of the Census before the beginning of the fiscal year. (section 2104(b)(2)(B) of the Act). As discussed above, the number of children will be the most recent data officially available and reported ad defined by the Bureau of the Census prior to October 1 before the beginning of the fiscal year.

For each of the fiscal years 1998 through 2000, the number of children is equal to the number of low-income children in the State for the fiscal year with no health insurance coverage. For fiscal year 2001, the number of children is equal to the sum of 75 percent of the number of low-income children in the State for the fiscal year with no health insurance coverage and 25 percent of

the number of low-income children in the State for the fiscal year. For fiscal years 2002 and thereafter, the number of children is equal to the sum of 50 percent of the number of children in the State for the fiscal year with no health insurance coverage and 50 percent of the number of low-income children in the State for the fiscal year (section 2104(b)(2)(B)).

SCF_i = *State cost factor* for a State (section 2104(b)(1)(A)(ii)).

For a fiscal year, this is equal to:

$.15 + .85 \times (W_i/W_N)$ (Section 2104(b)(3)(A)).

W_i = The annual average wages per employee for a State (section 2104(b)(3)(A)(ii)(I)).

W_N = The annual average wages per employee for the 50 States and the District of Columbia for such year (section 2104(b)(3)(A)(ii)(II)).

The annual average wages per employee for a State or for all States and the District of Columbia for a fiscal year is equal to the average of such wages for employees in the health industry (SIC code 80), as reported by the Bureau of Labor Statistics for the Department of Labor for each of the 3 years before the beginning of the fiscal year. Although section 2104(b)(3)(B) of the Act refers to the SIC code 8000, the Bureau of Labor Statistics reports the wages for employees in the health services industry using SIC code 80, which is more general. As discussed above, the health industry wages will be the most recent data available and reported and defined by the Bureau of Labor Statistics prior to October 1 before the beginning of the fiscal year. (section 2104(b)(3)(B)).

$\sum(C_{i \times SCFi})$ = This is the sum of the products of $C_i \times SCF_i$ for each State (section 2104(b)(1)(B)).

A_{TA} = Total amount available for allotment to all States and the District of Columbia for the fiscal year. For FY 1998, this is $4,224,262,500.

6. Reserved Allotment for Each State (§ 457.608(g))

Although the statute provides that the Secretary shall make an allotment to a specific state if it has an approved State child health plan, we are proposing a process under which State CHIP allotments will be determined and ''reserved'' for each and every State for the fiscal year, regardless of whether the States have submitted and have an approved State child health plan. The amount of the ''reserved'' allotment for each State would be determined in accordance with the formula provided for in section 2104(b) of the Act.

In accordance with this approach, § 457.608 specifies that for each fiscal year, HCFA will develop the reserved allotments for the 50 States and the District of Columbia and the Commonwealths and Territories based on the principle that an allotment amount should be reserved and available for each State, regardless of whether the State has submitted a State child health plan or whether that plan is approved. This will provide States with the flexibility and time to develop their programs and submit their State child health plans. The reserved allotment does not represent an actual allotment for a State. The reserved allotment may be established as a State's actual allotment for a fiscal year only upon submission and approval of the States' child health assistance plan by the end of the fiscal year (or, in the case of fiscal year 1998, by the end of fiscal year 1999). Furthermore, as discussed below, the State's final allotment for the fiscal year may differ from the State's reserved allotment. Since the effective date for the States' CHIP plans could have been as early as October 1, 1997, we published the FY 1998 reserved allotments for the States, District of Columbia and Commonwealths and Territories, in a separate **Federal Register** notice (67 FR 48098) on September 12, 1997, as if they all had approved State child health plans. We believe it is important for States to be informed of a reserved allotment at the beginning of the fiscal year so that States have an opportunity to plan accordingly.

Reserved allotments are determined through the method described in section 4 in accordance with the formula provided for in section 2104(b) of the Act.

7. Final Allotment for Each State (§ 457.608(h))

The statute requires that final State allotments for each fiscal year be determined based only on the States that have approved State child health plans by the end of the fiscal year. This regulation proposes that the factors used in calculating each State's final allotments for a fiscal year, the number of children and the State cost factor, will be the same as the factors used in determining and publishing the reserved allotments. As discussed previously, in section 4 above, in general we propose to use the official data for these factors available from the Bureau of the Census and the BLS prior to October 1 before the beginning of the fiscal year. More recent data than that used in calculating the reserved allotments for a fiscal year will not be used in determining the final allotments for that fiscal year. This will establish a consistent basis for States in planning their State children's health insurance programs, and will mitigate the potentially significant fluctuations in allotments that could occur because of changes in these factors.

However, as discussed above in section 4, on reserved allotments, the Bureau of the Census has recently changed the way it reports children having access to IHS services. In order to reflect this Bureau of Census adjustment in the calculation of the final allotments for FY 1998, we propose to use the revised number of children factor reflected in the revised reserved FY 1998 allotments published in the **Federal Register** on February 8, 1999 (64 FR 6102). These numbers are slightly different from what was used when the reserved allotments were published in the **Federal Register** on September 12, 1997.

The Bureau of Census will continue to use this new reporting methodology of children with access to IHS services in the future, and therefore it will be reflected in the reserved state allotments and the final CHIP allotments.

8. Allotments for the Commonwealths and Territories (§ 457.608(f))

New § 457.608(f) specifies the amount of the total allotment available for a fiscal year to the Commonwealths and the Territories and the amount of the specific allotment for each Commonwealth and Territory. Section 2104(c) of the Act provides for allotments to the Commonwealths and Territories of Puerto Rico, Guam, the Virgin Islands, American Samoa, and the Northern Mariana Islands. This section of the Act specifies that for a fiscal year, the Secretary shall allot 0.25 percent of the total amount appropriated for the fiscal year among each of the Commonwealths and Territories in accordance with the following percentages specified in section 2104(b)(2) of the Act:

Puerto Rico—91.6 percent
Guam—3.5percent
Virgin Islands—2.6 percent
American Samoa—1.2 percent
Northern Mariana Islands—1.1 percent

For fiscal year 1998 a total of $10,737,500 (.25 percent of $4,295,000,000) is available for allotment to the Commonwealths and Territories. For FY 1999 the Commonwealths and Territories will receive $10,687,500 (.25 percent of $4,275,000,000) under the formula described above. In addition, under Pub. L. 105–277, an additional $32 million

was appropriated for allotment only to the Commonwealths and Territories and only for FY 1999. This newly appropriated $32 million does not reduce the previous FY 1999 CHIP appropriation ($4.275 billion) and is in addition to the 0.25 percent of the amount discussed above ($10,687,500). Therefore, for FY 1999, a total of $42,687,500 will be available for allotment to the Commonwealths and Territories.

We will determine the reserved allotments for a fiscal year for the Commonwealths and Territories in accordance with the above methodology, as if every Commonwealth and Territory has an approved child health plan. If all the Commonwealths and Territories do not have an approved plan, the final allotments will be determined based only on those with approved child health plans and allotted in proportion to the above percentages.

9. Period of Availability of State Allotments for a Fiscal year (§ 457.610)

Section 457.610 specifies that a State's final allotment for a fiscal year as determined in accordance with the formula in § 457.608, remains available for the State, District of Columbia, and Commonwealth and Territory expenditures claimed in a 3-year period of availability beginning with the fiscal year, and ending at the end of the second fiscal year following the fiscal year. For example, for the FY 1998 final allotment, the period of availability is FY 1998 through FY 2000.

In addition, as discussed below, there may be a redistribution process to reallot unexpended amounts of States' allotments for a fiscal year. Section 457.610 specifies that the amounts of redistributed allotments for a fiscal year will be available through the end of the fiscal year immediately following the 3-year period of availability for a fiscal year. For example, for the redistribution of the unexpended amounts of the FY 1998 final allotments, the redistributed amounts would be available to States through the end of FY 2001.

10. Redistribution Process

We intend that at the end of the 3-year period of availability for a fiscal year allotment, HCFA will redistribute to States the unused amounts of allotments for that fiscal year. Section 2104(f) of the Act requires the Secretary to determine an appropriate procedure for redistribution of allotments from States that ''do not expend all of the amount of such allotments during the period in which such allotments are available'' under section 2104(e) of the Act, ''to States that have fully expended the amount of their allotments''. Under section 2104(e) of the Act, the period for which a particular fiscal year States' allotments are available is through the end of the second year following the fiscal year for which the allotment was established. That is, an allotment for a particular fiscal year is available to each State for up to a total of 3 years, the fiscal year and the 2 years following. For example, the FY 1998 allotments, would be available from the beginning of FY 1998 (October 1, 1997) through the end of FY 2000 (September 30, 2000). Any unused amounts of States' allotments for a fiscal year at the end of the 3-year period will be distributed to States that have fully spent their allotments. HCFA intends to apply the redistribution process as soon as possible after the end of the 3-year period, after determining the amount of the unused allotments and the States to which such amounts should be redistributed.

At this time HCFA is not addressing the redistribution process.

D. Payment to States

General Payment Process (§ 457.614)

New § 457.614 specifies that a State may make claim for payment for expenditures incurred during the period of availability related to that fiscal year. This section also specifies that in order to receive a claim for payment, a State must submit budget estimates of quarterly funding requirements for Medicaid and the Children's Health Insurance Programs, and submit an expenditure report. In turn, HCFA will issue an advance grant to a State as described in § 457.630; track and apply a State's reported expenditures against the State allotment; and track and apply relevant State expenditures for establishing and tracking the 10 percent limit.

As discussed previously, section 2105 requires the Secretary to make payments to each State with an approved State child health plan for child health assistance for targeted low-income children who meet the coverage requirements in section 2103, after reducing for expenditures for presumptive eligibility provided under section 1920A of the Act and Medicaid expansions for which the State receives a CHIP-related enhanced matching rate. Section 2105 also specifies that no more than 10 percent of a State's payment may be used for the total costs of: other child health assistance for targeted low-income children; health services initiatives; outreach; and administrative costs.

E. Application and Tracking of Payments Against the Fiscal Year Allotments (§ 457.616)

Section 457.616 of this regulation specifies the principles that will be used for tracking payments and States' title XIX and title XXI expenditures against the States' title XXI allotments.

Sections 2105(a) and 2104(d) of the Act require that title XXI fiscal year allotments be reduced by the following categories of expenditures:

(1) Payments made to a State under its title XIX Medicaid program with respect to section 1903(a) of the Act for expenditures claimed by the State during a fiscal year that are attributable to the provision of medical assistance to a child described in section 1905(u)(2) of the Act on the basis of the enhanced FMAP described in sections 1905(b) and 2105(b) of the Act.

(2) Payments made to a State under its title XIX Medicaid program with respect to section 1903(a) of the Act for expenditures claimed by the State during a fiscal year that are for attributable to the provision of medical assistance to a child described in section 1905(u)(3) of the Act on the basis of the enhanced FMAP described in sections 1905(b) and 2105(b) of the Act.

(3) Payments made to a State under section 1903(a) of the Act for expenditures claimed by the State during a fiscal year that are attributable to the provision of medical assistance to a child during a presumptive eligibility period under section 1920A of the Act.

(4) Payments made to a State under its title XXI children's health insurance program with respect to section 2105(a) of the Act for expenditures claimed by the State during a fiscal year.

HCFA will use the following principles, referenced in § 457.616(c) of this regulation, to: Coordinate the application of the title XIX and title XXI expenditures against the title XXI fiscal year allotments; determine the order of these expenditures; and determine how expenditures apply against multiple fiscal year allotments.

• *Principle 1. Apply title XIX Medicaid payments before title XXI CHIP payments (section 2104(d)).* Federal payments for title XIX expenditures must be applied against the title XXI fiscal year allotments before payment for title XXI expenditures are applied. Specifically, u2 (the total computable expenditures claimed for the fiscal year under section 1905(u)(2) of the Act), u3 (the total computable expenditures claimed for the fiscal year under section 1905(u)(3) of the Act), and PE (presumptive

eligibility) payments under section 1920A of the Act in the Medicaid program are applied before any title XXI payments are applied.

• *Principle 2. Federal payments for expenditures must be applied against a fiscal year allotment based on the quarter in which they are claimed (section 2104(b), (d), and section 2105(a)).* Federal payment for title XIX and title XXI expenditures must be applied against a fiscal year allotment based on the quarter in which they are claimed. Thus, Principle 1 above applies only on the basis of the quarter the expenditures are claimed. For example, if title XXI expenditures were claimed in one quarter and title XIX expenditures were claimed in a second, subsequent quarter, the title XXI expenditures claimed in the first quarter would be applied against the fiscal year allotment before the title XIX expenditures claimed in the second quarter.

• *Principle 3. Expenditures should be applied consistently over the 3-year period of availability for fiscal year allotment (Section 2101(a), section 2104(e), and (f)).* Federal payment for expenditures should be applied consistently over the 3-year period of availability for fiscal year allotments. In order to treat States consistently in the redistribution process, as appropriate, HCFA will apply the same ordering of expenditures and allotments for all States.

• *Principle 4. Title XIX expenditures should be applied in the order which provides the most benefits for States.* Federal payment for title XIX expenditures should be applied in the order that maximizes Federal reimbursement for States. We believe the order that most benefits States is as follows: u2 expenditures first, then u3 expenditures, and lastly PE expenditures. This is because u2 and u3 expenditures are funded at the enhanced FMAP rate which drops to the regular FMAP rate when the allotment is exhausted. PE expenditures are always matched at the regular (lower) FMAP, and also continue to be matched after the allotment is exhausted.

• *Principle 5. Apply expenditures and allotments in the least administratively burdensome, most effective and efficient manner (section 2101(a).* To the greatest extent possible HCFA will use processes which are the least administratively burdensome, and the most effective and efficient. For example, we believe a ''first-in-first-out'' (FIFO) method should be applied both with respect to the application of claims for FFP for expenditures against the allotment and the availability of the fiscal year allotments. Thus, Federal payments for expenditures would be applied against a fiscal year allotment in the order they are claimed, and an earlier fiscal year allotment would be used before a subsequent fiscal year allotment. For example, in the case of a State for which FY 1988 allotment amounts are carried over to FY 1999, Federal payments for expenditures claimed in FY 1999 would first be applied against the FY 1998 carryover allotment amounts before being applied against subsequent fiscal year allotments (see Principle 7).

• *Principle 6. Application of claims for Federal payments in expenditures for 1 fiscal year against a subsequent fiscal year allotment (section 2104(e), (f)).* Federal payment for expenditures claimed in one fiscal year would be applied against a subsequent fiscal year's allotment, if the earlier fiscal year's allotment was exhausted. However, this could not be done until the subsequent year's allotment was actually available. For example, Federal payments for expenditures claimed in FY 1998 after the FY 1998 allotment was exhausted would be applied against the FY 1999 allotment, but only after FY 1999 had begun and the FY 1999 allotment had become available.

• *Principle 7. Amounts of a State's fiscal year allotments for prior years that have not been expended and are ''carried over,'' are available for matching expenditures within the 3-year period of availability (section 2104(e), (f)).* Under the FIFO method (see Principle 5), unexpended amounts of an allotment for a fiscal year would be carried over for use in subsequent fiscal years and through the end of the 3-year period of availability. Furthermore, the carried over allotment would be used before the subsequent fiscal year allotment was used. For example, unspent amounts of the FY 1998 allotment may be carried over up through FY 2000. The carried over amounts of the FY 1998 allotment would be used before the allotments for FYs 1999 and 2000; that is, expenditures for FYs 1999 and 2000 would be applied against the FYs 1998 carryover amount before being applied against the FYs 1999 and 2000 allotments (Principle 5). Application of Principles 2, and 5 through 7 may mitigate the necessity of having to go through a redistribution process because earlier allotments would be exhausted by Federal payments for expenditures as they were claimed during the period of availability.

The following examples illustrate the above principles.

• *Example 1—Illustration of Principle 1.* The amount remaining of the fiscal year 1998 allotment is $5 million. Claims for payments for title XIX expenditures in a quarter are $4 million. Title XXI claims for payments for expenditures in the same quarter are $3 million. Under Principle 1, the $4 million in title XIX expenditures are applied against the remaining $5 million of the FY 1998 allotment first, leaving $1 million remaining of the fiscal year 1998 allotment. Therefore, FFP would be available for only $1 million of the $3 million in claims for title XXI expenditures; and at that point, the fiscal year 1998 allotment would be exhausted. The remaining $2 million in claims for title XXI expenditures would have to be funded by the State.

• *Example 2—Illustration of Principle 2.* The fiscal year 1998 allotment is $5 million. In quarter 1 of FY 1998, $3 million in title XXI expenditures are claimed. In quarter 2 of fiscal year 1998 there are $4 million in claims for title XIX expenditures. Since the $3 million in claims for title XXI expenditures are claimed (first) in quarter 1, under Principle 2, they would be applied first against the fiscal year 1998 allotment. This would leave $2 million remaining under the fiscal year 1998 allotment. In quarter 2 only $2 million in FFP would be available from the fiscal year 1998 allotment with respect to the $4 million title XIX claims for expenditures in that quarter. At that point, the fiscal year 1998 allotment would be exhausted, and FFP for the remaining $2 million in claims for title XIX expenditures would be available under Medicaid at the regular Medicaid FMAP.

• *Example 3—Illustration of Principle 4.* The fiscal year 1998 allotment is $5 million. There are the following claims for expenditures in Quarter 4 of fiscal year 1998: u2 $5 million, u3 $4 million, and PE $1 million. In accordance with Principle 4, in this case the $5 million in claims for u2 expenditures would be applied against the fiscal year 1998 allotment first. Since the amounts of the claims for u2 expenditures and the fiscal year 1998 allotment are the same, the entire amount of u2 expenditures would be reimbursed at the enhanced FMAP. Although the $5 million fiscal year 1998 allotment has been exhausted, the claims for u3 and PE expenditures would still be reimbursed under the Medicaid program at the regular FMAP rate. Again, this is because the regular Medicaid FMAP rate continues for these groups, even though the fiscal year 1998 allotment was exhausted.

• *Example 4—Illustration of Principle 6.* The fiscal year 1998 and 1999 allotments are $5 million for each fiscal year. The State claims $6 million for title XXI expenditures for fiscal year 1998, and $4 million for title XXI expenditures for fiscal year 1999. In this case, the $6 million in claims for fiscal year 1998 expenditures reduce the fiscal year 1998 allotment to $0 with $1 million of the fiscal year 1998 expenditures remaining unpaid. When the fiscal year 1999 allotment becomes available, the remaining $1 million in claims for fiscal year 1998 expenditures would be applied against the fiscal year 1999 allotment, leaving $4 million remaining of the fiscal year 1999 allotment. The $4 million

in claims for title XXI fiscal year 1999 expenditures claimed would then be paid from the fiscal year 1999 allotment, thereby exhausting the remaining fiscal year 1999 allotment.

• *Example 5—Illustration of Principles 5 and 7.* The fiscal year 1998 and fiscal year 1999 allotments are $5 million for each fiscal year. The State claims $4 million for title XXI expenditures for fiscal year 1998 and $6 million for title XXI expenditures for fiscal year 1999. Since the fiscal year 1998 was only reduced by the $4 million amount in claims for fiscal year 1998 title XXI expenditures, the $1 million remaining of the fiscal year 1998 allotment would be ''carried over'' to fiscal year 1999. In applying the claims for fiscal year 1999 expenditures, $1 million of the $6 million would first be applied against the carryover of the fiscal year 1998 allotment. The remaining $5 million for the fiscal year 1999 claims would be applied against the remaining $5 million allotment for fiscal year 1999, reducing the remaining fiscal year 1999 allotment to $0.

F. Ten Percent Limit on Certain Children's Health Insurance Program Expenditures (§ 457.618)

1. Limit on Four Categories of Expenditures (§ 457.618(a))

Sections 2105(a)(2) and 2105(c)(2) of the Act specifies that there are 4 categories of expenditures for which State claims for Federal funds at the enhanced FMAP are limited: administrative expenditures, outreach, health initiatives, and certain other child health assistance.

2. No Federal Payment for Expenditures in Excess of the Limit (§ 457.618(b))

Section 457.618(b) specifies that Federal payments for the categories of limited expenditures claimed by a State for a fiscal year will not be available to the extent the total of such expenditures exceeds the 10 percent limit calculation.

3. Ten Percent Limit (§ 457.618(c))

Under section 2105(c)(2)(A) of the Act, States may receive funds at the enhanced FMAP for administrative expenditures, outreach, health services initiatives, and certain other child health assistance, only up to a ''10 Percent Limit.'' The ''10 Percent Limit'' specifies that the ''total computable'' amount of these expenditures (the combined total State and Federal share of an expenditure) for which FFP may be claimed cannot exceed 10 percent of the sum of the total computable expenditures made under section 2105(a) of the Act and the total computable expenditures based on the enhanced match made under sections 1905(u)(2) and (u)(3) of the Act.

This 10 Percent Limit is applied on an annual fiscal year basis, and may be waived by the Secretary under section 2105(c)(2)(B) of the Act when coverage is provided through cost-effective community based health delivery systems. This proposed rule does not address the waiver process or standards.

Significant technical corrections were made to the 10 percent limit in Pub. L. 105–100. Prior to those amendments, the statute required calculation of the limit on a quarterly basis. This was changed to an annual basis. Furthermore, prior to the technical amendments, the limit was calculated on the basis of the Federal share of the expenditures while the expenditures applied against the limit were in total computable amounts. The technical amendments made both the calculation of the 10 percent limit and the expenditures applied against the 10 percent limit based on the total computable amounts of such expenditures.

These provisions along with the formula for calculating the 10 percent limit indicated below are specified in new § 457.618(c).

4. Formula for Calculating the 10-Percent Limit (§ 457.618(c)(3))

The following formula for the 10 Percent Limit (L10%) is in accordance with the referenced statutory provisions.

L10% = (a1 + u2 + u3)/9

a1 = Total computable expenditures claimed for the fiscal year under section 2105(a)(1) of the Act

u2 = Total computable expenditures claimed for the fiscal year under section 1905(u)(2) of the Act for which Federal payments under section 1903(a)(1) of the Act are based on the EFMAP

u3 = Total computable expenditures claimed for the fiscal year under section 1905(u)(3) of the Act for which Federal payments under section 1903(a)(1) of the Act are based on the EFMAP

Under this formula, the 10 percent limit is determined by dividing the State's CHIP program expenditures (meaning those expenditure that are *not* subject to the 10 percent limit) by 9. Calculating the 10 percent limit in this way ensures that the capped expenditures (meaning those expenditures that are applied against the 10 percent limit) are no more than 10 percent of the total expenditures including such capped expenditures. However, the amounts of the State's CHIP allotment(s) available in the fiscal year also provides the overall limit on the State's total CHIP expenditures in the fiscal year. In effect, the total of all the State's CHIP expenditures (that is, the program expenditures plus the expenditures capped by the 10 percent limit) cannot exceed the amounts of the State's CHIP allotment(s) available in the fiscal year. Therefore, we specify in § 457.618(c)(5) that a State's 10 percent limit for a fiscal year may be no greater than 10 percent of the total computable amounts of the State's allotment(s) available in the fiscal year, even if the application of the formula indicated above resulted in a larger amount. Thus, the 10 percent limit is the lower of: the amount determined under the formula indicated above; or 10 percent of the total computable amount of the CHIP allotment(s) available in that fiscal year.

The following example illustrates the calculation of the 10 Percent Limit based on a State's expenditures claimed for the fiscal year:

Example: The State's title XXI enhanced FMAP is 65 percent (that is, .65). The total computable expenditures claimed for the fiscal year under the section 2105(a)(1) category (a1) is $10 million; the Federal share claimed for those expenditures is $6.5 million (0.65 x $10 million). The total computable expenditure claimed for the fiscal year that are applicable against the 10 percent limit (for example, administrative expenditures) is $3 million. The total computable expenditures claimed for the fiscal year for the section 1905(u)(2) category (u2) is $3 million; the Federal share claimed for these expenditures is $1,95 million (.65 × $3 million). The total computable expenditures claimed for fiscal year for the section 1905(u)(3) category (u3) is $2 million; and the Federal share claimed for those expenditures is $1.3 million (.65 × $2 million).

In this example, the 10 Percent Limit is a total computable amount of $1,666,667, calculated as follows:

L10% = (a1 + u2 + u3)/9

a1 = Total computable expenditures for the fiscal year under section 2105(a)(1) of the Act.

u2 = Total computable expenditures for the fiscal year under section 1905(u)(2) of the Act.

u3 = Total computable expenditures for the fiscal year under section 1905(u)(3) of the Act.

L10% = (($10 million (a1) + $3 million (u2) + $2 million (u3))/)9 = $15 million/9 = $1,666,667.

In this example, FFP would not be available for that portion of the section 2105(a)(2) expenditures applicable against the 10 percent limit that are in excess of the 10 Percent Limit of $1,666,667, a total computable amount. Thus, although the State submitted $3 million in total computable amounts of section 2105(a)(2) expenditures, only $1,666,667 of the $3 million total computable amount would be allowable, and the remainder of the $1,333,333 total computable amount would be potentially disallowable.

Under this example, the allowable amount of Federal funds available under the 10 Percent Limit would be $1,083,334 (.65 ×0000666,667); and the unreimbursable amount of Federal funds in excess of the 10 Percent Limit would be $866,667 (.65 × $1,333,333).

The following example illustrates the ''limit on the 10 percent limit'' related to the available allotments in the fiscal year:

Example: The fiscal year is FY 1999. The State's carryover allotment from FY 1998 is $3 million and the FY 1999 allotment is $10 million. The enhanced EMAP for each of the FYs 1998 and 1999 is 65 percent. Therefore, the total computable amount of the total allotment available in FY 1999 is $20 million determined as:

($3 million (the FY 1998 carryover allotment) + $10 million (the FY 1999 allotment))/ .65 (the EFMAP) = $13 million/.65 = $20 million

Ten percent of $20 million is $2 million. Therefore, the 10 percent limit is limited to $ 2 million.

Under title XXI, FFP is available at the enhanced FMAP for a State's program and administrative expenditures (including related startup costs) during a period for which the State has an approved title XXI plan in effect. Initial State plans can be approved effective as early as October 1, 1997. As indicated above, such administrative expenditures (under section 2105(a)(2) of the Act) are subject to the 10 Percent Limit which is calculated on a fiscal year basis. Therefore, startup costs will be limited by the amount of sections 2105(a)(1), 1905(u)(2) and 1905(u)(3) expenditures claimed during the fiscal year in which the startup period occurs. The following example illustrates the availability of FFP for startup costs.

Example: The 10 Percent Limit formula is:

L10% = (a1 + u2 + u3)/9
a1 = § 2105(a)(1) expenditures
u2 = § 1905(u)(2) expenditures
u3 = § 1905(u)(3) expenditures

In the first two quarters of the fiscal year, the State's a1, u2, and u3 expenditures are $0 and the State's start up administration expenditures (a2 expenditures) are $2.0 million. In the third quarter of the fiscal year, the a1, u2, and u3 expenditures total $.5 million and the startup and other (a2) administrative expenditures are $1.5 million. In the fourth quarter of the fiscal year, the a1, u2, and u3 expenditures total $8.5 million and the startup and other (a2) administrative expenditures are $1.0 million. The totals for the fiscal year are: $9.0 million ($0 + $.5 million + $8.5 million) in a1, u2, and u3 expenditure, and $4.5 ($2.0 + $1.5 million + $1.0 million) in startup and other (a2) administrative expenditures. In this example, the 10 Percent Limit is $1.0 million, calculated as follows:

L10% = (a1 + u2 + u3)/9 = $9.0 million/9 = $1.0 million

In this example, FFP would be available at the enhanced FMAP for $1.0 million of the $4.5 million of administrative costs. Thus, the relatively lower benefit expenditures at the beginning of the fiscal year combined with the relatively higher benefits expenditures at the end of the fiscal year serve as the basis for calculating the final 10 Percent Limit, determined on a fiscal year basis.

It is important to note that if a State has no expenditures other than, for example, startup administrative expenditures under section 2105(a)(2)(D) of the Act during a fiscal year, no FFP under Title XXI will be available for such expenditures. This is because the 10 Percent Limit in this example would be $0, calculated as follows:

L10% = (a1 + u2 + u3)/9 = ($0 + $0 + $0)/ 9 = $0

States may mitigate the effect of little or no program expenditures on the calculation of the 10 percent limit in one fiscal year by delaying the claiming of administrative expenditures until a subsequent fiscal year. In that case, the delayed administrative expenditures could be applied against the subsequent year's 10 percent limit, which may be calculated using presumably higher program expenditures.

5. Administrative Expenditures

For purposes of payment under section 2105(a) of the Act, administrative costs are differentiated from the program costs referred to as ''child health assistance'' in section 2105(a)(1) of the Act (child health assistance is further defined in section 2110(a) of the Act). Child health assistance is generally referred to as ''payment for part or all of the cost of health benefits coverage for targeted low-income children.'' Payment for such program costs which are within the scope of the State's CHIP benefit package meeting the requirements of section 2103 of the Act are not considered to be payment for administrative costs, and are generally not subject to the 10 Percent Limit.

6. Waiver of 10 Percent-Limit

Under section 2105(c)(2)(B) of the Act, the Secretary may waive the 10 percent limit on the expenditures described in section 2105(a)(2) of the Act if 3 conditions are met: (1) Coverage provided to targeted low-income children through such expenditures meet the requirements of section 2103 of the Act, (2) the cost of such coverage is cost effective, and (3) such coverage is provided through the use of a community-based health delivery system such as through contacts with health centers receiving funds under section 330 of the Public Health Service Act or with hospitals such as those that receive disproportionate share payment adjustments under section 1886(d)(5)(F) or section 1923 of the Act. We are developing the requirements and conditions to implement the provision for waiver of the 10 percent limit. Therefore, this proposed rule does not address these issues. HCFA will address waiver procedures and standards at a later time.

7. FFP for State Expenditures (§ 457.622)

Under section 2105(a) of the Act, FFP in all allowable title XXI expenditures, and certain title XIX expenditures is available at the enhanced FMAP rate. As specified in § 457.622(b) and (c), a number of conditions apply with respect to the availability of FFP in States' expenditure claims at the enhanced FMAP.

Section 2105(b) of the statute defines the enhanced FMAP as the regular Medicaid FMAP for the State, increased by a number of percentage points equal to 30 percent of the number of percentage points by which that FMAP is less than 100 percent, but in no case more than 85 percent. This formula, mathematically, could be expressed as the lesser of 85 percent or FMAP + [0.3 × (100 percent—FMAP)]. In our proposed regulations, we simplify the statutory formula by multiplying the terms and arriving at a formula of the lesser of 85 percent or (0.7 × FMAP) + 30 percent. This formula is mathematically equal to the statutory formula.

The enhanced FMAP rate is available in a State's expenditures only if the State has an approved title XXI State child health plan.

The enhanced FMAP rate is available only if amounts of States' allotments for a fiscal year are available, that is, States' allotments have not been fully expended.

8. CHIP Related Title XIX Administrative Expenditures (§ 457.622(e))

As specified in § 457.622(e)(1), States have several options on how to claim FFP for CHIP related title XIX administrative expenditures. These administrative activities refer to the costs of State activities in support of certain Medicaid State plan options; specifically, the following provisions: coverage of children under section

1905(u)(2) and (3); and coverage of presumptive eligibility under section 1920A of the Act.

There are a number of factors a State must consider in deciding which option to choose for claiming FFP for CHIP-related Medicaid administrative costs:

- *The FFP rate for the administrative costs in the Medicaid and the CHIP programs.* For example, if the Medicaid administrative FFP rate is 50 percent for a certain administrative activity and the CHIP enhanced FMAP rate was 65 percent, a State might decide on the basis of this factor to claim the expenditure under the CHIP program.
- *The CHIP fiscal year 10 percent limit.* Any administrative costs claimed under the CHIP program are subject to the 10 percent limit. However, claiming CHIP related Medicaid administrative costs under the 10 percent limit could affect the availability of FFP for other CHIP-only administrative costs, if the 10 percent limit was an issue. Note, if the 10 percent limit was reached, a State could still claim CHIP related Medicaid administrative costs that were over the 10 percent limit under the Medicaid program.
- *The availability of the CHIP fiscal year allotment.* Any administrative costs claimed under the CHIP program are also subject to the State fiscal year allotment. Thus, whether any allotment amounts were available and how much they would be affected would be an issue. Note, that if the allotment was exhausted, a State could still claim CHIP related Medicaid administrative costs that were over the limit under the Medicaid program.

A State has a choice of two options on how it may claim the CHIP-related Medicaid administrative costs. These are administrative costs related to the provision of medical assistance for expenditures described under sections 1905(u)(2) and (3), and section 1920A of the Act when a State's Medicaid expansion is also referenced in an approved State child health plan. The option a State chooses determines how the State will report the estimated and actual expenditures related to these administrative costs.

Under the first option, States may choose to claim CHIP related title XIX Medicaid administrative expenditures under the title XXI CHIP, at the enhanced FMAP rate. States choosing this option must continue to claim these expenditures as administrative expenditures in a fiscal year until the 10 percent limit and/or the State allotment for the fiscal year is reached, at which point the State could claim these administrative expenditures under the Medicaid program.

Under the second option, States may choose to claim CHIP related title XIX Medicaid administrative expenditures under the title XIX Medicaid program.

States may select and apply each option with respect to any or all of the categories of FFP for administrative expenditures available in the title XIX Medicaid program, and specified in § 433.15 of this part. There are potentially 4 FFP rates for the different categories of administrative expenditures indicated in that section: 50, 75, 90, and 100 percent.

The regulation further specifies that once a State has chosen to claim CHIP related title XIX administrative expenditures under one of the options for one or more of the FFP claiming categories for administrative expenditures listed in title XIX, it must continue to claim these administrative expenditures consistently on a fiscal year basis.

As specified in § 457.622(e)(2), allowable title XXI administrative expenditures support the operation of the State child health plan. Therefore, FFP for administration under title XXI is not available for costs of activities related to other programs. For example, FFP would not be available for generalized activities related to health education or social services.

Section 457.622(e)(3) specifies that FFP for allowable title XXI administrative expenditures is not available in payments for expenditures that are paid for as part of another payment. That is, the effective and efficient operation of the State plan should include reasonable costs which do not duplicate payments that are already included and paid as part of another payment mechanism, for example:

- Rates for outpatient clinic services;
- Case management services;
- Part of capitation rate;
- Other provider rate; and
- Other program payments (including Federal, State, or local governmental programs.

Section 457.622(e)(4) specifies that FFP is available for administrative expenditures for activities defined in sections 2102(c)(1) and 2105(a)(2)(C) of the Act as outreach to families of children likely to be eligible for child health assistance under the plan or under other public or private health coverage programs to inform these families of the availability of, and to assist them in enrolling their children in, such a program. Section 457.622(e)(2) provides that States have the option to choose how to claim FFP for expenditures for title XIX Medicaid administrative activities, including outreach, related to the title XXI CHIP. If claimed under title XXI, FFP for outreach expenditures is available at the enhanced FMAP rate and subject to the 10 Percent Limit (unless subject to a waiver of such limit under section 2105(c)(2)(B) of the Act); if claimed under title XIX, FFP for such expenditures would be available at the regular Medicaid FFP rate for administration.

Section 457.622(e)(5) specifies that FFP is available for administrative expenditures for activities specified in sections 2102(c)(2) of the Act as coordination of the administration of the State children's health insurance program with other public and private health insurance programs. Furthermore, § 457.622(e)(2) specifies that States may choose how to claim FFP for expenditures for title XIX Medicaid coordination administrative activities related to the title XXI CHIP. If claimed under title XXI, FFP for such expenditures is available at the enhanced FMAP rate and subject to the 10 Percent Limit; if claimed under title XIX, FFP for such expenditures would be available at the regular Medicaid FFP rate for administration.

Therefore, FFP at the enhanced FMAP rate is available under title XXI specifically for coordination activities related to the administration of title XXI with other public and private health insurance programs. Section 457.622(e)(3) specifies that FFP would not be available for the costs of administering the other public and private health insurance programs. Coordination activities must be distinguished from other administrative activities common among different programs.

9. Limitations on Certain Payments for Certain Expenditures (§ 457.624)

Section 457.624 implements provisions of sections 2105(c) of the Act, which limit the availability of FFP for certain coverage.

Under section 2105(c)(1) and (7), payment for health insurance coverage under a State's child health insurance program may only be made to States for coverage of abortions that are necessary to save the life of the mother, or if the pregnancy is the result of rape or incest. Otherwise, payment may not be used to pay for abortions or assist in the purchase, whole or in part, of health benefit coverage that includes coverage of abortion.

Section 2105(c)(3) of the Act provides for waiver for purchase of family coverage. Payment may be made to a State with an approved State child health plan for the purchase of family

coverage under a group plan or health insurance coverage that includes coverage of targeted low-income children only if the State establishes to the satisfaction of HCFA that—

(1) Purchase of this coverage is cost-effective relative to the amounts that the State would have paid to obtain comparable coverage only of the targeted low-income children involved; and

(2) This coverage shall not be provided if it would otherwise substitute for health insurance coverage that would be provided to such children but for the purchase of family coverage.

10. Prevention of Duplicate Payments (§ 457.626)

This section implements section 2105(c)(6) of the Act, which limits payments for child health assistance when such payments would duplicate certain other health insurance coverage.

Section 2105(c)(6) of the Act specifies that no payment will be made to a State for expenditures for child health assistance provided for a targeted low-income child under its State child health plan to the extent that a private insurer defined by the Secretary by regulation and including a group health plan (as defined in section 607(l) of the Employee Retirement Income Security Act of 1974, a service benefit plan, and a health maintenance organization) would have been obligated to provide such assistance but for a provision of its insurance contract which has the effect of limiting or excluding such obligation because the individual is eligible for or is provided child health assistance under the State child health plan.

As specified under section 2105(c)(6)(B) of the Act, except as otherwise provided by statute, no payment will be made to a State under its State child health plan for child health assistance provided for a targeted low-income child under its plan to the extent that payment has been made or can reasonably be expected to be made promptly as defined in accordance with regulations under any other Federally operated or financed health care insurance program, other than an insurance program operated or financed health care insurance program, other than an insurance program operated or financed by the Indian Health Service, as identified by the Secretary.

11. Other Applicable Federal Regulations (§ 457.628)

Section 2107(e) provides that certain provisions of the Act outside of title XXI shall apply to title XXI ''in the same manner as they apply to a State under title XIX.'' HCFA continues to study how to best apply these provisions to title XXI ''in the same manner.'' As an interim measure, in § 457.628, we propose to make certain Medicaid regulations directly applicable to title XXI.

Section 457.628 specifies other regulations that are applicable to State CHIP programs. These are existing Medicaid and other Departmental programs and include, for example, the Medicaid regulations at 42 CFR subpart B, § 433.50 related to the donations and taxes provisions issue. Under section 2107(e)(1)(C) of the Act, the limitations on provider taxes and donations (as referred to in section 1903(w) of the Act) must apply in States' CHIPs in the same manner as they do in the Medicaid program. Other Medicaid provisions, that are also applicable in States' CHIPs, include deferral and disallowance procedures (§§ 457.210 and 457.212), appeals procedures, record keeping.

G. Grants

Grant Procedures (§ 457.630)

Section 457.630 specifies the grant procedures that HCFA will use to issue grants awards to States with approved title XXI State plans.

In general, based on the title XXI appropriation language the entire title XXI appropriation amount for each fiscal year referred to in section 2104(a) of the Act must be ''obligated'' by the Federal government by the end of such fiscal year. Any funds not obligated by the Federal government by the end of the fiscal year (that is, prior to the close of the related Federal government's accounting system for that fiscal year) will no longer be available to any State.

However, as indicated in section C. 2. above, Pub. L. 105–174, enacted on May 1, 1998, provides that if a State child health plan is approved by HCFA on or after October 1, 1998, and before October 1, 1999, the plan must be treated as having been approved for both FY 1998 and FY 1999. Pub. L. 105–174 affects the general grant award process discussed above for FYs 1998 and 1999. Under the provisions of Pub. L. 105–174, the FY 1998 allotments may not be finalized until the end of FY 1999, because States have until then to have their child health plans approved. Therefore, the Federal government must obligate the FY 1998 CHIP allotments by issuing grant awards (for purposes of meeting the ''obligation'' requirements) equal to the total of the allotments for FY 1998, by the end of FY 1999. The Federal government must also obligate the FY 1999 allotments by the end of FY 1999 by issuing grant awards for FY 1999 equal to the total of the fiscal year allotments for each State by the end of FY 1999. Section 457.630 will reflect these requirements for issuance of the grant awards in order to obligate the allotment funds for each fiscal year.

The funds are obligated by issuing title XXI grant awards. To ensure that all of the appropriated funds are available to States, HCFA will issue grant awards to all States with title XXI State plans approved by the end of the fiscal year (or by the end of fiscal year 1999, for fiscal year 1998) which equal, in total, the national amount available for allotment to the 50 States, the District of Columbia, and the Commonwealths and Territories for that fiscal year (on September 30). Such grant awards must be issued by the time the HCFA/HHS accounting system closes with respect to that fiscal year. The total of the grant awards for the fiscal year will equal the States'', Commonwealths'', and Territories' final allotments, described earlier. Therefore, in order for HCFA to act to approve each States' State child health plan by September 30 of a fiscal year, it is important for States to submit such plans as soon as possible and no later than July 1 of that fiscal year.

H. FFP for Expenditures Provided During Presumptive Eligibility (PE) Period

Section 4912 of the BBA amended the Medicaid statute to add a new section 1920A of the Act, which authorizes States to make medical assistance available in their Medicaid programs to low-income children on a cursory assessment of family income by a qualified entity, during a presumptive eligibility period pending submission and processing of a complete Medicaid application. Although the CHIP statute, title XXI of the Act, does not contain an explicit section similarly authorizing presumptive eligibility in States' CHIPs, we believe that States could implement a similar policy under title XXI as a health services initiative under section 2105(a)(2)(B) of the Act.

We believe it would be useful to discuss some payment implications of different administrative approaches to claiming presumptive eligibility expenditures. Federal payments for presumptive eligibility expenditures for children who are not later determined to be Medicaid or CHIP eligible fall under the definition of title XXI health services initiatives, and therefore, are subject to the State's CHIP 10 percent limit (discussed in section II. F. 7. of this preamble and in § 457.622) as well as the State's CHIP allotment. Because of this, States will need to carefully consider how they claim Federal payments for presumptive eligibility

expenditures, both in Medicaid and CHIP. We believe that States have a number of options in characterizing their presumptive expenditures that may increase available Federal funding for their programs, with respect to both the CHIP and Medicaid programs. For example:

1. *Presumptive Eligibility (PE) Under Title XIX*—Section 1920A of the Act permits States to provide medical assistance under their title XIX Medicaid programs for up to two months to children during a PE period. Expenditures classified as Medicaid PE expenditures under section 1920A of the Act may only be claimed as medical assistance and matched at the regular FMAP under section 1905(b) of the Act; that is, the enhanced FMAP is not available for Medicaid PE expenditures. Furthermore, if the State has an approved title XXI child health plan, such payments for PE expenditures under section 1920A of the Act must be tracked and applied against the title XXI allotment.

There are a number of options available to States for classifying and reporting medical assistance expenditures provided to children during the section 1920A PE period. In particular, the actual eligibility category in which PE children are ultimately placed through the regular eligibility determination may also determine the treatment of States' expenditures for these children. The options a State chooses with respect to reporting expenditures during the PE period and the ultimate category of eligibility (or ineligibility) will determine how the payments for expenditures provided during the PE period can be treated for purposes of application against the title XXI allotment and the FMAP rate (regular or enhanced) that is available for the expenditures.

The following options are available to a State for classifying and reporting expenditures as PE expenditures in its Medicaid program when the State has an approved title XXI Child Health Plan and an associated fiscal year State allotment; these provisions will be set forth in new § 447.88:

(a) *Identify and Claim PE Expenditures on Ongoing Basis—No Subsequent Adjustments.*—A State can identify and claim FFP for all PE medical assistance expenditures on an ongoing basis. That is, under this option the State would claim FFP for PE expenditures as they are incurred and billed by providers, and would not make any further subsequent adjustments when the actual eligibility determination is made. Under this option, the amounts of the Federal payments for the PE expenditures would be applied against the States's CHIP allotments and would be claimed at the regular title XIX FMAP. This approach may be the easiest for States to administer, since no further adjustment or tracking of the payments would be necessary.

(b) *Delay Reporting PE-Related Expenditures Until After Actual Eligibility Determination.*—Under this option a State would delay reporting of PE-related medical assistance expenditures until after the actual determination of eligibility. Under this option, a State would classify the expenditures as follows, in accordance with the actual eligibility determination, and would not claim for such expenditures until after the actual eligibility determination was made:

- Expenditures for children determined to be in a regular Medicaid eligibility category (for example, the Temporary Assistance for Needy Families (TANF) program related eligibility under section 1931 of the Act) and not within a CHIP-related Medicaid expansion. These expenditures would be reported by the States as Medicaid title XIX expenditures under the Medicaid Budget and Expenditure System (MBES) and would be claimed and funded under the regular Medicaid eligibility category at the regular Medicaid FMAP. The associated Federal payments for expenditures in this category would not be applied against the CHIP allotment as a PE expenditure.
- Expenditures for children determined to be eligible in CHIP-related Medicaid expansions for children described in sections 1905(u)(2) and/or (u)(3) of the Act in States with an approved title XXI child health plan. These expenditures would be reported as Medicaid title XIX expenditures under the MBES, and claimed, and funded under the Medicaid program at the enhanced FMAP, not the regular FMAP associated with PE expenditures. The associated Federal payments for these expenditures would be treated as expenditures under section 1905(u)(2) or (3) of the Act, not as PE expenditures, and applied against the States' CHIP allotments.
- Expenditures for children determined to be eligible under a State's approved title XXI State child health plan. These expenditures would be reported as CHIP title XXI expenditures under the CBES, and claimed, and funded under the CHIP at the enhanced FMAP. The associated Federal payments for these expenditures would be applied against the States' CHIP allotments as payments for CHIP expenditures would be, not as payments for Medicaid PE expenditures.
- Expenditures for children ultimately determined not to be eligible for either the Medicaid or CHIP programs. These expenditures would be reported as Medicaid title XIX PE expenditures under the MBES, and claimed and funded at the regular Medicaid FMAP as PE expenditures. If the State has a title XXI allotment, the associated Federal payments would be applied against the CHIP allotment. Payments for these expenditures are treated and reported as PE expenditures.

(c) *Identify and Claim PE on Ongoing Basis—Adjust After Actual Eligibility Determination.*—Similar to the process under subsection (a) above, on an ongoing basis States can identify and claim FFP for all section 1920A PE expenditures, as such expenditures are billed to and paid by the State. Under this option, after the actual eligibility determination is made, adjustments to the previous claims would be made to reflect the actual eligibility category determination. The PE expenditures would be reported on an ongoing basis as PE expenditures under title XIX, the payments for such expenditures would be applied against the CHIP allotments, and claimed at the regular title XIX FMAP rate. After the actual eligibility determination, the State would make an adjustment to the previously reported expenditures as in section II. H. 1.(b) above.

2. *Presumptive Eligibility (PE) Under Title XXI*—A State may make PE expenditures under its State title XXI CHIP as an expenditure described in section 2105(a)(2)(B) of the Act, which permits health services initiatives. These expenditures would be reported as CHIP title XXI expenditures. As described in the previous sections on the 10 percent limit, CHIP PE expenditures provided as a health services initiative are subject to the 10 percent limit and are counted against the State's title XXI allotment. The State has several options for claiming such expenditures which could mitigate the effect of such expenditures on the 10 percent limit and the CHIP allotment. The following options are available to a State for classifying and reporting expenditures as PE expenditures in its CHIP, and are similar to those discussed above with respect to the title XIX Medicaid PE program.

In summary, States may:

- Identify and claim CHIP PE health services initiative expenditures on an ongoing basis—no subsequent adjustments.
- Delay reporting CHIP PE health services initiative expenditures until

after actual eligibility determination (and claim under final eligibility category).

- Identify and claim PE on an ongoing basis—adjust after actual eligibility determination to reflect final eligibility status.

I. Other Regulations Similar to the Medicaid Program

Certain existing general Departmental regulations in part 45 of the Code of Federal Regulations (CFR) subparts 92 and 95 were conformed to the title XXI program. We revised the sections in these subparts.

J. Relationship of the CHIP, the CHIP Fiscal Year Allotments, and the Limit on FFP for the Commonwealths and Territories Under Section 1108 of the Act

1. Commonwealth/Territory Limit Under Section 1108 of the Act

Sections 1108(f) and (g) of the Act specifies limits on the amounts of FFP available to the Commonwealths and Territories for expenditures under the Medicaid program. However, under the CHIP legislation, the limits on FFP for the Commonwealths and Territories under section 1108 of the Act do not apply with respect to FFP for expenditures that are attributable to the provision of Medical assistance to a child for which payment is made under section 1903(a)(1) of the Act on the basis of an enhanced FMAP under section 1905(b) of the Act (which in turn refers to the Federal matching rate specified at section 2105(b) of the Act). That is, if the Federal payments for expenditures are made at the enhanced FMAP referenced at section 2105(b) of the Act, such payments would not apply to the Commonwealth/Territory limit under section 1108 of the Act. However, these payments would apply against the CHIP allotments established for the Commonwealths or Territories. However, if the Federal payments are for expenditures for which payment is not at the enhanced FMAP, such payments would be applicable against the Commonwealth and Territory limit under section 1108 of the Act. This issue is discussed in sections below.

2. Family Planning

As indicated in previous sections, in general under the Medicaid program the Federal matching for States' family planning provided to CHIP related Medicaid expansion groups is not at the enhanced FMAP, but rather is at the regular Medicaid FMAP rates associated with such expenditures: 90 percent. Since the family planning FMAP rate is not at the enhanced FMAP referenced in section 2105(b) of the Act, in the States the Federal payments for such expenditures would not be applicable to the States' CHIP allotments. In general, this is also true for the Commonwealths and Territories. However, as indicated in section II. J. 1. above, if the Federal payments are not at the enhanced FMAP, but are at the ''regular'' Medicaid FMAP rate associated with the services (in the case of family planning, 90 percent), the Federal payments would be applied against the Commonwealth/Territory limit under section 1108 of the Act.

Because of the potential effect that FFP claims for family planning may have on the Commonwealth and Territory limit on Federal payments under section 1108 of the Act, we believe the Commonwealths and Territories have two options for claiming for such expenditures. Under the first option, the Commonwealths/Territories could claim FFP for family planning at the ''regular'' Medicaid FMAP rates associated with such expenditures (90 percent). Under this option, the Federal payments would not apply against the Commonwealth/Territory CHIP allotment, but would apply against the Commonwealth/Territory limit established under section 1108 of the Act.

Under the second option, the Commonwealths/Territories could choose to claim FFP for family planning (provided to the CHIP related Medicaid expansion groups) at the enhanced FMAP (which is lower than the regular Federal matching rate for such expenditures). Under this option, the Federal payments available at the enhanced FMAP rate would apply against the Commonwealth/Territory CHIP allotment, but would not apply against the Commonwealth/Territory limit under section 1108 of the Act.

3. Family Planning Expenditures Based on Presumptive Eligibility Under Section 1920A of the Act

As indicated in section II. J. 2. above, under the Medicaid program the title XIX Federal matching rates for States' family planning provided to CHIP related Medicaid expansion groups are not the enhanced FMAP rates, but rather are the regular Medicaid FMAP rates associated with such expenditures: 90 percent. Furthermore, as amended by section 4911(a) of the BBA, the Federal matching rate for expenditures made on the basis of the presumptive eligibility provisions of section 1920A of the Act may not be at the enhanced FMAP. Therefore, with respect to family planning and IHS expenditures provided on the basis of a section 1920A presumptive eligibility determination, the only available Federal matching rates would be 90 and 100 percent. Therefore, the options offered under section 2 above are not available if the basis for the expenditures is the section 1920A presumptive eligibility provisions. In such case, in the Commonwealths and Territories, the Federal payments are at the ''regular'' Medicaid FMAP rate associated with such expenditures; such payments are not applied against the CHIP allotment; and such payments would be applicable against the section 1108 Commonwealth/Territorial limit.

III. Regulatory Impact Statement

We have examined the impacts of this proposed rule as required by Executive Order 12866, the Unfunded Mandate Reform Act of 1995 (Pub. L. 104–4), and the Regulatory Flexibility Act (RFA) (Pub. L. 96–354). Executive Order 12866 directs agencies to assess all costs and benefits of available regulatory alternatives and, when regulations are necessary, to select regulatory approaches that maximize net benefits (including potential economic environments, public health and safety, other advantages, distributive impacts, and equity). In addition, a Regulatory Impact Analysis (RIA) must be prepared for major rules with economically significant effects ($100 million or more annually).

The Unfunded Mandates Reform Act of 1995 requires that agencies prepare an assessment of anticipated costs and benefits before proposing any rule that may result in an annual expenditure by State, local, and tribal governments, in the aggregate, or by the private sector, of $100,000,000 or more (adjusted annually for inflation). Because participation in the CHIP program on the part of States is voluntary, any payments and expenditures States make or incur on behalf of the program that are not reimburse by the federal government are made voluntarily. These regulations would implement narrowly defined statutory language on the allocation of funds for CHIP and will not create unfunded mandate on States, tribal or local governments. Therefore we are not required to perform an assessment of the costs and benefits of these regulations.

In addition, section 1102(b) of the Act requires us to prepare a regulatory impact analysis for any proposed rule that may have a significant impact on the operations of a substantial number of small rural hospitals. Such an analysis must conform to the provisions of section 604 of the RFA. With the

exception of hospitals located in certain rural counties adjacent to urban areas, for purposes of section 1102(b) of the Act, we define a small rural hospital as a hospital that is located outside of a Metropolitan Statistical Area and has fewer than 50 beds.

This proposed rule sets forth the methodologies and procedures to determine the Federal fiscal year allotments of Federal funds available to individual States, Commonwealths and Territories for the new State CHIP established under title XXI of the Social Security Act. This rule would also establish in regulations the payment and grant award process that will be used for the States, the Commonwealths and Territories to claim and receive FFP for expenditures under the State CHIP and related Medicaid program provisions.

Budget authority for title XXI is statutorily specified in section 2104(a) of the BBA with additional money authorized in Pub. L. 105–100. The total national amount available for allotment to the 50 States, the District of Columbia, and the Commonwealths and Territories for the life of CHIP, is established as follows:

TOTAL AMOUNT OF ALLOTMENTS

Year	Amount
1998	$4,235,000,000
1999	4,215,000,000
2000	4,215,000,000
2001	4,215,000,000
2002	3,090,000,000
2003	3,090,000,000
2004	3,150,000,000
2005	4,050,000,000
2006	4,050,000,000
2007	5,000,000,000

The spending levels shown in the table above are based entirely on the spending and allocation formulas contained in the statute. The Secretary has no discretion over these spending levels and initial allotments of funds allocated to States. In addition, under Pub. L. 105–277, an additional $32 million was appropriated for allotment only to the Commonwealths and Territories, and only for FY 1999.

Administrative resources needed in HCFA's Program Management account to carry out the new responsibilities of the Children's Health Insurance Program have been estimated at $10.1 million. This estimate has been included in the baseline of HCFA's FY 1999 President's Budget to Congress.

For these reasons, we are not preparing an analysis for either the RFA or section 1102(b) of the Act because we have determined, and we certify, that this rule will not have a significant economic impact on a substantial number of small entities or a significant impact on the operations of a substantial number of small rural hospitals.

In accordance with the provisions of Executive Order 12866, this regulation was reviewed by the Office of Management and Budget.

IV. Collection of Information Requirements

Under the Paperwork Reduction Act of 1995, agencies are required to provide 60-day notice in the **Federal Register** and solicit public comment before a collection of information requirement is submitted to the Office of Management and Budget (OMB) for review and approval. In order to fairly evaluate whether an information collection should be approved, section 3506(c)(2)(A) of the Paperwork Reduction Act of 1995 requires that we solicit comment on the following issues:

- Whether the information collection is necessary and useful to carry out the proper functions of the agency;
- The accuracy of the agency's estimate of the information collection burden;
- The quality, utility, and clarity of the information to be collected; and
- Recommendations to minimize the information collection burden on the affected public, including automated collection techniques.

Therefore, we are soliciting public comment on each of these issues for the information collection requirements discussed below.

Section 457.226 Fiscal Policies and Accountability

A State plan must provide that the State CHIP agency and, where applicable, local agencies administering the plan will; (a) maintain supporting fiscal records to assure that claims for Federal funds are in accord with applicable Federal requirements, (b) retain records for 3 years from date of submission of a final expenditure report, (c) maintain records beyond the 3-year period if audit findings have not been resolved, and (d) retain certain records for nonexpendable property acquired under a Federal grant for 3 years from the date of final disposition of that property.

We have determined that these record keeping requirements meet the criteria set forth in 5 CFR 1320.3, (b)(2) and (b)(3) (usual and customary burden). Therefore, there is no burden imposed by these requirements.

Section 457.234 State Plan Requirements

A State plan must describe the policy and the methods to be used in setting payment rates for each type of service included in the State's CHIP program.

The burden associated with this requirement is captured pursuant to the completion of HCFA collection, HCFA–R–211, approved under OMB number 0938–0707.

Section 457.238 Documentation of Payment Rates

The CHIP agency must maintain documentation of payment rates and make it available to HHS upon request.

We have determined that these record keeping requirements meet the criteria set forth in 5 CFR 1320.3, (b)(2) and (b)(3) (usual and customary burden). Therefore, there is no burden imposed by these requirements.

Section 457.606 Conditions for State Allotments and Federal Payments for a Fiscal Year

In order to receive a State allotment for a fiscal year, a State must have a State child health plan submitted in accordance with section 2106 of the Act and approved by the end of the fiscal year.

The burden associated the submission of the State Child Health Plan is currently captured pursuant to the completion of the HCFA–R–211, approved under OMB number 0938–0707.

Section 457.614 General Payment Process

In order to receive Federal financial participation for a State's claims for payment for the State's expenditures, a State must submit budget estimates of quarterly funding requirements for Medicaid and the Children's Health Insurance Programs and submit an expenditure report.

The burden associated with these reporting requirements are currently captured pursuant to the completion of HCFA collections, HCFA–21, HCFA–37, and HCFA–64. Respectively, the OMB control numbers for these collections are 0938–0731, 0938–0101, and 0938–0067.

Section 457.630 Grants Procedures

A State must submit a budget request in an appropriate format for the first 3 quarters of the fiscal year. In addition a State must submit a budget request for the fourth quarter of the fiscal year.

The State Children's Health Insurance Program agency must submit Form HCFA–21B (Children's Health Insurance Program Budget Report for Children's

Health Insurance Program State expenditures) to the HCFA central office (with a copy to the HCFA regional office) 45 days before the beginning of each quarter.

The State must submit Form HCFA–64 (Quarterly Medicaid Statement of Expenditures for the Medical Assistance Program) and Form HCFA–21 (Quarterly Children's Health Insurance Program Statement of Expenditures for title XXI), to central office (with a copy to the regional office) not later than 30 days after the end of the quarter.

The burden associated with these reporting requirements are currently captured pursuant to the completion of HCFA collections, HCFA–21, HCFA–37, and HCFA–64. Respectively, the OMB control numbers for these collections are 0938–0731, 0938–0101, and 0938–0067.

We have submitted a copy of this proposed rule to OMB for its review of the information collection requirements in §§ 457.226, 457.234, 457.238, 457.606, 457.614, and 457.630.

Organizations and individuals desiring to submit comments on the information collection and recordkeeping requirements should direct them to the OMB official and HCFA/OIS whose names appear in the **ADDRESSES** section of this preamble.

VI. Response to Comments

Because of the large number of items of correspondence we normally receive on **Federal Register** documents published for comment, we are not able to acknowledge or respond to them individually. We will consider all comments we receive by the date and time specified in the **DATE** section of this preamble, and, if we proceed with a subsequent document, we will respond to the comments in the preamble to that document.

List of Subjects

42 CFR Part 447

Accounting, Administrative practice and procedure, Drugs, Grant programs-health, Health facilities, Health professions, Medicaid, Reporting and recordkeeping requirements, Rural areas.

42 CFR Part 457

Administrative practice and procedure, Grant programs-health, Children's Health Insurance Program, Reporting and recordkeeping requirements.

45 CFR Part 92

Accounting, Grant programs, Indians, Intergovernmental relations, Reporting recordkeeping requirements.

45 CFR Part 95

Claims, Computer technology, Grant programs—Health, Grant programs—social programs, Reporting and recordkeeping requirements.

42 CFR chapter IV, would be amended as set forth below:

A. 42 CFR Part 447 is amended as follows:

PART 447—PAYMENTS FOR SERVICES

1. The authority citation continues to read as follows:

Authority: Sec. 1102 of the Social Security Act (42 U.S.C. 1302).

2. Section 447.88 is added to read as follows:

Subpart A—Payments: General Provisions

§ 447.88 Options for claiming FFP payment for section 1920A presumptive eligibility medical assistance payments.

(a) The FMAP rate for medical assistance payments made available to a child during a presumptive eligibility period under section 1920A of the Act is the regular FMAP under title XIX, based on the category of medical assistance; that is, the enhanced FMAP is not available for section 1920A presumptive eligibility expenditures.

(b) States have the following 3 options for identifying Medicaid section 1920A presumptive eligibility expenditures and the application of payments for those expenditures:

(1) A State may identify Medicaid section 1920A presumptive eligibility expenditures in the quarter expended with no further adjustment based on the results of a subsequent actual eligibility determination (if any).

(2) A State may identify Medicaid section 1920A presumptive eligibility expenditures in the quarter expended but may adjust reported expenditures based on results of the actual eligibility determination (if any) to reflect the actual eligibility status of the individual, if other than presumptively eligible.

(3) A State may elect to delay submission of claims for payments of section 1920A presumptive eligibility expenditures until after the actual eligibility determination (if any) is made and, at that time identify such expenditures based on the actual eligibility status of individuals if other than presumptively eligible. At that time, the State would, as appropriate, recategorize the medical assistance expenditures made during the section 1920A presumptive eligibility period based on the results of the actual eligibility determination, and claim them appropriately.

B. Subchapter D is redesignated as subchapter F—PEER REVIEW ORGANIZATIONS; Parts 462, 466, 473, and 476 are redesignated as parts 475, 476, 478 and 480, respectively; and the section numbers are revised to conform to the new parts numbers.

C. Subchapter E is redesignated as subchapter G—STANDARDS AND CERTIFICATION with no changes in part designations.

D. A new subchapter D—CHILDREN'S HEALTH INSURANCE PROGRAMS, consisting of part 457, is added to read as follows:

SUBCHAPTER D—CHILDREN'S HEALTH INSURANCE PROGRAMS (CHIPs)

PART 457—ALLOTMENTS AND GRANTS TO STATES

Subpart A—[Reserved]

Subpart B—General Administration—Reviews and Audits; Withholding for Failure To Comply; Deferral and Disallowance of Claims; Reduction of Federal Medical Payments

Sec.
457.200 Program reviews.
457.202 Audits.
457.204 Withholding of payment for failure to comply with Federal requirements.
457.206 Administrative appeals under the State CHIP.
457.208 Judicial review.
457.210 Deferral of claims for FFP.
457.212 Disallowance of claims for FFP.
457.216 Treatment of uncashed or canceled (voided State CHIP) checks.
457.218 Repayment of Federal funds by installments.
457.220 Public funds as the State share of financial participation.
457.222 FFP for equipment.
457.224 FFP: Conditions relating to cost sharing.
457.226 Fiscal policies and accountability.
457.228 Cost allocation.
457.230 FFP for State ADP expenditures.
457.232 Refunding of Federal share of CHIP overpayments to providers and referral of allegations of waste, fraud or abuse of the Office of Inspector General.
457.234 State plan requirements.
457.236 Audit of records.
457.238 Documentation of payment rates.

Subparts C through E—[Reserved]

Subpart F—Payment to States

457.600 Purpose and basis of this subpart.
457.602 Applicability.
457.606 Conditions for State allotments and Federal payments for a fiscal year.
457.608 Process and calculation of State allotments for a fiscal year.
457.610 Period of availability for State allotments for a fiscal year.
457.614 General payment process.
457.616 Application and tracking of payments against the fiscal year allotments.

457.618 Ten percent limit on certain Children's Health Insurance program expenditures.
457.622 Rate of FFP for State expenditures.
457.624 Limitations on certain payments for certain expenditures.
457.626 Prevention of duplicate payments.
457.628 Other applicable Federal regulations.
457.630 Grants procedures.

Authority: Sec. 1102 of the Social Security Act (42 U.S.C. 1302).

Subpart A—[Reserved]

Subpart B—General Administration—Reviews and Audits; Withholding for Failure To Comply; Deferral and Disallowance of Claims; Reduction of Federal Medical Payments

§ 457.200 Program reviews.

(a) *Review of State and local administration of the State CHIP plan.* In order to determine whether the State is complying with the Federal requirements and the provisions of its plan, HCFA reviews State and local administration of the State CHIP plan through analysis of the State's policies and procedures, on-site reviews of selected aspects of agency operation, and examination of samples of individual case records.

(b) *Action on review findings.* If Federal or State reviews reveal serious problems with respect to compliance with any Federal or State plan requirement, the State must correct its practice accordingly.

§ 457.202 Audits.

(a) *Purpose.* The Department's Office of Inspector General (OIG) periodically audits State operations in order to determine whether —

(1) The program is being operated in a cost-efficient manner; and

(2) Funds are being properly expended for the purposes for which they were appropriated under Federal and State law and regulations.

(b) *Reports.* (1) The OIG releases audit reports simultaneously to State officials and the Department's program officials.

(2) The reports set forth OIG opinion and recommendations regarding the practices it reviewed, and the allowability of the costs it audited.

(3) Cognizant officials of the Department make final determinations on all audit findings.

(c) *Action on audit exceptions.* (1) *Concurrence or clearance.* The State agency has the opportunity of concurring in the exceptions or submitting additional facts that support clearance of the exceptions.

(2) *Appeal.* Any exceptions that are not disposed of under paragraph(c)(1) of this section are included in a disallowance letter that constitutes the Department's final decision unless the State requests reconsideration by the Appeals Board. (Specific rules are set forth in § 457.212.)

(3) *Adjustment.* If the decision by the Board requires an adjustment of FFP, either upward or downward, a subsequent grant award promptly reflects the amount of increase or decrease.

§ 457.204 Withholding of payment for failure to comply with Federal requirements.

(a) *Basis for withholding.* HCFA withholds payments to the State, in whole or in part, only if, after giving the State notice, a reasonable opportunity for correction, and an opportunity for a hearing, the Administrator finds—

(1) That the plan is in substantial noncompliance with the requirements of title XXI of the Act; or

(2) That the State is conducting its program in substantial noncompliance with either the State plan or the requirements of title XXI of the Act. (Hearings are generally not called until a reasonable effort has been made to resolve the issues through conferences and discussions. These efforts may be continued even if a date and place have been set for the hearing.)

(b) *Noncompliance of the plan.* A question of noncompliance of a State plan may arise from an unapprovable change in the approved State plan or the failure of the State to change its approved plan to conform to a new Federal requirement for approval of State plans.

(c) *Noncompliance in practice.* A question of noncompliance in practice may arise from the State's failure to actually comply with a Federal requirement, regardless of whether the plan itself complies with that requirement.

(d) *Notice, reasonable opportunity for correction, and implementation of withholding.* If the Administrator makes a finding of noncompliance under paragraph (a) of this section, the following steps apply:

(1) *Preliminary notice.* The Administrator provides a preliminary notice to the State—

(i) Of the findings of noncompliance;

(ii) The proposed enforcement actions to withhold payments; and

(iii) If enforcement action is proposed, that the State has a reasonable opportunity for correction, described in paragraph (d)(2) of this section, before the Administrator takes final action.

(2) *Opportunity for corrective action.* If enforcement actions are proposed, the State must submit evidence of corrective action related to the findings of noncompliance to the Administrator within 30 days from the date of the preliminary notification.

(3) *Final notice.* Taking into account any evidence submitted by the State under paragraph (d)(2) of this section, the Administrator makes a final determination related to the findings of noncompliance, and provides a final notice to the State—

(i) Of the final determination on the findings of noncompliance;

(ii) If enforcement action is appropriate—

(A) No further payments will be made to the State (or that payments will be made only for those portions or aspects of the programs that are not affected by the noncompliance); and

(B) The total or partial withholding will continue until the Administrator is satisfied that the State's plan and practice are, and will continue to be, in compliance with Federal requirements.

(4) *Hearing.* An opportunity for a hearing will be provided to the State prior to withholding under paragraph (d)(5) of this section.

(5) *Withholding.* HCFA withholds payments, in whole or in part, until the Administrator is satisfied regarding the State's compliance.

§ 457.206 Administrative appeals under the State CHIP.

Three distinct types of determinations are subject to Departmental reconsideration upon request by a State.

(a) *Compliance with Federal requirements.* A determination that a State's plan or proposed plan amendments, or its practice under the plan do not meet (or continue to meet) Federal requirements are subject to the hearing provisions of 42 CFR part 430, subpart D of this chapter.

(b) *FFP in State CHIP expenditures.* Disallowances of FFP in State CHIP expenditures (mandatory grants) are subject to Departmental reconsideration by the Departmental Appeals Board (the Board) in accordance with procedures set forth in 45 CFR part 16.

(c) *Discretionary grants disputes.* Determinations listed in 45 CFR part 16, appendix A, pertaining to discretionary grants, such as grants for special demonstration projects under section 1115 of the Act, that may be awarded to a State CHIP agency, are subject to reconsideration by the Departmental Grant Appeals Board.

§ 457.208 Judicial review.

(a) *Right to judicial review.* Any State dissatisfied with the Administrator's final determination on approvability of plan material or compliance with

Federal requirements (§ 457.204) has a right to judicial review.

(b) *Petition for review.* (1) The State must file a petition for review with the U.S. Court of Appeals for the circuit in which the State is located, within 60 days after it is notified of the determination.

(2) After the clerk of the court files a copy of the petition with the Administrator, the Administrator files in the court the record of the proceedings on which the determination was based.

(c) *Court action.* (1) The court is bound by the Administrator's findings of fact, if they are supported by substantial evidence.

(2) The court has jurisdiction to affirm the Administrator's decision, to set it aside in whole or in part, or, for good cause, to remand the case for additional evidence.

(d) *Response to remand.* (1) If the court remands the case, the Administrator may make new or modified findings of fact and may modify his or her previous determination.

(2) The Administrator certifies to the court the transcript and record of the further proceedings.

(e) *Review by the Supreme Court.* The judgment of the appeals court is subject to review by the U.S. Supreme Court upon certiorari or certification, as provided in 28 U.S.C. 1254.

§ 457.210 Deferral of claims for FFP.

(a) *Requirements for deferral.* Payment of a claim or any portion of a claim for FFP is deferred only if—

(1) The Regional Administrator or the Administrator questions its allowability and needs additional information in order to resolve the question; and

(2) HCFA takes action to defer the claim (by excluding the claimed amount from the grant award) within 60 days after the receipt of a Quarterly Statement of Expenditures (prepared in accordance with HCFA instructions) that includes that claim.

(b) *Notice of deferral and State's responsibility.* (1) Within 15 days of the action described in paragraph (a)(2) of this section, the Regional Administrator sends the State a written notice of deferral that—

(i) Identifies the type and amount of the deferred claim and specifies the reason for deferral; and

(ii) Requests the State to make available all the documents and materials the HCFA regional office believes are necessary to determine the allowability of the claim.

(2) It is the responsibility of the State to establish the allowability of a deferred claim.

(c) *Handling of documents and materials.* (1) Within 60 days (or within 120 days if the State requests an extension) after receipt of the notice of deferral, the State must make available to the HCFA regional office, in readily reviewable form, all requested documents and materials except any that it identifies as not being available.

(2) HCFA regional office staff initiates review within 30 days after receipt of the documents and materials.

(3) If the Regional Administrator finds that the materials are not in readily reviewable form or that additional information is needed, he or she promptly notifies the State that it has 15 days to submit the readily reviewable or additional materials.

(4) If the State does not provide the necessary materials within 15 days, the Regional Administrator disallows the claim.

(5) The Regional Administrator has 90 days, after all documentation is available in readily reviewable form, to determine the allowability of the claim.

(6) If the Regional Administrator cannot complete review of the material within 90 days, HCFA pays the claim, subject to a later determination of allowability.

(d) *Effect of decision to pay a deferred claim.* Payment of a deferred claim under paragraph (c)(6) of this section does not preclude a subsequent disallowance based on the results of an audit or financial review. (If there is a subsequent disallowance, the State may request reconsideration as provided in paragraph (e)(2) of this section.)

(e) *Notice and effect of decision on allowability.* (1) The Regional Administrator or the Administrator gives the State written notice of his or her decision to pay or disallow a deferred claim.

(2) If the decision is to disallow, the notice informs the State of its right to reconsideration in accordance with 45 CFR part 16.

§ 457.212 Disallowance of claims for FFP.

(a) *Notice of disallowance and of right to reconsideration.* When the Regional Administrator or the Administrator determines that a claim or portion of claim is not allowable, he or she promptly sends the State a disallowance letter that includes the following, as appropriate:

(1) The date or dates on which the State's claim for FFP was made.

(2) The time period during which the expenditures in question were made or claimed to have been made.

(3) The date and amount of any payment or notice of deferral.

(4) A statement of the amount of FFP claimed, allowed, and disallowed and the manner in which these amounts were computed.

(5) Findings of fact on which the disallowance determination is based or a reference to other documents previously furnished to the State or included with the notice (such as a report of a financial review or audit) that contain the findings of fact on which the disallowance determination is based.

(6) Pertinent citations to the law, regulations, guides and instructions supporting the action taken.

(7) A request that the State make appropriate adjustment in a subsequent expenditure report.

(8) Notice of the State's right to request reconsideration of the disallowance and the time allowed to make the request.

(9) A statement indicating that the disallowance letter is the Department's final decision unless the State requests reconsideration under paragraph (b)(2) of this section.

(b) *Reconsideration of FFP disallowance.* (1) The Departmental Appeals Board reviews disallowances of FFP under title XXI.

(2) A State may request reconsideration with a request to the Chair, Departmental Appeals Board, within 30 days after receipt of the disallowance letter, which must include—

(i) A copy of the disallowance letter;

(ii) A statement of the amount in dispute; and

(iii) A brief statement of why the disallowance is wrong.

(c) *Reconsideration procedures.* The reconsideration procedures are those set forth in 45 CFR part 16.

(d) *Implementation of decisions.* If the reconsideration decision requires an adjustment of FFP, either upward or downward, a subsequent grant award promptly reflects the amount of increase or decrease.

§ 457.216 Treatment of uncashed or canceled (voided State CHIP) checks.

(a) *Purpose.* This section provides rules to ensure that States refund the Federal portion of uncashed or canceled (voided) checks under title XXI.

(b) *Definitions.* As used in this section—

Canceled (voided) check means a CHIP check issued by a State or fiscal agent that prior to its being cashed is canceled (voided) by the State or fiscal agent, thus preventing disbursement of funds.

Fiscal agent means an entity that processes or pays vendor claims for the State CHIP agency.

Uncashed check means a CHIP check issued by a State or fiscal agent that has not been cashed by the payee.

Warrant means an order by which the State CHIP agency or local agency without the authority to issue checks recognizes a claim. Presentation of a warrant by the payee to a State officer with authority to issue checks will result in release of funds due.

(c) *Refund of Federal financial participation (FFP) for uncashed checks*—(1) *General provisions.* If a check remains uncashed beyond a period of 180 days from the date it was issued; that is, the date of the check, it is no longer regarded as an allowable program expenditure. If the State has claimed and received FFP for the amount of the uncashed check, it must refund the amount of FFP received.

(2) *Report of refund.* At the end of each calendar quarter, the State agency must identify those checks that remain uncashed beyond a period of 180 days after issuance. The State CHIP agency must refund all FFP that it received for uncashed checks by adjusting the Quarterly Statement of Expenditures for that quarter. If an uncashed check is cashed after the refund is made, the State may file a claim. The claim will be considered to be an adjustment to the costs for the quarter in which the check was originally claimed. This claim will be paid if otherwise allowed by the Act and the regulations issued in accordance with the Act.

(3) If the State does not refund the appropriate amount as specified in paragraph (c)(2) of this section, the amount will be disallowed.

(d) *Refund of FFP for canceled (voided) checks*—(1) *General provisions.* If the State has claimed and received FFP for the amount of a canceled (voided) check, it must refund the amount of FFP received.

(2) *Report of refund.* At the end of each calendar quarter, the State CHIP agency must identify those checks that were canceled (voided). The State must refund all FFP that it received for canceled (voided) checks by adjusting the Quarterly Statement of Expenditures for that quarter.

(3) If the State does not refund the appropriate amount as specified in paragraph (d)(2) of this section, the amount will be disallowed.

§ 457.218 Repayment of Federal funds by installments.

(a) *Basic conditions.* When Federal payments have been made for claims that are later found to be unallowable, the State may repay the Federal Funds by installments if the following conditions are met:

(1) The amount to be repaid exceeds 2½ percent of the estimated or actual annual State share for the State CHIP program; and

(2) The State has given the Regional Administrator written notice, before total repayment was due, of its intent to repay by installments.

(b) *Annual State share determination.* HCFA determines whether the amount to be repaid exceeds 2½ percent of the annual State share as follows:

(1) If the State CHIP program is ongoing, HCFA uses the annual estimated State share of State CHIP expenditures. This is the sum of the estimated State shares for four consecutive quarters, beginning with the quarter in which the first installment is to be paid, as shown on the State's latest HCFA–21B form.

(2) If the State CHIP program has been terminated by Federal law or by the State, HCFA uses the actual State share. The actual State share is that shown on the State's Quarterly Statement of Expenditures reports for the last four quarters before the program was terminated.

(c) *Repayment amounts, schedules, and procedures*—(1) *Repayment amount.* The repayment amount may not include any amount previously approved for installment repayment.

(2) *Repayment schedule.* The number of quarters allowed for repayment is determined on the basis of the ratio of the repayment amount to the annual State share of State CHIP expenditures. The higher the ratio of the total repayment amount is to the annual State share, the greater the number of quarters allowed, as follows:

Total repayment amount as percentage of State share of annual expenditures for State CHIP	Number of quarters to make repayment
2.5 percent or less	1
Greater than 2.5, but not greater than 5	2
Greater than 5, but not greater than 7.5	3
Greater than 7.5, but not greater than 10	4
Greater than 10, but not greater than 15	5
Greater than 15, but not greater than 20	6
Greater than 20, but not greater than 25	7
Greater than 25, but not greater than 30	8
Greater than 30, but not greater than 47.5	9
Greater than 47.5, but not greater than 65	10
Greater than 65, but not greater than 82.5	11
Greater than 82.5, but not greater than 100	12

(3) *Quarterly repayment amounts.* The quarterly repayment amounts for each of the quarters in the repayment schedule may not be less than the following percentages of the estimated State share of the annual expenditures for State CHIP:

For each of the following quarters	Repayment installment may not be less than these percentages
1 to 4	2.5
5 to 8	5.0
9 to 12	17.5

(4) *Extended schedule.* The repayment schedule may be extended beyond 12 quarterly installments if the total repayment amount exceeds 100 percent of the estimated State share of annual expenditures. In these circumstances, the repayment schedule in paragraph (c)(2) of this section is followed for repayment of the amount equal to 100 percent of the annual State share. The remaining amount of the repayment is in quarterly amounts equal to not less than 17.5 percent of the estimated State share of annual expenditures.

(5) *Repayment process.* Repayment is accomplished through adjustment in the quarterly grants over the period covered by the repayment schedule. If the State chooses to repay amounts representing higher percentages during the early quarters, any corresponding reduction in required minimum percentages is applied first to the last scheduled payment, then to the next to the last payment, and so forth as necessary.

(6) *Offsetting of retroactive claims.* (i) The amount of a retroactive claim to be paid a State is offset against any amounts to be, or already being, repaid by the State in installments. Under this provision, the State may choose to:

(A) Suspend payments until the retroactive claim due the State has, in fact, been offset; or

(B) Continue payments until the reduced amount of its debt (remaining after the offset), has been paid in full. This second option would result in a shorter payment period.

(ii) A retroactive claim for the purpose of this regulation is a claim applicable to any period ending 12 months or more before the beginning of the quarter in which HCFA would pay that claim.

§ 457.220 Public funds as the State share of financial participation.

(a) Public funds may be considered as the State's share in claiming FFP if they meet the conditions specified in paragraphs (b) and (c) of this section.

(b) The public funds are appropriated directly to the State or local State CHIP agency, or transferred from other public agencies (including Indian tribes) to the State or local agency and under its administrative control, or certified by the contributing public agency as representing expenditures eligible for FFP under this section.

(c) The public funds are not Federal funds, or are Federal funds authorized by the Federal law to be used to match other Federal funds.

§ 457.222 FFP for equipment.

Claims for Federal financial participation in the cost of equipment under the State CHIP are determined in accordance with subpart G of 45 CFR part 95. Requirements concerning the management and disposition of equipment under the State CHIP Program are also prescribed in subpart G of 45 CFR part 95.

§ 457.224 FFP: Conditions relating to cost sharing.

(a) No FFP is available for the following amounts, even when related to services or benefit coverage which is or could be provided under a State CHIP program—

(1) Any cost sharing amounts that beneficiaries should have paid as enrollment fees, premiums, deductibles, coinsurance, copayments, or similar charges.

(2) Any amounts paid by the agency for health benefits coverage or services furnished to individuals who would not be eligible for that coverage or those services under the approved State child health plan, whether or not the individual paid any required premium or enrollment fee.

(b) The amount of expenditures under the State child health plan must be reduced by the amount of any premiums and other cost-sharing received by the State.

§ 457.226 Fiscal policies and accountability.

A State plan must provide that the State CHIP agency and, where applicable, local agencies administering the plan will—

(a) Maintain an accounting system and supporting fiscal records to assure that claims for Federal funds are in accord with applicable Federal requirements;

(b) Retain records for 3 years from date of submission of a final expenditure report;

(c) Retain records beyond the 3-year period if audit findings have not been resolved; and

(d) Retain records for nonexpendable property acquired under a Federal grant for 3 years from the date of final disposition of that property.

§ 457.228 Cost allocation.

A State plan must provide that the single or appropriate State CHIP Agency will have an approved cost allocation plan on file with the Department in accordance with the requirements contained in subpart E of 45 CFR part 95. Subpart E also sets forth the effect on FFP if the requirements contained in that subpart are not met.

§ 457.230 FFP for State ADP expenditures.

FFP is available for State ADP expenditures for the design, development, or installation of mechanized claims processing and information retrieval systems and for the operation of certain systems. Additional HHS regulations and HCFA procedures regarding the availability of FFP for ADP expenditures are in 45 CFR part 74, 45 CFR part 95, subpart F, and part 11, State Medicaid Manual.

§ 457.232 Refunding of Federal Share of CHIP overpayments to providers and referral of allegations of waste, fraud or abuse to the Office of Inspector General.

(a) Quarterly Federal payments to the States under title XXI (CHIP) of the Act are to be reduced or increased to make adjustment for prior overpayments or underpayments that the Secretary determines have been made.

(b) The Secretary will consider the pro rata Federal share of the net amount recovered by a State during any quarter to be an overpayment.

(c) Allegations or indications of waste fraud and abuse with respect to the CHIP program shall be referred promptly to the Office of Inspector General.

§ 457.234 State plan requirements.

The State plan is a comprehensive written statement submitted by the agency describing the nature and scope of its Children's Health Insurance Program and giving assurance that it will be administered in conformity with the specific requirements of title XXI, the applicable regulations in Chapter IV, and other applicable official issuance of the Department. The State plan contains all information necessary for HCFA to determine whether the plan can be approved to serve as a basis for FFP in the State plan program.

§ 457.236 Audits.

The CHIP agency must assure appropriate audit of records on costs of provider services.

§ 457.238 Documentation of payment rates.

The CHIP agency must maintain documentation of payment rates and make it available to HHS upon request.

Subparts C Through E—[Reserved]

Subpart F—Payments to States

§ 457.600 Purpose and basis of this subpart.

This subpart interprets and implements—

(a) Section 2104 of the Act which specifies the total allotment amount available for allotment to each State for child health assistance for fiscal years 1998 through 2007, the formula for determining each State allotment for a fiscal year, including the Commonwealth and Territories, and the amounts of payments for expenditures that are applied to reduce the State allotments.

(b) Section 2105 of the Act which specifies the provisions for making payment to States, the limitations and conditions on such payments, and the

calculation of the enhanced Federal medical assistance percentage.

§ 457.602 Applicability.

The provisions of this subpart apply to the 50 States and the District of Columbia, and the Commonwealths and Territories.

§ 457.606 Conditions for State allotments and Federal payments for a fiscal year.

(a) *Basic conditions.* In order to receive a State allotment for a fiscal year, a State must have a State child health plan submitted in accordance with section 2106 of the Act, and

(1) For fiscal years 1998 and 1999, the State child health plan must be approved before October 1, 1999;

(2) For fiscal years after 1999, the State child health plan must be approved by the end of the fiscal year;

(3) An allotment for a fiscal year is not available to a State prior to the beginning of the fiscal year; and

(4) Federal payments out of an allotment are based on State expenditures which are allowable under the approved State child health plan.

(b) Federal payments for States' Children's Health Insurance program (CHIP) expenditures under an approved State child health plan are—

(1) Limited to the amount of available funds remaining in State allotments calculated in accordance with the allotment process and formula specified in §§ 457.608 and 457.610, and payment process in §§ 457.614 and 457.616.

(2) Available based on a percentage of State CHIP expenditures, at a rate equal to the enhanced Federal medical assistance percentage (FMAP) for each fiscal year, calculated in accordance with § 457.622.

(3) Available through the grants process specified in § 457.630.

§ 457.608 Process and calculation of State allotments for a fiscal year.

(a) *General.* (1) State allotments are determined by HCFA for each State and the District of Columbia with an approved State child health plan, as described in paragraph (d) of this section, and for each Commonwealth and Territory, as described in paragraph (f) of this section.

(2) In order to determine each State allotment, HCFA determines the national total allotment amount for each fiscal year available to the 50 States and the District of Columbia, as described in paragraph (b) of this section, and the total allotment amount available for each fiscal year for allotment to the Commonwealths and Territories, as described in paragraph (c) of this section.

(b) *National total allotment amount for the 50 States and the District of Columbia.* (1) The national total allotment amount available for allotment to the 50 States and the District of Columbia is determined by subtracting the following 3 amounts in the following order from the total appropriation specified in section 2104(a) of the Act for the fiscal year—

(i) The total allotment amount available for allotment for each fiscal year to the Commonwealths and Territories, as determined in paragraph (c)(1) of this section;

(ii) The total amount of the grant for the fiscal year for children with Type I Diabetes under section 4921 of Pub. L. 105–33. This is $30,000,000 for each of the fiscal years 1998 through 2002; and

(iii) The total amount of the grant for the fiscal year for diabetes programs for Indians under section 4922 of Pub. L. 105–33. This is $30,000,000 for each of the fiscal years 1998 through 2002.

(2) The formula below illustrates the calculation of the national total allotment amount for a fiscal year available for allotment to the 50 States and the District of Columbia:

$A_{TA} = S_{2104(a)} - T_{2104(c)} - D_{4921} - D_{4922}$

A_{TA} = National total allotment amount available for allotment to the 50 States and the District of Columbia for the fiscal year.

$S_{2104(a)}$ = Total appropriation for the fiscal year indicated in section 2104(a) of the Act.

$T_{2104(c)}$ = Total allotment amount for a fiscal year available for allotment to the Commonwealths and Territories; as determined under paragraph (c)(1) of this section.

D_{4921} = Amount of total grant for children with Type I Diabetes under section 4921 of Pub. L. 105–33. This is $30,000,000 for each of the fiscal years 1998 through 2002.

D_{4922} = Amount of total grant for diabetes programs for Indians under section 4922 of Pub. L. 105–33. This is $30,000,000 for each of the fiscal years 1998 through 2002.

(c) *Total allotment amount available to the Commonwealths and the Territories.*—(1) *General.*—The total allotment amount available to all the Commonwealths and Territories equals .25 percent of the total appropriation for the fiscal year indicated in section 2104(a) of the Act.

(2) *Additional Amount for Allotment to the Commonwealths and Territories for FY 1999.* For FY 1999, $32 million in addition to the amount specified in paragraph (1) of this section, is available for allotment to the Commonwealths and Territories. This additional appropriation was provided for the Commonwealths and Territories under Pub. L. 105–277.

(d) *Methodology for determining the State allotments for a fiscal year.*—(1) *General methodology and data used for FY 2000 and subsequent fiscal years.* The methodology for determining the State allotment amount for a fiscal year is in accordance with the following formula:

Formula for Calculating the State Allotment for a Fiscal Year

$$SA_i = \frac{C_i \times SCF_i}{\sum\left(C_i \times SCF_i\right)} \times A_{TA}$$

SA_i = Allotment for a State for a fiscal year.

C_i = *Number of children* in a State (section 2104(b)(1)(A)(I)) for a fiscal year.

This number is based on the number of low-income children for a State for a fiscal year and the number of low-income children for a State for a fiscal year with no health insurance coverage for the fiscal year determined on the basis of the arithmetic average of the number of such children as reported and defined in the 3 most recent March supplements to the Current Population Survey of the Bureau of the Census officially available prior to October 1 before the beginning of the fiscal year. (section 2104(b)(2)(B)).

For each of the fiscal years 1998 through 2000, the number of children is equal to the number of low-income children in the State for the fiscal year with no health insurance coverage. For fiscal year 2001, the number of children is equal to the sum of 75 percent of the number of low-income children in the State for the fiscal year with no health insurance coverage and 25 percent of the number of low-income children in the State for the fiscal year. For fiscal years 2002 and thereafter, the number of children is equal to the sum of 50 percent of the number of low-income children in the State for the fiscal year with no health insurance coverage and 50 percent of the number of low-income children in the State for the fiscal year.

SCF_i = *State cost factor for a State* (section 2104(b)(1)(A)(ii)of the Act).

For a fiscal year, this is equal to:

$.15 + .85 \times (W_i/W_N)$ (Section 2104(b)(3)(A)).

W_i = The annual average wages per employee for a State for such year (section 2104(b)(3)(A)(ii)(I)).

W_N = The annual average wages per employee for the 50 States and the District of Columbia (section 2104(b)(3)(A)(ii)(II)).

The annual average wages per employee for a State or for all States and the District of Columbia for a fiscal year is equal to the average of such wages for employees in the health services industry (SIC 80), as reported by the Bureau of Labor Statistics of the Department of Labor for each of the most recent 3 years officially available prior to the beginning of the fiscal year on October 1. (section 2104(b)(3)(B)).

$\frac{1}{8}(C^i \times SCF_i)$ = The sum of the products of $(C_i \times SCF_i)$ for each State (section 2104(b)(1)(B)).

A_{TA} = Total amount available for allotment to the 50 States and the District of Columbia for the fiscal year as determined under paragraph (b) of this section.

(2) *Data used for calculating the FY 1998 CHIP allotments.* The FY 1998 CHIP allotments, were calculated in accordance with the methodology described in paragraph (d)(1) of this section, using the most recent official data that were available from the Bureau of the Census and Bureau of Labor Statistics, respectively, prior to the September 1 before the beginning of FY 1998 (that is, through August 31, 1997). In particular, through August 31, 1997, the only official data available on the numbers of children were data from the 3 March CPSs conducted in March 1994, 1995, and 1996 that reflected data for the 3 calendar years 1993, 1994, and 1995.

(3) *Data used for calculating the FY 1999 CHIP allotments.* In accordance with Public Law 105–277, the FY 1999 allotments were calculated in accordance with the methodology described in paragraph (d)(1) of this section, using the same data as were used in calculating the FY 1998 CHIP allotments.

(e) *Minimum State allotment for a fiscal year.* Each State and the District of Columbia with an approved State child health plan will receive a minimum allotment for a fiscal year in the amount of $2 million. In the event that a State allotment for a fiscal year determined under the formula in § 457.608(d) is below the $2 million minimum and needs to be increased, the increase will be offset by reducing the State allotments for the other States and the District of Columbia in a pro rata manner (but not below $2 million) so that the total of such State allotments in a fiscal year does not exceed the national total allotment amount available for allotment to the 50 States and the District of Columbia, determined under § 457.608(b).

(f) *Methodology for determining the Commonwealth and Territory allotments for a fiscal year.* The total amount available for the Commonwealths and Territories for each fiscal year, as determined under paragraph (c) of this section, is allotted to each Territory and Commonwealth below which has an approved State child health plan. These allotments are in the proportion that the following percentages for each Commonwealth Territory bear to the sum of such percentages, as specified in section 2104(b)(2) of the Act:

Puerto Rico—91.6 percent
Guam—3.5 percent
Virgin Islands—2.6 percent
American Samoa—1.2 percent
Northern Mariana Islands—1.1 percent

(g) *Reserved State allotments for a fiscal year.* (1) In order to provide an estimate of each States' fiscal year allotments, HCFA uses the formula and methodology described in paragraphs (a) through (f) of this section, and applies it as if all 50 States, the District of Columbia, and the Commonwealths and Territories have an approved State child health plan for the fiscal year.

(2) For FY 2000 and subsequent fiscal years, HCFA determines and publishes the State reserved allotments for a fiscal year for each State, the District of Columbia, and Commonwealths and Territories in the **Federal Register** based on the most recent official data available prior to the beginning of the fiscal year on October 1 for the number of children and the State cost factor. For FY 1998 and FY 1999, HCFA determines and published the State reserved allotments using the available data described in paragraphs (d)(2) and (d)(3) of this section, respectively.

(h) *Final allotments.* (1) Final State allotments for fiscal year 1998 for each State, the District of Columbia, and the Commonwealths and Territories are determined by HCFA based only on those States, the District of Columbia, and the Commonwealths and Territories that have approved State child health plans by the end of fiscal year 1999, in accordance with the formula and methodology specified in paragraphs (a) through (g) of this section.

(2) Final State allotments for a fiscal year for each State, the District of Columbia, and the Commonwealths and Territories are determined by HCFA for each State fiscal year after fiscal year 1998 based only on those States, the District of Columbia, and the Commonwealths and Territories that have approved State child health plans by the end of the fiscal year, in accordance with the formula and methodology specified in paragraphs (a) through (g) of this section.

(3) HCFA determines and publishes the States' final fiscal year allotments in the **Federal Register** based on the same data, with respect to the number of children and State cost factor, as were used in determining the reserved allotments for the fiscal year.

(3) If all States, the District of Columbia, and the Commonwealths and Territories have approved State child health plans in place prior to the beginning of the fiscal year, as appropriate, HCFA may publish the reserved and final fiscal year allotments in the **Federal Register** concurrently.

§ 457.610 Period of availability for State allotments for a fiscal year.

The amount of a final allotment for a fiscal year, as determined under § 457.608(h) and reduced to reflect certain Medicaid expenditures in accordance with § 457.616, remains available until expended for Federal payments based on expenditures claimed during a 3-year period of availability, beginning with the fiscal year of the final allotment and ending with the end of the second fiscal year following the fiscal year.

§ 457.614 General payment process.

(a) A State may make claims for Federal payment based on expenditures incurred by the State prior to or during the period of availability related to that fiscal year.

(b) In order to receive Federal financial participation (FFP) for a State's claims for payment for the State's expenditures, a State must—

(1) Submit budget estimates of quarterly funding requirements for Medicaid and the Children's Health Insurance Programs; and

(2) Submit an expenditure report.

(c) Based on the State's quarterly budget estimates, HCFA—

(1) Issues an advance grant to a State as described in § 457.630;

(2) Tracks and applies Federal payments claimed quarterly by each State, the District of Columbia, and each Commonwealth and Territory to ensure that payments do not exceed the applicable allotments for the fiscal year; and

(3) Track and apply relevant State, District of Columbia, Commonwealth and Territory expenditures reported each quarter against the 10 percent limit on expenditures other than child health assistance for standard benefit package, on a fiscal year basis as specified in § 457.618.

§ 457.616 Application and tracking of payments against the fiscal year allotments.

(a) In accordance with the principles described in paragraph (c) of this

section, the following categories of payments are applied to reduce the State allotments for a fiscal year:

(1) Payments made to the State for expenditures claimed during the fiscal year under its title XIX Medicaid program, to the extent the payments were made on the basis of the enhanced FMAP described in sections 1905(b) and 2105(b) of the Act for expenditures attributable to children described in section 1905(u)(2) of the Act.

(2) Payments made to the State for expenditures claimed during the fiscal year under its title XIX Medicaid program, to the extent the payments were made on the basis of the enhanced FMAP described in sections 1905(b) and 2105(b) of the Act for expenditures attributable to children described in section 1905(u)(3) of the Act.

(3) Payments made to a State under section 1903(a) of the Act for expenditures claimed by the State during a fiscal year that are attributable to the provision of medical assistance to a child during a presumptive eligibility period under section 1920A of the Act.

(4) Payments made to a State under its title XXI Children's Health Insurance Program with respect to section 2105(a) of the Act for expenditures claimed by the State during a fiscal year.

(b) HCFA applies the principles in paragraph (c) of this section to—

(1) Coordinate the application of the payments made to a State for the State's expenditures claimed under the Medicaid and State child health insurance program against the State allotment for a fiscal year;

(2) Determine the order of these payments in that application; and

(3) Determine the application of payments against multiple State child health insurance program fiscal year allotments.

(c) *Principles for applying Federal payments against the allotment.* HCFA—

(1) Applies the payments attributable to Medicaid expenditures specified in paragraphs (a)(1) through (a)(3) of this section, against the State child health plan allotment for a fiscal year before State child health plan expenditures specified in paragraph (a)(4) of this section are applied.

(2) Applies the payments attributable to Medicaid and State child health plan expenditures specified in paragraph (a) of this section against the applicable allotments for a fiscal year based on the quarter in which the expenditures are claimed by the State.

(3) Applies payments against the State allotments for a fiscal year in a manner that is consistent for all States.

(4) Applies payments attributable to Medicaid expenditures specified in paragraphs (a)(1) through (a)(3) of this section, in an order that maximizes Federal reimbursement for States. Expenditures for which the enhanced FMAP is available are applied before expenditures for which the regular FMAP is available.

(5) Applies payments for expenditures against State Child Health Insurance Program fiscal year allotments in the least administratively burdensome, and most effective and efficient manner; payments are applied on a quarterly basis as they are claimed by the State, and are applied to reduce the earliest fiscal year State allotments before the payments are applied to reduce later fiscal year allotments.

(6) Applies payments for expenditures for a fiscal year's allotment against a subsequent fiscal year's allotment; however, the subsequent fiscal year's allotment must be available at the time of application. For example, if the allotment for fiscal year 1998 has been fully expended, payments for expenditures claimed in fiscal year 1998 are carried over for application against the fiscal year 1999 allotment when it becomes available.

(7) Carries over unexpended amounts of a State's allotment for a fiscal year for use in subsequent fiscal years through the end of the 3-year period of availability. For example, if the amounts of the fiscal year 1998 allotment are not fully expended by the end of fiscal year 1998, these amounts are carried over to fiscal year 1999 and are available to provide FFP for expenditures claimed by the State for that fiscal year.

(d) The amount of the Federal payment for expenditures claimed by a State, District of Columbia, or the Commonwealths and Territories is determined by the enhanced FMAP applicable to the fiscal year in which the State paid the expenditure. For example, Federal payment for an expenditure paid by a State in fiscal year 1998 that was carried over to fiscal year 1999 (in accordance with paragraph (c)(6) of this section), because the State exceeded its fiscal year 1998 allotment, is available at the fiscal year 1998 enhanced FMAP rate.

§ 457.618 Ten percent limit on certain children's health insurance program expenditures.

(a)(1) *Primary expenditures* are expenditures under a State plan for child health assistance to targeted low-income children in the form of a standard benefit package, and Medicaid expenditures claimed during the fiscal year to the extent Federal payments made for these expenditures on the basis of the enhanced FMAP described in sections 1905(b) and 2105(b) of the Act that are used to calculate the 10 percent limit.

(2) *Non-primary expenditures* are other expenditures under a State plan. Subject to the 10 percent limit described in paragraph (c) of this section, a State may receive Federal funds at the enhanced FMAP for 4 categories of non-primary expenditures:

(i) Administrative expenditures;

(ii) Outreach;

(iii) Health initiatives; and

(iv) Certain other child health assistance.

(b) Federal payment will not be available based on a State's non-primary expenditures for a fiscal year which exceed the 10 percent limit of the total of expenditures under the plan, as specified in paragraph (c) of this section.

(c) *10 percent limit.* The 10 percent limit is—

(1) Applied on an annual fiscal year basis;

(2) Calculated based on the total computable amounts of expenditures; and

(3) Calculated using the following formula:

L10% = (a1+ u2+ u3)/9;

L10% = 10 Percent Limit for a fiscal year

a1 = Total computable amount of expenditures for the fiscal year under section 2105(a)(1) of the Act for which Federal payments are available at the enhanced FMAP described in section 2105(b) of the Act;

u2 = Total computable expenditures for medical assistance for which Federal payments are made during the fiscal year based on the enhanced FMAP described in sections 1905(b) and 2105(b) of the Act for individuals described in section 1905(u)(2) of the Act; and

u3 = Total computable expenditures for medical assistance for which Federal payments are made during the fiscal year based on the enhanced FMAP described in sections 1905(b) and 2105(b) of the Act for individuals described in section 1905(u)(3) of the Act.

(4) The expenditures under section 2105(a)(2) of the Act that are subject to the 10 percent limit are applied on an annual fiscal year basis.

(5)(i) The 10 percent limit for a fiscal year, as calculated under paragraph (c)(3) of this section, may be no greater than 10 percent of the total computable amount (determined under paragraph

(c)(5)(ii) of this section) of the State allotment or allotments available in that fiscal year. Therefore, the 10 percent limit is the lower of the amount calculated under paragraph (c)(3) of this section, and 10 percent of the total computable amount of the State allotment available in that fiscal year.

(ii) As used in paragraph (c)(5)(i) of this section, the total computable amount of a State's allotment for a fiscal year is determined by dividing the State's allotment for the fiscal year by the State's enhanced FMAP for the year. For example, if a State allotment for a fiscal year is $65 million and the enhanced FMAP rate for the fiscal year is 65 percent, the total computable amount of the allotment for the fiscal year is $100 million ($65 million/.65). In this example, the 10 percent limit may be no greater than a total computable amount of $10 million (10 percent of $100 million).

§ 457.622 Rate of FFP for State expenditures.

(a) *Basis.* Sections 1905(b), 2105(a) and 2105(b) of the Act provides for payments to States from the States' allotments for a fiscal year, as determined under § 457.608, for part of the cost of expenditures for services and administration made under an approved State child health assistance plan. The rate of payment is generally the enhanced Federal medical assistance percentage described below.

(b) *Enhanced Federal medical assistance percentage (Enhanced FMAP)—Computations.* The enhanced FMAP is the lower of the following:

(1) 70 percent of the regular FMAP determined under section 1905(b) of the Act, plus 30 percentage points; or

(2) 85 percent.

(c) *Conditions for availability of enhanced FMAP based on a State's expenditures.* The enhanced FMAP is available for payments based on a State's expenditures claimed under the State's title XXI program from the State's fiscal year allotment only under the following conditions:

(1) The State has an approved title XXI State child health plan;

(2) The expenditures are allowable under the State's approved title XXI State child health plan;

(3) State allotment amounts are available in the fiscal year, that is, the State's allotment or allotments (as reduced in accordance with § 457.616) and available for a fiscal year have not been fully expended.

(4) Expenditures claimed against the 10 percent limit are within the State's 10 percent limit for the fiscal year.

(5) The State is in compliance with the maintenance of effort requirements of section 2105(d)(1) of the Act.

(d) *Categories of expenditures for which enhanced FMAP are available.* Except as otherwise provided below, the enhanced FMAP is available with respect to the following States' expenditures:

(1) Child health assistance under the plan for targeted low-income children in the form of providing health benefits coverage that meets the requirements of section 2103 of the Act; and

(2) Subject to the 10 percent limit provisions under § 457.618(a)(2), the following expenditures:

(i) Payment for other child health assistance for targeted low-income children;

(ii) Expenditures for health services initiatives under the State child health assistance plan for improving the health of children (including targeted low-income children);

(iii) Expenditures for outreach activities; and

(iv) Other reasonable costs incurred by the State to administer the State child health assistance plan.

(e) *CHIP administrative expenditures and CHIP related title XIX administrative expenditures*—(1) *General rule.* Allowable title XXI administrative expenditures should support the operation of the State child health assistance plan. In general, FFP for administration under title XXI is not available for costs of activities related to the operation of other programs.

(2) *Exception.* FFP is available under title XXI, at the enhanced FFP rate, for Medicaid administrative expenditures attributable to the provision of medical assistance to children described in sections 1905(u)(2) and 1905(u)(3), and during the presumptive eligibility period described in section 1920A of the Act, to the extent that the State does not claim those costs under the Medicaid program.

(3) FFP is not available in expenditures for administrative activities for items or services included within the scope of another claimed expenditure.

(4) FFP is available in expenditures for activities defined in sections 2102(c)(1) and 2105(a)(2)(C) of the Act as outreach to families of children likely to be eligible for child health assistance under the plan or under other public or private health coverage programs to inform these families of the availability of, and to assist them in enrolling their children in such a program.

(5) FFP is available in administrative expenditures for activities specified in sections 2102(c)(2) of the Act as coordination of the administration of the State children's health insurance program with other public and private health insurance programs. FFP would not be available for the costs of administering the other public and private health insurance programs. Coordination activities must be distinguished from other administrative activities common among different programs.

§ 457.624 Limitations on certain payments for certain expenditures.

(a) *Abortions*—(1) *General rule.* Payment is not made for any State expenditures to pay for abortions or to assist in the purchase, whole or in part, of health benefit coverage that includes coverage of abortion.

(2) *Exception.* Payment may be made for expenditures for health benefits coverage and services that include abortions that are necessary to save the life of the mother or if the pregnancy is the result of rape or incest.

(b) *Waiver for purchase of family coverage.* Payment may be made to a State with an approved State child health plan for the purchase of family coverage under a group plan or health insurance coverage that includes coverage of targeted low-income children only if the State establishes to the satisfaction of HCFA that—

(1) Purchase of this coverage is cost-effective relative to the amounts that the State would have paid to obtain comparable coverage only of the targeted low-income children involved; and

(2) This coverage will not be provided if it would otherwise substitute for health insurance coverage that would be provided to such children but for the purchase of family coverage.

§ 457.626 Prevention of duplicate payments.

(a) *General rule.* No payment shall be made to a State for expenditures for child health assistance under its State child health plan to the extent that:

(1) A non-governmental health insurer would have been obligated to pay for those services but for a provision of its insurance contract that has the effect of limiting or excluding those obligations based on the actual or potential eligibility of the individual for child health assistance under the State child health insurance plan.

(2) Payment has been made or can reasonably be expected to be made promptly under any other Federally operated or financed health insurance or benefits program, other than a program operated or financed by the Indian Health Service.

(b) *Definitions.* As used in paragraph (a) of this section—

Non-governmental health insurer includes any health insurance issuer, group health plan, or health maintenance organization, as those terms are defined in 45 CFR 144.103, which is not part of, or wholly owned by, a governmental entity.

Prompt payment can reasonably be expected when payment is required by applicable statute, or under an approved State plan.

Programs operated or financed by the Indian Health Service means health programs operated by the Indian Health Service, or Indian tribe or tribal organization pursuant to a contract, grant, cooperative agreement or compact with the Indian Health Service under the authority of the Indian Self-Determination and Education Assistance Act (25 U.S.C. 450, et seq.), or by an urban Indian organization in accordance with a grant or contract with the Indian Health Service under the authority of title V of the Indian Health Care Improvement Act (25 U.S.C. 1601, et seq.).

§ 457.628 Other applicable Federal regulations.

Other regulations applicable to State CHIP programs include the following:

(a) HHS regulations in 42 CFR subpart B—§§ 433.51–433.74 sources of non-Federal share and Health Care-Related Taxes and Provider-Related Donations; these regulations apply to States' CHIPs in the same manner as they apply to States' Medicaid programs.

(b) HHS Regulations in 45 CFR subtitle A:

Part 16—Procedures of the Departmental Appeals Board.

Part 74—Administration of Grants (except as specifically excepted).

Part 80—Nondiscrimination Under Programs Receiving Federal Assistance Through the Department of Health and Human Services: Effectuation of Title VI of the Civil Rights Act of 1964.

Part 81—Practice and Procedure for Hearings Under 45 CFR part 80.

Part 84—Nondiscrimination on the Basis of Handicap in Programs and activities Receiving or Benefiting From Federal Financial Assistance.

Part 95—General Administration—grant programs (public assistance and medical assistance).

§ 457.630 Grants procedures.

(a) *General provisions.* Once HCFA has approved a State child health plan, HCFA makes quarterly grant awards to the State to cover the Federal share of expenditures for child health assistance, other child health assistance, special health initiatives, outreach and administration.

(1) For fiscal year 1998, a State must submit a budget request in an appropriate format for the 4 quarters of the fiscal year. HCFA bases the grant awards for the 4 quarters of fiscal year 1998 based on the State's budget requests for those quarters.

(2) For fiscal years after 1998, a State must submit a budget request in an appropriate format for the first 3 quarters of the fiscal year. HCFA bases the grant awards for the first 3 quarters of the fiscal year on the State's budget requests for those quarters.

(3) For fiscal years after 1998, a State must also submit a budget request for the fourth quarter of the fiscal year. The amount of this quarter's grant award is based on the difference between a State's final allotment for the fiscal year, and the total of the grants for the first 3 quarters that were already issued in order to ensure that the total of all grant awards for the fiscal year are equal to the State's final allotment for that fiscal year.

(4) The amount of the quarterly grant is determined on the basis of information submitted by the State (in quarterly estimate and quarterly expenditure reports) and other pertinent information. This information must be submitted by the State through the Medicaid Budget and Expenditure System (MBES) for the Medicaid program, and through the Child Health Budget and Expenditure System (CBES) for the title XXI program.

(b) *Quarterly estimates.* The State children's health insurance program agency must submit Form HCFA–21B (Children's Health Insurance Program Budget Report for Children's Health Insurance Program State expenditures) to the HCFA central office (with a copy to the HCFA regional office) 45 days before the beginning of each quarter.

(c) *Expenditure reports.* (1) The State must submit Form HCFA–64 (Quarterly Medicaid Statement of Expenditures for the Medical Assistance Program) and Form HCFA–21 (Quarterly Children's Health Insurance Program Statement of Expenditures for title XXI), to central office (with a copy to the regional office) not later than 30 days after the end of the quarter.

(2) This report is the State's accounting of actual recorded expenditures. This disposition of Federal funds may not be reported on the basis of estimates.

(d) *Additional required information.* A State must provide HCFA with the following information regarding the administration of the title XXI program:

(1) Name and address of the State Agency/organization administering the program;

(2) The employer identification number (EIN); and

(3) A State official contact name and telephone number.

(e) Grant award.—(1) *Computation by HCFA.* Regional office staff analyzes the State's estimates and sends a recommendation to the central office. Central office staff considers the State's estimates, the regional office recommendations and any other relevant information, including any adjustments to be made under paragraph (e)(2) of this section, and computes the grant.

(2) *Content of award.* The grant award computation form shows the estimate of expenditures for the ensuring quarter, and the amounts by which that estimate is increased or decreased because of an increase or overestimate for prior quarters, or for any of the following reasons:

(i) Penalty reductions imposed by law.

(ii) Deferrals or disallowances.

(iii) Interest assessments.

(iv) Mandated adjustments such as those required by section 1914 of the Act.

(3) *Effect of award.* The grant award authorizes the State to draw Federal funds as needed to pay the Federal share of disbursements.

(4) *Draw procedure.* The draw is through a commercial bank and the Federal Reserve system against a continuing letter of credit certified to the Secretary of the Treasury in favor of the State payee. (The letter of credit payment system was established in accordance with Treasury Department regulations -Circular No.1075.)

(f) *General administrative requirements.* With the following exceptions, the provisions of 45 CFR part 74, that establish uniform administrative requirements and cost principles, apply to all grants made to States under this subpart:

(1) Subpart G—Matching and Cost Sharing; and

(2) Subpart I—Financial Report Requirement.

E. 45 CFR PART 92 is amended as follows:

PART 92—UNIFORM ADMINISTRATION REQUIREMENTS FOR GRANTS AND COOPERATIVE AGREEMENTS TO STATE AND LOCAL GOVERNMENTS

1. The authority citation for part 92 continues to read as follows:

Authority: 42 U.S.C. 301.

2. Section 92.4 is amended by revising paragraphs(a)(3)(iv) and (a)(3)(v), and adding a new paragraph (a)(3)(vi) to read as follows:

§ 92.4 Applicability.

(a) * * *

(3) * * *

(iv) Aid to the Aged, Blind, and Disabled (titles I, X, XIV, and XVI–AABD of the Act);

(v) Medical Assistance (Medicaid) (title XIX of the Act) not including the State Medicaid Fraud Control program authorized by section 1903(a)(6)(B); and

(vi) State Children's Health Insurance Program (title XXI of the Act).

* * * * *

C. 45 CFR part 95 is amended as follows:

1. The heading of part 95 is revised to read as follows:

PART 95—GENERAL ADMINISTRATION —GRANT PROGRAMS (PUBLIC ASSISTANCE, MEDICAL ASSISTANCE AND CHILDREN'S HEALTH INSURANCE PROGRAMS)

2. The authority citation for part 95 is revised to read as follows:

Authority: Sec. 452(a), 83 Stat. 2351, 42 U.S.C. 652(a): sec. 1102, 49 Stat. 647, 42 U.S.C. 1302; sec. 7(b), 68 Stat. 658, 29 U.S.C. 37(b); sec. 139, 84 Stat. 1323, 42 U.S.C. 2577b; sec. 144, 81 Stat. 529, 42 U.S.C. 2678; sec. 1132, 94 Stat. 530, 42 U.S.C. 1320b–2; sec. 306(b), 94 Stat. 530, 42 U.S.C. 1320b-2note, unless otherwise noted.

Subpart A—Time Limits for States to file Claims

3. In § 95.1(a), title XXI is added in numerical order immediately following title XX as follows:

§ 95.1 Scope.

* * * * *

(a) * * *

Title XXI—Grants to States for Children's Health Insurance Programs

* * * * *

4. In § 95.4, the definition of ''State agency'' is revised to read as follows:

§ 95.4 Definitions.

* * * * *

State agency for the purposes of expenditures for financial assistance under title IV–A and for support enforcement services under title IV–D means any agency or organization of the State or local government which is authorized to incur matchable expenses; for purposes of expenditures under titles XIX and XXI, means any agency of the State, including the State Medicaid agency or State Child Health Agency, its fiscal agents, a State health agency, or any other State or local organization which incurs matchable expenses; for purposes of expenditures under all other titles, see the definitions in the appropriate program's regulations.

* * * * *

5. In § 95.13, paragraph (b) and the first sentence of paragraph (d) are revised to read as follows:

§ 95.13 In which quarter we consider an expenditure made.

* * * * *

(b) We consider a State agency's expenditure for services under title I, IV–A, IV–B, IV–D, IV–E, X, XIV, XVI (AABD , XIX, or XXI to have been made in the quarter in which any State agency made a payment to the service provider.

* * * * *

(d) We consider a State agency's expenditure for administration or training under titles I, IV–A, IV–B, IV–D, IV–E, X, XIV, XVI (AABD), XIX, or XXI to have been made in the quarter payment was made by a State agency to a private agency or individual; or in the quarter to which the costs were allocated in accordance with the regulations for each program. * * *

5. Section 95.503 is revised to read as follows:

Subpart E—Cost Allocation Plans

§ 95.503 Scope.

This subpart applies to all State agency costs applicable to awards made under titles I, IV–A, IV–B, IV–C, IV–D, IV–E, X, XIV, XVI (AABD), XIX, and XXI, of the Social Security Act, and under the Refugee Act of 1980, title IV, Chapter 2 of the Immigration and Nationality Act (8 U.S.C. 1521 *et seq.*), and under title V of Pub. L. 96–422, the Refugee Education Assistance Act of 1980.

6. Section 95.507(a)(3) is revised to read as follows:

§ 95.507 Plan requirements.

(a) * * *

(3) Be compatible with the State plan for public assistance programs described in 45 CFR Chapter II, III and XIII, and 42 CFR Chapter IV Subchapters C and D; and

* * * * *

7. Section 95.601 is revised to read as follows:

Subpart F—Automatic Data Processing Equipment and Services—Conditions for Federal Financial Participation (FFP)

General

§ 95.601 Scope and Applicability.

This subpart prescribes part of the conditions under which the Department of Health and Human Services will approve Federal financial participation (FFP) at the applicable rates for the costs of automatic data processing incurred under an approved State plan for titles I, IV–A, IV–B, IV–D, IV–E, X, XIV, XVI(AABD), XIX, or XXI of the Social Security Act and title IV chapter 2 of the Immigration and Nationality Act. The conditions of approval of this subpart add to the statutory and regulatory requirements for acquisition of ADP equipment and services under the specified titles of the Social Security Act.

8. In § 95.605, the definitions of ''approving component'', ''operation'', ''regular matching rate'', and ''State agency'' are revised to read as follows:

§ 95.605 Definitions.

* * * * *

Approving component means an organization within the Department that is authorized to approve requests for the acquisition of ADP equipment or ADP services. Family Support Administration (FSA) for cash assistance for titles I, IV–A, X, XIV, and XVI(AABD); Office of Human Development Services (OHDS) for social services for Titles IV–B (child welfare services) and IV–E (foster care and adoption assistance); Family Support Administration (FSA) for title IV–D; and Health Care Financing Administration (HCFA) for titles XIX and XXI of the Social Security Act.

* * * * *

Operation means the automated processing of data used in the administration of State plans for titles I, IV–A, IV–B, IV–D, IV–E, X, XIV, XVI(AABD), XIX, and XXI of the Social Security Act. Operation includes the use of supplies, software, hardware, and personnel directly associated with the functioning of the mechanized system. See 45 CFR 205.38 and 307.10 for specific requirements for titles IV–A and IV–D, and 42 CFR 433.112 and 42 CFR 433.113 for specific requirements for title XIX.

Regular matching rate means the normal rate of FFP authorized by titles IV–A, IV–B, IV–D, IV–E, X, XIV, XVI(AABD), XIX, and XXI of the Social Security Act for State and local agency

administration of programs authorized by those titles.

* * * * *

State agency means the State agency administering or supervising the administration of the State plan under titles I, IV, X, XIV, XVI(AABD), XIX or XXI of the Social Security Act.

* * * * *

9. In § 95.703 the definition of ''Public Assistance Programs'' is revised to read as follows:

§ 95.703 Definitions.

* * * * *

Public Assistance Programs means programs authorized by titles I, IV–A, IV–B, IV–C, IV–D, IV–E, X, XIV, XVI (AABD), XIX and XXI of the Social Security Act, and programs authorized by the Immigration and Nationality Act as amended by the Refugee Act of 1980 (Pub. L. 96–212).

* * * * *

(Section 1102 of the Social Security Act (42 U.S.C. 1302)

(Catalog of Federal Domestic Assistance Program No. 00.000, State Children's Health Insurance Program)

Dated: August 3, 1998.

Nancy-Ann Min DeParle,

Administrator, Health Care Financing Administration.

Dated: February 23, 1999.

Donna E. Shalala,

Secretary.

[FR Doc. 99–4933 Filed 3–3–99; 8:45 am]

BILLING CODE 4120–01–P

DEPARTMENT OF COMMERCE

National Oceanic and Atmospheric Administration

50 CFR Parts 285, 600, 630, 635, 644, and 678

[I.D. 071698B; 010799A]

Atlantic Highly Migratory Species (HMS Fisheries); Fishery Management Plan, Plan Amendment and Consolidation of Regulations

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

ACTION: Proposed rule; extension of the comment period; additional public hearing.

SUMMARY: On January 20, 1999, NMFS requested comments on a draft Fishery Management Plan for Atlantic Tunas, Swordfish and Sharks (HMS FMP), and draft Amendment 1 to the Atlantic Billfish FMP, and the proposed rule that would implement these FMPs. On February 25, NMFS announced the availability of an addendum to the HMS FMP and published a supplemental proposed rule to implement the addendum. Comments on all documents were requested by March 4, 1999. NMFS hereby extends the public comment period from March 4, 1999, to March 12, 1999, except for proposed import restrictions for swordfish. NMFS also announces an additional public hearing during the extended comment period.

DATES: Comments on the draft HMS FMP and its addendum, Amendment 1 to the Billfish FMP, and their proposed implementing regulations must be received by March 12, 1999. An additional public hearing will be held in Spray Beach, NJ, on March 11, 1999, from 7 to 10 p.m.

ADDRESSES: To submit comments on, or to obtain copies of, the draft HMS FMP, the Addendum to the draft HMS FMP, draft Amendment 1 to the Billfish FMP, the proposed rule, supplemental proposed rule and supporting documents, including the revised Initial Regulatory Flexibility Analysis, or a summary of these items, contact Rebecca Lent, Chief, Highly Migratory Species Management Division, Office of Sustainable Fisheries (F/SF1), NMFS, 1315 East-West Highway, Silver Spring, MD 20910–3282, phone (301) 713–2347, fax (301) 713–1917. Copies of the addendum and supplement are also available on the Sustainable Fisheries Act web site at www.nmfs.gov/sfa/hms/hmspg.html. Send comments regarding the burden-hour estimates or other aspects of the collection-of-information requirements contained in this proposed rule to Rebecca Lent and to the Office of Information and Regulatory Affairs, Office of Management and Budget (OMB), Washington, DC 20503 (Attention: NOAA Desk Officer).

The hearing location is the Spray Beach Inn, Oceanfront and 24th Street, Spray Beach, NJ 08004.

FOR FURTHER INFORMATION CONTACT: Pat Scida regarding tuna issues at (978) 281–9260; Jill Stevenson regarding swordfish issues at (301) 713–2347; Margo Schulze regarding shark issues at (301) 713–2347; Buck Sutter regarding billfish issues at (727) 570–5447; Karyl Brewster-Geisz regarding limited access at (301) 713–2347; and Chris Rogers regarding the regulatory consolidation at (301) 713–2347.

SUPPLEMENTARY INFORMATION: On October 9, 1998 (63 FR 54433), NMFS announced the availability of draft Amendment 1 to the Billfish FMP, and on October 26, 1998, NMFS announced the availability of the draft HMS FMP (63 FR 57093). Information regarding the management of HMS under the HMS and Billfish FMPs was provided in the preamble to the proposed rule to implement those FMPs (64 FR 3154, January 20, 1999) and is not repeated here. NMFS indicated that the preferred alternative for western Atlantic bluefin tuna (BFT) rebuilding would be identified following the November 1998 meeting of the International Commission for the Conservation of Atlantic Tunas (ICCAT), that the preferred alternative and associated analyses would be published as an addendum to the draft HMS FMP, and that proposed measures to implement the preferred rebuilding alternative would be published in a supplement to the proposed rule. The supplement to the proposed rule (February 25, 1999; 64 FR 9298) would implement the rebuilding and bycatch reduction measures of the FMP Addendum and would specify BFT General category effort controls for the 1999 fishing season and clarify mandatory data collection requirements.

In response to public requests that additional time is needed to review the above-referenced documents and prepare responses, NMFS hereby extends the comment period to March 12, 1999.

Specific provisions in the proposed rule regarding swordfish import restrictions had been previously proposed on October 13, 1998 (63 FR 54661). These provisions were restated in the proposed rule to implement the HMS FMP due to the consolidated format of the new 50 CFR part 635 regulations for HMS. Because the public comment period on swordfish import restrictions has been adequate, and NMFS must begin implementation of import monitoring, NMFS intends to finalize these regulations under 50 CFR part 630. The final import restriction regulations will subsequently be incorporated into 50 CFR part 635 when the final consolidated regulations are issued.

Special Accommodations

This hearing is physically accessible to people with disabilities. Requests for sign language interpretation or other auxiliary aids should be directed to Rebecca Lent (see **ADDRESSES**) at least 7 days prior to the hearing.

Authority: 16 U.S.C. 971 *et seq.* and 16 U.S.C. 1801 *et seq.*

Dated: February 26, 1999.

Bruce C. Morehead,

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

[FR Doc. 99–5281 Filed 3–1–99; 9:57 am]

BILLING CODE 3510–22–F

DEPARTMENT OF COMMERCE

National Oceanic and Atmospheric Administration

50 CFR Part 660

[Docket No. 990219053–9053–01; I.D. 011999B]

RIN 0648–AK83

Fisheries off West Coast States and in the Western Pacific; West Coast Salmon Fisheries; Amendment 13

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

ACTION: Proposed rule; request for comments.

SUMMARY: The Secretary of Commerce (Secretary) requests public comments on a proposed rule to implement Amendment 13 to the West Coast Salmon Plan (FMP) in accordance with the Magnuson-Stevens Fishery Conservation and Management Act (Magnuson-Stevens Act). Amendment 13 would change the management of Oregon coastal natural (OCN) coho salmon (coho), *Oncorhynchus kisutch*, by disaggregating the OCN stock into four components, restricting total harvest exploitation rates to a maximum of 35 percent, and linking increases in harvest rates to increases in marine survival and proven reproductive success of the present brood year. The only regulatory change that would be required is a technical change to a provision regarding coho allocation south of Cape Falcon to make it consistent with the new OCN harvest levels. The intended effect of this proposed rule is to make the requisit technical change.

DATES: Written comments on the amendment must be received by March 29, 1999. Written comments on the proposed rule must be received by April 5, 1999.

ADDRESSES: Comments should be sent to William W. Stelle, Jr., Administrator, Northwest Region, National Marine Fisheries Service, 7600 Sand Point Way NE., BIN C15700–Bldg. 1, Seattle, WA 98115–0070, or William T. Hogarth, Administrator, Southwest Region, National Marine Fisheries Service, 501 West Ocean Blvd., Suite 4200, Long Beach, CA 90802–4213. Copies of the amendment, including the environmental assessment and the regulatory impact review/initial regulatory flexibility analysis, the Amendment 13 Issues Attachment, and the Oregon Department of Fish and Wildlife (ODFW)/NMFS risk assessment for the Oregon Coastal Salmon Restoration Initiative (OCSRI) are available from Lawrence D. Six, Executive Director, Pacific Fishery Management Council, Metro Center, Suite 420, 2000 SW. First Avenue, Portland, OR 97201–5344.

FOR FURTHER INFORMATION CONTACT: William L. Robinson at 206– 526–6140, Svein Fougner at 562–980–4040, or Lawrence D. Six at 503–326–6352.

SUPPLEMENTARY INFORMATION:

Background

The Pacific Fishery Management Council (Council) developed the FMP, and the Secretary approved it under the Magnuson-Stevens Act, 16 U.S.C. 1801 *et seq.*, in 1978. Since then, the FMP has been amended 12 times, with implementing regulations codified at 50 CFR part 660, subpart H. From 1979 to 1983, the FMP was amended annually. In 1984, a framework amendment was implemented that provided the mechanism for making preseason and inseason adjustments in the regulations without annual amendments.

The Council prepared Amendment 13 to the FMP under the provisions of the Magnuson-Stevens Act and submitted it on January 15, 1999, for Secretarial review. NMFS published a notice of availability for Amendment 13 in the **Federal Register** on January 27, 1999, announcing a public 60-day comment period.

This proposed amendment resulted from an intensive effort by the State of Oregon, led by the Governor, to develop the OCSRI. The OCSRI was intended to restore coastal coho populations and to prevent the need for listing the stock under the Endangered Species Act (ESA). While the OCN coho have since been listed as threatened, NMFS considers the OCSRI important for the recovery of the stock. The ODFW proposed Amendment 13 to the Council to implement the fisheries management provisions of the OCSRI throughout both state and Federal waters wherever OCN coho are harvested. The amendment would manage OCN coho on the basis of exploitation rates, not spawner escapement objectives. The determination of appropriate exploitation rates is based on the habitat production potential, incorporating the effects on the stocks of the condition of both freshwater and marine environments. This determination relies heavily on habitat-based assessment and modeling of OCN coho production. One of the amendment's primary goals is to remove fishery-related impacts as a significant impediment to the recovery of depressed OCN coho and to allow rebuilding the component population subgroups to higher levels.

Although Amendment 13 would change the management goals for OCN coho, the major provisions of this amendment would not be codified because the salmon escapement goals are in the FMP rather than in the codified regulations. Therefore, the modification of the OCN escapement goals requires only a minor modification of the regulations that explain that the coho allocation provisions for south of Cape Falcon apply only when coho abundance allows a directed harvest of coho. The existing regulatory language is tied to the existing level of harvest allowed on OCN coho. The proposed rule would change the language to be more generic and accurate.

Implementation of Amendment 13 would require minor changes to the regulatory language in 50 CFR part 660.

Classification

Section 304(a)(1)(D) of the Magnuson-Stevens Act, as amended, requires the Secretary to publish regulations proposed by a Council within 15 days of receipt of the amendment and regulations. At this time, the Secretary has not yet determined that the amendment these rules would implement is consistent with the national standards, other provisions of the Magnuson-Stevens Act, and other applicable law. The Secretary, in making that determination, will take into account the data, views, and comments received during the comment period.

The Assistant General for Legislation and Regulation of the Department of Commerce certified to the Chief Counsel for Advocacy of the Small Business Administration that this proposed rule, if adopted, would not have a significant economic impact on a substantial number of small entities as follows:

> This proposed rule would make minor modifications to regulatory language to clarify that the existing regulatory allocations apply only when there are sufficient coho for directed harvest. This modification will not result in any changes to the current management of the fisheries and thus will have no economic impacts on any small entities.

The Council prepared a regulatory impact review (RIR) and an initial regulatory flexibility analysis (IRFA) on

the portions of the plan amendment that are not codified in this rule. The RIR and IRFA are incorporated in the Amendment 13 document and may be obtained from the Council (see **ADDRESSES**).

The Council prepared an environmental assessment for this amendment that concludes there will be no significant impact on the environment as a result of the amendment or this rule. The environmental assessment has been incorporated in the Amendment 13 document and may be obtained from the Council (see **ADDRESSES**).

NMFS prepared an Issues Attachment, which summarizes and responds to comments from the Council's technical teams and Council members regarding the plan amendment (see **ADDRESSES**).

List of Subjects in 50 CFR Part 660

Administrative practice and procedure, American Samoa, Fisheries, Fishing, Guam, Hawaiian Natives, Indians, Northern Marianas Islands, Reporting and recordkeeping requirements.

Dated: March 1, 1999.

For the reasons set forth in the preamble, 50 CFR part 660 is proposed to be amended as follows:

PART 660—FISHERIES OFF WEST COAST STATES AND IN THE WESTERN PACIFIC

1. The authority citation for part 660 continues to read as follows:

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

2. In § 660.408, paragraph (c)(2)(iv) is revised to read as follows:

§ 660.408 Annual actions.

* * * * *

(c) * * *

(2) * * *

(iv) *Oregon coastal natural coho*. The allocation provisions in (c)(2) of this section provide guidance only when coho abundance permits a directed coho harvest, not when the allowable harvest impacts are insufficient to allow coho retention south of Cape Falcon. At such low levels, allowable harvest impacts will be allocated during the Council's preseason process.

* * * * *

[FR Doc. 99–5361 Filed 3-3-99; 8:45 am]

BILLING CODE 3510–22–F

Notices

Federal Register
Vol. 64, No. 42
Thursday, March 4, 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

Agricultural Marketing Service

[FV–99–329N]

United States Standards for Grades of Canned Whole Kernel (Whole Grain) Corn

AGENCY: Agricultural Marketing Service, USDA.

ACTION: Notice.

SUMMARY: The Agricultural Marketing Service (AMS) of the Department of Agriculture (USDA) is soliciting comments on its proposal to change the United States Standards for Grades of Canned Whole Kernel (Whole Grain) Corn. Specifically, USDA is proposing to provide for the ''individual attributes'' procedure for product grading with sample sizes, acceptable quality levels (AQL's), tolerances and acceptance numbers (number of allowable defects); include varietal types of supersweet and genetically modified varieties in the grade standards; replace dual grade nomenclature with single letter grade designations; remove the recommended minimum drained weight criteria from the grade standards and provide the criteria in the grading manual; remove the score sheet for canned whole kernel corn; and make minor editorial changes.

DATES: Comments must be submitted on or before May 3, 1999.

ADDRESSES: Interested persons are invited to submit their written comments to Karen L. Kaufman, Processed Products Branch, Fruit and Vegetable Programs, Agricultural Marketing Service, U.S. Department of Agriculture, STOP 0247, P.O. Box 96456; Washington, DC 20090–6456; fax (202) 690–1087; or e-mail karen__l__kaufman@usda.gov.

Comments should reference the date and page of this issue of the **Federal Register**. All comments received will be made available for public inspection at the address listed above during regular business hours. The current United States Standards for Grades of Canned Whole Kernel (Whole Grain) Corn, along with the proposed changes, are available either through the address cited above or by accessing AMS's Home Page on the Internet at: www.ams.usda.gov/standards/vegcan.htm.

FOR FURTHER INFORMATION CONTACT: Karen L. Kaufman at (202) 720–5021.

SUPPLEMENTARY INFORMATION: Section 203(c) of the Agricultural Marketing Act of 1946, as amended, directs and authorizes the Secretary of Agriculture ''to develop and improve standards of quality, condition, quantity, grade and packaging and recommend and demonstrate such standards in order to encourage uniformity and consistency in commercial practices. * * *'' Agricultural Marketing Service (AMS) is committed to carrying out this authority in a manner that facilitates the marketing of agricultural commodities and makes copies of official standards available upon request. The United States Standards for Grades of Canned Whole Kernel Corn do not appear in the Code of Federal Regulations but are maintained by USDA. Copies of official standards are available upon request.

Specifically, AMS proposes to change the United States Standards for Grades of Canned Whole Kernel (Whole Grain) Corn using procedures that appear in Part 36 of Title 7 of the Code of Federal Regulations (7 CFR Part 36). AMS is proposing to provide for the ''individual attributes'' procedure for product grading with sample sizes, acceptable quality levels (AQL's), tolerances and acceptance numbers (number of allowable defects); include varietal types of supersweet and genetically modified varieties in the grade standards; replace dual grade nomenclature with single letter grade designations; remove the recommended minimum drained weight criteria from the grade standards and provide the criteria in the grading manual; remove the score sheet for canned whole kernel corn; and make minor editorial changes. These changes will allow for a more equitable marketing environment for domestic whole kernel corn processors.

AMS received a petition from the National Food Processors Association (NFPA), requesting that the U.S. grade standards for canned whole kernel corn be revised. NFPA represents over 550 food industry companies [1].

NFPA specifically requested that the U.S. grade standards for canned whole kernel corn, which are currently based on cumulative score points, be modified by converting the U.S. grade standards to statistically-based individual attributes grade standards, similar to the U.S. grade standards for canned green and wax beans (58 FR 4295, January 14, 1993).

In addition, NFPA requested the grade standards include other varietal types i.e., supersweet and genetically modified sweet corn. These newer varieties possess flavor, tenderness, and maturity characteristics that vary somewhat from conventional corn. The proposed revision of the grade standards would include the quality characteristics for these varietal types, for example, appearance, cut, flavor and odor, tenderness and maturity, extraneous vegetable material, specified defects, seriously damaged kernels, damaged kernels and pulled kernels.

Another proposed change would replace dual grade nomenclature with single letter designations. ''U.S. Grade A'' (or ''U.S. Fancy''), ''U.S. Grade B'' (or U.S. Extra Standard), and ''U.S. Grade C'' (or ''U.S. Standard'') would become ''U.S. Grade A,'' ''U.S. Grade B,'' and ''U.S. Grade C'', respectively.

NFPA also proposed removing the recommended minimum drained weight criteria from the grade standards and relocating it in the Grading Manual for Canned Whole Kernel Corn since drained weight, as such, is not a factor of quality for the purpose of these grades.

This proposed revision would remove the ''Score sheet for canned whole kernel (or whole grain) corn and canned whole kernel (or whole grain) vacuum pack corn'', from the U.S. grade standards since this scoresheet is not needed for individual attributes-type grade standard.

This proposed change includes minor editorial changes and provides a uniform format consistent with recent revisions of other U.S. grade standards. In addition, this format has been designed to provide industry personnel and agricultural commodity graders with simpler and more comprehensive standards.

[1] Source—USDA, NASS, ASB

AMS has reviewed the petitions and data submitted, gathered information from government and industry resources and is proposing to revise the standards based on the recommended changes.

A 60 day comment period is provided for interested persons to comment on changes to the standards.

Authority: 7 U.S.C. 1621–1627.

Dated: February 26, 1999.

Robert C. Keeney,

Deputy Administrator, Fruit and Vegetable Programs.

[FR Doc. 99–5356 Filed 3–3–99; 8:45 am]

BILLING CODE 3410–02–P

DEPARTMENT OF AGRICULTURE

Agricultural Marketing Service

[S&T99–001]

Plant Variety Protection Advisory Board; Open Meeting

AGENCY: Agricultural Marketing Service, USDA.

ACTION: Notice of meeting.

SUMMARY: This notice sets forth the schedule and proposed agenda of a forthcoming meeting of the Plant Variety Protection Advisory Board.

DATES: March 24, 1999, 9 a.m. to 5 p.m., open to the public.

ADDRESSES: The meeting will be held in the National Agricultural Library Building, Conference Room 1400 (Fourteenth Floor), Beltsville, Maryland.

FOR FURTHER INFORMATION CONTACT: Alan A. Atchley, Acting Commissioner, Plant Variety Protection Office, Room 500, National Agricultural Library Building, Beltsville, Maryland 20705 (301/504–5518).

SUPPLEMENTARY INFORMATION: Pursuant to the provisions of section 10(a) of the Federal Advisory Committee Act (Pub.L. 92–463), this notice is given concerning a Plant Variety Protection Advisory Board meeting. The Board is established pursuant to the Plant Variety Protection Act (7 U.S.C. 2321, *et seq.*). The proposed agenda for the meeting will include discussions of: (1) a proposal to increase user fees for the Plant Variety Protection Office, (2) the handling of Plant Variety Protection Office decisions which are being protested by applicants, (3) long term strategic planning for efficient functioning of the Plant Variety Protection Office, and (4) and other related topics. Written comments may be submitted to the contact person listed above before or after the meeting.

Dated: February 26, 1999.

Kenneth C. Clayton,

Acting Administrator.

[FR Doc. 99–5357 Filed 3–3–99; 8:45 am]

BILLING CODE 3410–02–P

DEPARTMENT OF AGRICULTURE

Animal and Plant Health Inspection Service

[Docket No. 99–002–1]

University of Saskatchewan; Receipt of Petition for Determination of Nonregulated Status for Flax Genetically Engineered for Tolerance to Soil Residues of Sulfonylurea Herbicides

AGENCY: Animal and Plant Health Inspection Service, USDA.

ACTION: Notice.

SUMMARY: We are advising the public that the Animal and Plant Health Inspection Service has received a petition from the University of Saskatchewan seeking a determination of nonregulated status for a flax line designated as CDC Triffid, which has been genetically engineered for tolerance to residues of sulfonylurea herbicides in soil. The petition has been submitted in accordance with our regulations concerning the introduction of certain genetically engineered organisms and products. In accordance with those regulations, we are soliciting public comments on whether this flax line presents a plant pest risk.

DATES: Written comments must be received on or before May 3, 1999.

ADDRESSES: Please send an original and three copies of your comments to Docket No. 99–002–1, Regulatory Analysis and Development, PPD, APHIS, Suite 3C03, 4700 River Road, Unit 118, Riverdale, MD 20737–1238. Please state that your comments refer to Docket No. 99–002–1. A copy of the petition and any comments received may be inspected at USDA, room 1141, South Building, 14th Street and Independence Avenue SW., Washington, DC, between 8 a.m. and 4:30 p.m., Monday through Friday, except holidays. Persons wishing access to that room to inspect the petition or comments are asked to call in advance of visiting at (202) 690–2817 to facilitate entry into the reading room.

FOR FURTHER INFORMATION CONTACT: Dr. James White, Biotechnology and Biological Analysis, PPQ, APHIS, Suite 5B05, 4700 River Road, Unit 147, Riverdale, MD 20737–1236; (301) 734–5940. To obtain a copy of the petition, contact Ms. Kay Peterson at (301) 734–4885; e-mail: Kay.Peterson@usda.gov.

SUPPLEMENTARY INFORMATION: The regulations in 7 CFR part 340, ''Introduction of Organisms and Products Altered or Produced Through Genetic Engineering Which Are Plant Pests or Which There Is Reason to Believe Are Plant Pests,'' regulate, among other things, the introduction (importation, interstate movement, or release into the environment) of organisms and products altered or produced through genetic engineering that are plant pests or that there is reason to believe are plant pests. Such genetically engineered organisms and products are considered ''regulated articles.''

The regulations in § 340.6(a) provide that any person may submit a petition to the Animal and Plant Health Inspection Service (APHIS) seeking a determination that an article should not be regulated under 7 CFR part 340. Paragraphs (b) and (c) of § 340.6 describe the form that a petition for determination of nonregulated status must take and the information that must be included in the petition.

On December 1, 1998, APHIS received a petition (APHIS Petition No. 98–335–01p) from the Crop Development Centre (CDC) of the University of Saskatchewan (CDC/Saskatchewan) of Saskatchewan, Saskatoon, Canada, requesting a determination of nonregulated status under 7 CFR part 340 for a flax (*Linum usitatissimum* L.) line designated as CDC Triffid, which has been genetically engineered for tolerance to residues of sulfonylurea herbicides in soil. The CDC Triffid flax line was developed for use as a rotational crop alternative with cereals such as wheat and barley on soils containing residues of sulfonylurea herbicides. The CDC/Saskatchewan petition states that the subject flax line should not be regulated by APHIS because it does not present a plant pest risk.

As described in the petition, the CDC Triffid flax line has been genetically engineered to contain a modified acetolactate synthase (*als*) gene derived from *Arabidopsis thaliana*. The *als* gene encodes a modified acetolactate synthase enzyme that extends to root tissues the reported natural ability of flax to withstand sulfonylurea herbicides. The subject flax line also contains and expresses the nopaline synthase (*nos*) gene derived from *Agrobacterium tumefaciens* and the neomycin phosphotransferase-II (*nptII*) gene derived from *Escherchia coli*. The *nos* and *nptII* genes are used as selectable markers during the plant

transformation process. Expression of the added genes is controlled in part by gene sequences from the plant pathogen *A. tumefaciens*, and the *A. tumefaciens* method was used to transfer the added genes into the parental Norlin commercial flax variety.

The CDC Triffid flax line has been considered a regulated article under the regulations in 7 CFR part 340 because it contains gene sequences from a plant pathogen. The subject flax line was extensively field tested under confined conditions in Canada in Saskatchewan, Manitoba, and Alberta between 1989 and 1995, and grown under unconfined conditions in Canada since 1996. Field test data and site monitoring indicate no risk of plant pest introduction or dissemination and no negative environmental impacts from the field testing or unconfined release of this flax line. The CDC Triffid flax line was cleared for variety registration, unrestricted environmental release, and use as animal feed in 1996 by Agriculture and Agri-Food Canada, and Health Canada granted human food approval in 1998.

In the Federal Plant Pest Act, as amended (7 U.S.C. 150aa *et seq.*), ''plant pest'' is defined as ''any living stage of: Any insects, mites, nematodes, slugs, snails, protozoa, or other invertebrate animals, bacteria, fungi, other parasitic plants or reproductive parts thereof, viruses, or any organisms similar to or allied with any of the foregoing, or any infectious substances, which can directly or indirectly injure or cause disease or damage in any plants or parts thereof, or any processed, manufactured or other products of plants.'' APHIS views this definition very broadly. The definition covers direct or indirect injury, disease, or damage not just to agricultural crops, but also to plants in general, for example, native species, as well as to organisms that may be beneficial to plants, for example, honeybees, rhizobia, etc.

The U.S. Environmental Protection Agency (EPA) is responsible for the regulation of pesticides under the Federal Insecticide, Fungicide, and Rodenticide Act (FIFRA), as amended (7 U.S.C. 136 *et seq.*). FIFRA requires that all pesticides, including herbicides, be registered prior to distribution or sale, unless exempt by EPA regulation. In cases in which genetically modified plants allow for a new use of an herbicide or involve a different use pattern for the herbicide, EPA must approve the new or different use. When the use of the herbicide on the genetically modified plant would result in an increase in the residues of the herbicide in a food or feed crop for which the herbicide is currently registered, or in new residues in a crop for which the herbicide is not currently registered, establishment of a new tolerance or a revision of the existing tolerance would be required. Residue tolerances for pesticides are established by EPA under the Federal Food, Drug and Cosmetic Act (FFDCA), as amended (21 U.S.C. 301 *et seq.*), and the Food and Drug Administration (FDA) enforces tolerances set by EPA under the FFDCA. Sulfonylurea herbicides are not registered for use on flax in either the United States or Canada.

FDA published a statement of policy on foods derived from new plant varieties in the **Federal Register** on May 29, 1992 (57 FR 22984–23005). The FDA statement of policy includes a discussion of FDA's authority for ensuring food safety under the FFDCA, and provides guidance to industry on the scientific considerations associated with the development of foods derived from new plant varieties, including those plants developed through the techniques of genetic engineering. CDC/Saskatchewan completed consultation with FDA in 1998 on the subject flax line.

In accordance with § 340.6(d) of the regulations, we are publishing this notice to inform the public that APHIS will accept written comments regarding the Petition for Determination of Nonregulated Status from any interested person for a period of 60 days from the date of this notice. The petition and any comments received are available for public review, and copies of the petition may be ordered from the individual listed under **FOR FURTHER INFORMATION CONTACT**.

After the comment period closes, APHIS will review the data submitted by the petitioner, all written comments received during the comment period, and any other relevant information. Based on the available information, APHIS will furnish a response to the petitioner, either approving the petition in whole or in part, or denying the petition. APHIS will then publish a notice in the **Federal Register** announcing the regulatory status of the CDC/Saskatchewan CDC Triffid flax line and the availability of APHIS' written decision.

Authority: 7 U.S.C. 150aa–150jj, 151–167, and 1622n; 31 U.S.C. 9701; 7 CFR 2.22, 2.80, and 371.2(c).

Done in Washington, DC, this 26th day of February 1999.

Joan M. Arnoldi,

Acting Administrator, Animal and Plant Health Inspection Service.

[FR Doc. 99–5360 Filed 3–3–99; 8:45 am]

BILLING CODE 3410–34–P

COMMISSION ON CIVIL RIGHTS

Agenda and Notice of Public Meeting of the Maryland Advisory Committee

Notice is hereby given, pursuant to the provisions of the rules and regulations of the U.S. Commission on Civil Rights, that a meeting of the Maryland Advisory Committee to the Commission will convene at 10:00 a.m. and adjourn at 2:00 p.m. on March 24, 1999, at the Montgomery County Human Relations Commission, 164 Rollins Avenue, The Blue Conference Room, Rockville, Maryland 20852. The purpose of the meeting is to update project activity and orient the newly appointed members.

Persons desiring additional information, or planning a presentation to the Committee, should contact Ki-Taek Chun, Director of the Eastern Regional Office, 202–376–7533 (TDD 202–376–8116). Hearing-impaired persons who will attend the meeting and require the services of a sign language interpreter should contact the Regional Office at least ten (10) working days before the scheduled date of the meeting.

The meeting will be conducted pursuant to the provisions of the rules and regulations of the Commission.

Dated at Washington, DC, February 23, 1999.

Carol-Lee Hurley,

Chief, Regional Programs Coordination Unit.

[FR Doc. 99–5353 Filed 3–3–99; 8:45 am]

BILLING CODE 6335–01–P

DEPARTMENT OF COMMERCE

International Trade Administration

[A–583–832]

Notice of Postponement of Preliminary Determination of Sales at Less Than Fair Value: Dynamic Random Access Memory Semiconductors of One Megabit and Above (DRAMs) From Taiwan

AGENCY: Import Administration, International Trade Administration, Department of Commerce.

EFFECTIVE DATE: March 4, 1999.

FOR FURTHER INFORMATION CONTACT: Thomas Futtner or Alexander Amdur,

Import Administration, International Trade Administration, U.S. Department of Commerce, 14th Street and Constitution Avenue, N.W., Washington, D.C. 20230; telephone: (202) 482–3814 or (202) 482–5346, respectively.

POSTPONEMENT OF PRELIMINARY DETERMINATION: On November 18, 1998, the Department initiated the antidumping duty investigation of imports of DRAMs from Taiwan. The notice of initiation stated that we would issue our preliminary determination by April 1, 1999 (63 FR 60404, November 18, 1998).

On February 18, 1999, petitioner, Micron Technology, Inc., made a timely request pursuant to19 CFR 351.205(e) of the Department's regulations for a postponement of the preliminary determination, pursuant to section 733(c)(1) of the Tariff Act of 1930, as amended (the Act). Petitioner requested a postponement in order to allow additional time for the Department to analyze the anticipated voluminous, and unusually complex, sales and cost of production issues in this investigation.

For the reasons identified by petitioner, we are postponing the preliminary determination under section 733(c)(1)(A) of the Act (*See* memorandum from Holly Kuga to Robert LaRussa, dated February 26, 1999). We will make our preliminary determination no later than May 21, 1999.

This notice is published pursuant to section 733(c)(2) of the Act and 19 CFR 351.205(f).

Dated: February 26, 1999.

Holly Kuga,

Acting Deputy Assistant Secretary, Group II, AD/CVD Enforcement, Import Administration.

[FR Doc. 99–5394 Filed 3–3–99; 8:45 am]

BILLING CODE 3510–DS–P

DEPARTMENT OF COMMERCE

International Trade Administration

[A–588–837]

Large Newspaper Printing Presses and Components Thereof, Whether Assembled or Unassembled, From Japan: Postponement of Preliminary Results of the First and Second Administrative Reviews of Antidumping Duty Order

AGENCY: Import Administration, International Trade Administration, Department of Commerce.

ACTION: Notice of extension of the time limit for the preliminary results in the first and second administrative reviews of the antidumping duty order on large newspaper printing presses from Japan.

SUMMARY: The Department of Commerce (''the Department'') is extending the time limit for the preliminary results of the first and second administrative reviews of the antidumping duty order on large newspaper printing presses from Japan. These reviews cover the period September 5, 1996, through August 31, 1998 for Mitsubishi Heavy Industries (''MHI'')[1] and for the period September 1, 1997, through August 31, 1998 for Tokyo Kikai Seisakusho (''TKS'').[2]

EFFECTIVE DATE: March 4, 1999.

FOR FURTHER INFORMATION CONTACT: Kate Johnson, at (202) 482–4929, or Dinah McDougall, at (202) 482–3773, Office of AD/CVD Enforcement, Import Administration, International Trade Administration, U.S. Department of Commerce, 14th Street and Constitution Avenue, N.W., Washington, D.C., 20230.

POSTPONEMENT OF PRELIMINARY RESULTS OF ADMINISTRATIVE REVIEW: The Department initiated reviews of the antidumping duty order on LNPP from Japan on October 29, 1998 (63 FR 58009) for MHI, and on November 30, 1998 (63 FR 6548) for TKS. The current deadline for the preliminary results in these reviews is June 2, 1999. In accordance with section 751(a)(3)(A) of the Tariff Act of 1930, as amended, the Department finds that it is not practicable to complete the first and second administrative reviews of the antidumping order on large newspaper printing presses from Japan within this time limit. Specifically, the Department finds that additional time is needed to adequately consider the complexity of the issues involved in these reviews. (*See* memorandum from Holly Kuga to Robert LaRussa, dated February 26, 1999). Thus the Department is extending the time limit for completion of the preliminary results of these reviews until September 30, 1999, which is 365 days after the last day of the anniversary month of the order. The final determination will occur within 120 days of the publication of the preliminary results.

Dated: February 26, 1999.

Holly A. Kuga,

Acting Deputy Assistant Secretary for Import Administration.

[FR Doc. 99–5395 Filed 3–3–99; 8:45 am]

BILLING CODE 3510–DS–P

[1] The initiation of the first administrative review of this antidumping duty order on LNPPs from Japan with respect to MHI (covering the period September 5, 1996 through August 31, 1997) was deferred at the request of the petitioner, until the initiation of the second administrative review (covering the period September 1, 1997 through August 31, 1998). Thus both reviews with respect to MHI are being conducted concurrently.

[2] There was no request for an administrative review of the LNPP order with respect to TKS for the period September 5, 1996 through August 31, 1997.

DEPARTMENT OF COMMERCE

International Trade Administration

[A–570–847]

Persulfates From the People's Republic of China: Postponement of Preliminary Results of Antidumping Duty Administrative Review

AGENCY: Import Administration, International Trade Administration, Department of Commerce

ACTION: Extension of time limits for preliminary results of antidumping duty administrative review.

SUMMARY: The Department of Commerce is extending by 120 days the time limit of the preliminary results of the antidumping duty administrative review of the antidumping duty order on persulfates from the People's Republic of China (PRC) covering the period December 27, 1996, through June 30, 1998, since it is not practicable to complete this review within the time limits mandated by the Tariff Act of 1930, as amended.

EFFECTIVE DATE: March 4, 1999.

FOR FURTHER INFORMATION CONTACT: Sunkyu Kim, at (202) 482–2613; or James M. Nunno II, at (202) 482–0783, Import Administration, International Trade Administration, U.S. Department of Commerce, 14th Street and Constitution Avenue, N.W., Washington, D.C. 20230.

POSTPONEMENT OF PRELIMINARY RESULTS OF REVIEW: Section 751(a)(3)(A) of the Act requires the Department to make a preliminary determination in an administrative review within 245 days after the last day of the anniversary month of an order for which a review is requested and a final determination within 120 days after the date on which the preliminary determination is published. However, section 751(a)(3)(A) of the Act provides that when it is not practicable to complete the review within the specified time period, the Department may extend this time period by 120 days. We determine that it is not practicable to complete the preliminary results of this review within the original time frame. *See* Decision Memorandum from Holly A. Kuga,

Acting Deputy Assistant Secretary, to Robert S. LaRussa, Assistant Secretary. Accordingly, the deadline for issuing the preliminary results of this review is now due no later than July 31, 1999. In accordance with section 751(a)(3)(A) of the Act, we plan to issue the final results of this administrative review within 120 days after publication of the preliminary results.

Dated: February 26, 1999.

Holly A. Kuga,

Acting Deputy Assistant Secretary, Import Administration.

[FR Doc. 99–5397 Filed 3–3–99; 8:45 am]

BILLING CODE 3510–DS–P

DEPARTMENT OF COMMERCE

International Trade Administration

[A–588–833]

Stainless Steel Bar From Japan: Preliminary Results of Antidumping Administrative Review

AGENCY: Import Administration, International Trade Administration, Department of Commerce.

ACTION: Notice of preliminary results of antidumping administrative review.

SUMMARY: The Department of Commerce is conducting an administrative review of the antidumping duty order on stainless steel bar from Japan in response to a request from a respondent, Aichi Steel Works, Ltd. This review covers the period February 1, 1997, through January 31, 1998.

We preliminarily determine that sales have been made below normal value (NV). Interested parties are invited to comment on these preliminary results. Parties who submit argument are requested to submit with the argument (1) a statement of the issue and (2) a brief summary of the argument.

EFFECTIVE DATE: March 4, 1999.

FOR FURTHER INFORMATION CONTACT: Minoo Hatten or Robin Gray, Office of AD/CVD Enforcement, Import Administration, International Trade Administration, U.S. Department of Commerce, 14th Street and Constitution Avenue, N.W., Washington, D.C. 20230; telephone (202) 482–1690 or (202) 482–4023, respectively.

SUPPLEMENTARY INFORMATION:

The Applicable Statute

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 of Commerce's (the Department's) regulations are to 19 CFR Part 351 (1998).

Background

On February 27, 1998, the Department received a request from Aichi Steel Works, Ltd. (Aichi) to conduct an administrative review of the antidumping duty order on stainless steel bar (SSB) from Japan. On March 23, 1998, the Department published a notice of initiation of an administrative review of Aichi, covering the period February 1, 1997, through January 31, 1998, in the **Federal Register** (63 FR 13837).

On May 29, 1998, Al Tech Specialty Steel Corp., Dunkirk, N.Y., Carpenter Technology Corp., Reading, PA, Republic Engineered Steels, Inc., Massillon, OH, Slater Steels Corp., Fort Wayne, IN, Talley Metals Technology, Inc., Hartsville, SC, and the United Steel Workers of America, AFL–CIO/CLC, collectively petitioners in the less-than-fair value (LTFV) investigation (hereafter petitioners), requested that the Department conduct an investigation to determine if Aichi made sales at prices below its cost of production (COP) during the 1997–1998 review period.

On July 10, 1998, based on petitioners' allegation and the evidence on the record, the Department determined that there were reasonable grounds to believe or suspect that Aichi made sales at prices below its COP, in accordance with section 773(b)(2) (A)(i) of the Act, and initiated a COP investigation of Aichi pursuant to section 773(b)(1) of the Act (see the Memorandum To File (July 10, 1998) located in Room B–099 of the main Commerce building).

On September 28, 1998, the Department conducted a sales verification using standard verification procedures. Our verification results are outlined in the public version of the verification report (*see* verification report from analysts to file, dated December 21, 1998).

Scope of Review

The merchandise covered by this review is stainless steel bar (SSB). For purposes of this review, the term ''stainless steel bar'' means articles of stainless steel in straight lengths that have been either hot-rolled, forged, turned, cold-drawn, cold-rolled or otherwise cold-finished, or ground, having a uniform solid cross section along their whole length in the shape of circles, segments of circles, ovals, rectangles (including squares), triangles, hexagons, octagons or other convex polygons. SSB includes cold-finished SSBs that are turned or ground in straight lengths, whether cold-finished SSBs that are turned or ground in straight lengths, whether produced from hot-rolled bar or from straightened and cut rod or wire, and reinforcing bars that have indentations, ribs, groves, or other deformations produced during the rolling process.

Except as specified above, the term does not include stainless steel semi-finished products, cut-length flat-rolled products (*i.e.*, cut-length rolled products which if less than 4.75 mm in thickness have a width measuring at least 10 times the thickness or if 4.75 mm or more in thickness having a width which exceeds 150 mm and measures at least twice the thickness), wire (i.e., cold-formed products in coils, of any uniform solid cross section along their whole length, which do not conform to the definition of flat-rolled products), and angles, shapes and sections.

The SSB subject to this order is currently classifiable under subheadings 7222.10.0005, 7222.10.0050, 7222.20.0005, 7222.20.0045, 7222.20.0075, and 7222.30.0000 of the Harmonized Tariff Schedule of the United States (''HTSUS''). Although the HTSUS subheadings are provided for convenience and customs purposes, our written description of the scope of this order is dispositive.

United States Price

In calculating the price to the United States, we used export price (EP) as defined in section 772(a) of the Act, because the subject merchandise was sold to an unaffiliated U.S. purchaser in the United States prior to the date of importation into the United States and the use of constructed export price was not indicated by the facts of record.

We calculated EP for U.S. sales based on F.O.B. Japan port prices to the United States. We made adjustments, where appropriate, for domestic inland freight, warehousing expenses, and brokerage and handling, in accordance with section 772(c)(2)(A) of the Act.

Aichi claimed that an upward adjustment to EP was appropriate to account for a ''duty drawback'' program. As stated in Certain Welded Carbon Standard Steel Pipes and Tubes from India (62 FR 47632, 47635, September 10, 1997), ''we determine whether an adjustment to U.S. price for a respondent's claimed duty drawback is appropriate when the respondent can demonstrate that it meets both parts of our two-part test. There must be: (1) a sufficient link between the import duty

and the rebate, and (2) a sufficient amount of raw materials imported and used in the production of the final exported product.'' As discussed below, because the respondent met these criteria, we have made an adjustment to EP.

Aichi participates in Japan's duty-drawback program through its operation of a ''hozei area,'' which is similar to a bonded warehouse. Aichi posts a bond on all materials that enter the warehouse. If Aichi utilizes the imported materials for the production of merchandise that is exported, Japanese Customs Authority then releases the bond. If the imported materials are not used in the production of exported merchandise, Aichi pays import duties on the materials.

We examined a listing Aichi sent to the hozei area as notification of the export of merchandise that was manufactured using materials entered under bond. We tied specific transactions from this listing to the U.S. sales listing Aichi submitted to the Department. See Verification Report dated December 21, 1998. Thus, we granted an upward adjustment to EP because Aichi was able to show both (1) a link between the import duty and the rebate, and (2) a sufficient amount of raw materials imported and used in the production of the final exported product.

No other adjustments to EP were claimed.

Normal Value

On April 27, 1998, Aichi requested that the Department not require it to report home market sales that would not likely be needed for matching purposes. Aichi claimed that there are a limited number of home market sales of SSB during the period of review (POR) that will match to U.S. sales for purposes of calculating dumping margins. In addition, Aichi requested that it not be required to report resale information for its affiliated customers (downstream sales), with the exception of its subsidiary trading company, Aiko Corporation.

On May 1, 1998, the Department granted Aichi's request in part by permitting Aichi to report only home market sales of hot-rolled merchandise. In the letter of May 1, 1998, the Department requested additional information from Aichi concerning its downstream sales. On June 11, 1998, the Department issued additional questions seeking further clarification of downstream-sales information.

After a complete analysis of all the information on the record, on July 14, 1998, the Department informed Aichi that it was required to report all downstream sales made by its affiliates.

In order to determine whether there is a sufficient volume of sales in the home market to serve as a basis for calculating NV, we compare the respondent's volume of home market sales of the foreign like product to the volume of U.S. sales of the subject merchandise, in accordance with section 773(a) of the Act. Because the aggregate volume of home market sales of the foreign like product was greater than five percent of the aggregate volume of U.S. sales of the subject merchandise, we determined that the home market provides a viable basis for calculating NV. Therefore, in accordance with section 773(a)(1)(B)(i) of the Act, we based NV on the price at which the foreign like product was first sold to unaffiliated customers for consumption in the exporting country, in the usual commercial quantities and in the ordinary course of trade. We matched EP sales to sales at the same LOT in the home market and made no LOT adjustment. (See *Level of Trade* below.)

After disregarding appropriate below-cost sales (see *Cost-of-Production Analysis* below), pursuant to section 777A(d)(2) of the Act, we compared the EP sales of individual transactions to the monthly weighted-average price of sales of the most similar foreign like product. Where possible, we based NV on delivered prices to unaffiliated purchasers in the home market. Where applicable, we made adjustments to home market price for billing adjustments, inland freight, warehousing expenses, discounts and rebates. Subject merchandise sold in the United States was compared to home market products by applying the following criteria on a hierarchical basis: general type of finish, grade, remelting, type of final finishing operation, shape and size.

Home market prices were based on delivered prices to affiliated or unaffiliated purchasers. When applicable, we made adjustments for differences in packing and for movement expenses in accordance with sections 773(a)(6)(A) and (B) of the Act. We also made adjustments for differences in cost attributable to differences in physical characteristics of the merchandise pursuant to section 773(a)(6)(C)(ii) of the Act and for differences in circumstances of sale (COS) in accordance with section 773(a)(6)(C)(iii) of the Act and 19 CFR 351.410. To make COS adjustments, we reduced home market price by an amount for home market credit and we increased it by an amount for U.S. credit expenses.

Level of Trade

As set forth in section 773(a)(1)(B)(i) of the Act and in the Statement of Administrative Action (SAA) accompanying the Uruguay Round Agreements Act, at 829–831 (see H.R. Doc. No. 316, 103d Cong., 2d Sess. 829–831 (1994)), to the extent practicable, the Department calculates NV based on sales at the same level of trade (LOT) as the U.S. sales (either EP or Constructed Export Price). When the Department is unable to find sale(s) in the comparison market at the same LOT as the U.S. sale(s), the Department may compare sales in the U.S. and foreign markets at different LOTs. The NV LOT is that of the starting-price sales in the home market. When NV is based on CV, the LOT is that of the sales from which we derive selling, general and administrative expenses (SG&A) and profit.

To determine whether home market sales are at a different LOT than U.S. sales, we examine stages in the marketing process and selling functions along the chain of distribution between the producer and the unaffiliated customer. If the comparison-market sales are at a different LOT and the differences affect price comparability, as manifested in a pattern of consistent price differences between the sales on which NV is based and comparison-market sales at the LOT of the export transaction, we make a LOT adjustment under section 773(a)(7)(A) of the Tariff Act. See *Notice of Final Determination of Sales at Less Than Fair Value: Certain Cut-to-Length Carbon Steel Plate from South Africa*, 62 FR 61731 (November 19, 1997).

In implementing these principles in this review, we examined information from the respondent regarding the marketing stages involved in the reported home market and EP sales, including a description of the selling activities performed by Aichi for each channel of distribution. Aichi reported three channels of distribution in the home market and claimed five levels of trade for its home market sales—consignment sales to trading companies, consignment sales to direct distributors, non-consignment sales to trading companies, non-consignment sales to distributors and non-consignment sales to end-users. During verification, we examined Aichi's reported LOTs further.

Based on our analysis of information on the record, we determine that there are no differences with respect to selling functions between consignment and non-consignment sales. Specifically, there are no differences between

consignment and non-consignment sales with respect to strategic and economic planning, market research, computer, legal, accounting, audit, business systems development assistance, personnel assistance, engineering services, research and development technical programs, advertising, procurement and sourcing, sales calls/assistance and post-sale warehousing. The distinction between consignment and non-consignment sales is that in consignment sales situations, Aichi permits the customer to take possession of the product without requiring that the customer pay for the product until the customer sells to its downstream customer. This distinction, however, does not relate to the nature of the selling activities provided. See Preliminary results analysis memorandum from case analyst to file, dated February 22, 1999, in room B–099.

Aichi reported sales to three types of customers in the home market: trading companies, end-users, and distributors. Selling functions performed with respect to sales to trading companies included strategic and economic planning, market research, computer, legal and business-systems development, engineering services and post-sale warehousing. In addition to these functions, other functions performed for sales to end-users included R&D technical programs, advertising, and sales calls/assistance. Distributors were also offered personnel training and manpower assistance in addition to the services offered to trading companies and end-users. Based on these differences, we found that the three types of home market customers constituted three different levels of trade.

We found that Aichi made EP sales of various models of merchandise through unaffiliated trading companies, a channel of distribution similar to the home market channel involving sales to trading companies. As with sales through the trading-company channel of distribution in the home market, Aichi performed only a few selling functions when selling merchandise to trading companies that exported the merchandise to the United States. Thus, we found that the LOT for this U.S. channel of distribution was the same as the LOT for the home market trading company channel of distribution. See *Id*.

Cost-of-Production Analysis

As stated in the Background section of this notice, the Department initiated a COP investigation for Aichi to determine whether Aichi made home market sales during the POR at prices below their respective COPs (as defined by section 773(b) of the Act). In accordance with section 773(b)(3) of the Act, we calculated the COP based on the sum of the costs of materials and fabrication employed in producing the foreign like product, plus SG&A expenses and all costs and expenses incidental to packing the merchandise. In our COP analysis, we used the home market sales and COP information Aichi provided in its questionnaire responses.

After calculating the COP, in accordance with section 773(b)(1) of the Act, we tested whether home market sales of SSB were made at prices below the COP within an extended period of time in substantial quantities and whether such prices permitted the recovery of all costs within a reasonable period of time. We compared model-specific COPs to the reported home market prices less any applicable movement charges, discounts, and rebates.

Pursuant to section 773(b)(2)(C) of the Act, when less than 20 percent of Aichi's sales of a given product were at prices below the COP, we did not disregard any below-cost sales of that product because the below-cost sales were not made in substantial quantities within an extended period of time. When 20 percent or more of Aichi's sales of a given product during the POR were at prices less than the COP, we disregarded the below-cost sales because they were made in substantial quantities within an extended period of time. See sections 773(b)(2)(B) and (C) of the Act. Additionally, based on comparisons of prices to weighted-average COPs for the POR, we determined that the sales were at prices which would not permit recovery of all costs within a reasonable period of time, as defined by section 773(b)(2)(D) of the Act.

Constructed Value

In accordance with section 773(a)(4) of the Act, we used constructed value (CV) as the basis for NV when there were no usable sales of the foreign like product in the comparison market. We calculated CV in accordance with section 773(e) of the Act. We included the cost of materials and fabrication, SG&A expenses, and profit in the calculation of CV. In accordance with section 773(e)(2)(A) of the Act, we based SG&A expenses and profit on the amounts incurred and realized by Aichi in connection with the production and sale of the foreign like product in the ordinary course of trade for consumption in the home market.

When appropriate, we make adjustments to CV in accordance with section 773(a)(8) of the Act and 19 CFR 351.410 for COS differences and LOT differences. For comparisons to EP, we make COS adjustments by deducting home market direct selling expenses from and adding U.S. direct selling expenses to NV.

We calculated CV at the same LOT as the EP. Therefore we made no LOT adjustment.

Preliminary Results of Review

As a result of our comparison of EP and NV, we preliminarily determine a weighted-average dumping margin of 5.91 percent for Aichi for the period February 1, 1997, through January 31, 1998.

Any interested party may request a hearing within 30 days of publication of this notice. Any hearing, if requested, will be held 37 days after the date of publication of this notice, or the first workday thereafter. Issues raised in hearings will be limited to those raised in the respective case and rebuttal briefs. Interested parties may submit case briefs within 30 days of the date of publication of this notice. Rebuttal briefs, which must be limited to issues raised in the case briefs, may be filed not later than 35 days after the date of publication.

Parties who submit argument are requested to submit with the argument (1) a statement of the issue, and (2) a brief summary of the argument. The Department will publish a notice of final results of this administrative review, which will include the results of its analysis of issues raised in any such comments or at a hearing.

The Department shall determine, and the Customs Service shall assess, antidumping duties on all appropriate entries. In accordance with 19 CFR 351.212(b)(1), we have calculated an exporter/customer-specific assessment value for subject merchandise. Upon completion of this review, the Department will issue appraisement instructions directly to the Customs Service.

Furthermore, the following deposit rates will be effective upon publication of the final results of this administrative review for all shipments of SSB from Japan entered, or withdrawn from warehouse, for consumption on or after the publication date, as provided for by section 751(a)(2)(c) of the Act: (1) The cash deposit rate for Aichi will be the rate established in the final results of this review; (2) if the exporter is not a firm covered in this review, or the original LTFV investigation, but the manufacturer is, the cash deposit rate

will be the rate established for the most recent period for the manufacturer of the merchandise; and (3) for all other producers and/or exporters of this merchandise, the cash deposit rate shall be 61.47 percent, the all-others rate established in the LTFV investigation (59 FR 66930, December 28, 1994).

This deposit rate, when imposed, shall remain in effect until publication of the final results of the next administrative review.

This notice also serves as a preliminary reminder to importers of their responsibility under 19 CFR 351.402(f) 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.

We are issuing and publishing this determination in accordance with sections 751(a)(1) and 777(i)(1) of the Act.

Dated: February 26, 1999.

Robert S. LaRussa,

Assistant Secretary for Import Administration.

[FR Doc. 99–5396 Filed 3–3–99; 8:45 am]

BILLING CODE 3510–DS–P

DEPARTMENT OF COMMERCE

International Trade Administration

Industry Sector and Functional Advisory Committees for Trade Policy Matters; Request for Nominations

AGENCY: International Trade Administration, Trade Development.

ACTION: Request for nominations.

SUMMARY: The Secretary of Commerce and the United States Trade Representative (USTR) are seeking nominations for appointment to each of the Industry Sector and Functional Advisory Committees on Trade Policy Matters. Nominations will be accepted for current vacancies and those that occur throughout the remainder of the charter term, which expires March 19, 2000. In order to qualify for representation on an Industry Sector or Functional Advisory Committee (ISAC/IFAC), nominees must be U.S. citizens representing U.S. manufacturing and service firms that trade internationally or an industry association whose members are primarily U.S. owned and are involved in international trade.

Priority will be given to manufacturing establishments and firms that are outside of the Washington, D.C. area. U.S.-based subsidiaries of foreign companies, non-government organizations, and academic institutions do not quality for representation on a committee.

Recruitment: Vacancies occur throughout the charter period and new appointments are made on a rolling basis. Nominations for the current charter period will be accepted at any time up to March 2000. Recruitment information is available on the International Trade Administration website at *www.ita.doc.gov/icp*. Further inquiries may be directed to Tamara Underwood, Acting Director, Industries Consultations Program, U.S. Department of Commerce, 14th and Constitution Avenue, NW, Room 2015–B, Washington, D.C. 20230.

SUPPLEMENTARY INFORMATION: Pursuant to the Federal Advisory Committee Act (5 U.S.C. appendix 2), the Secretary of Commerce (the Secretary) and the United States Trade Representative (USTR) have renewed the Charters of seventeen ISACs and three IFACs. The Secretary and USTR welcome nominations for the Industry Sector Advisory Committees for Trade Policy Matters (ISACs) and the Industry Functional Advisory Committees for Trade Policy Matters (IFACs) listed below:

- Industry Sector Advisory Committees for Trade Policy Matters (ISAC) on:

Aerospace Equipment (ISAC 1);
Capital Goods (ISAC 2);
Chemicals and Allied Products (ISAC 3);
Consumer Goods (ISAC 4);
Electronics and Instrumentation (ISAC 5);
Energy (ISAC 6);
Ferrous Ores and Metals (ISAC 7);
Footwear, Leather, and Leather Products (ISAC 8);
Building Products and Other Materials (ISAC 9);
Lumber and Wood Products (ISAC 10);
Nonferrous Ores and Metals (ISAC 11);
Paper and Paper Products (ISAC 12);
Services (ISAC 13);
Small and Minority Business (ISAC 14);
Textiles and Apparel (ISAC 15);
Transportation, Construction, Mining, and Agricultural Equipment (ISAC 16);
Wholesaling and Retailing (ISAC 17); and

- Industry Functional Advisory Committees on Trade Policy Matters on:

Customs (IFAC 1);
Standards (IFAC 2);
Intellectual Property Rights (IFAC 3).

Background

In section 135 of the Trade Act of 1974 (1974 Trade Act), 19 U.S.C. 2155), as amended, Congress established a private-sector advisory system to ensure that U.S. trade policy and trade negotiation objectives adequately reflect U.S. commercial and economic interests. Section 135 directs the President to

> ''seek information and advice from representative elements of the private sector and the non-Federal governmental sector with respect to—
>
> (A) negotiating objectives and bargaining positions before entering into a trade agreement under [title I of the 1974 Trade Act and section 1102 of the Omnibus Trade and Competitiveness Act of 1988];
>
> (B) the operation of any trade agreement once entered into; including preparation for dispute settlement panel proceedings to which the United States is a party; and
>
> (C) other matters arising in connection with the development, implementation, and administration of the trade policy of the United States. * * *''

The Secretary of Commerce and the USTR co-chair the seventeen ISACs and three IFACs.

Functions

The duties of the ISACs and IFACs are to provide the President with advice on objectives and bargaining positions for multilateral trade negotiations, bilateral trade negotiations, and other trade related matters. The committees provide bipartisan, industry input in the development of trade policy objectives. The committees' efforts result in strengthening the U.S. negotiating position by enabling the United States to display a united front when it negotiates trade agreements with other nations.

The ISACs provide advice and information on issues that affect specific sectors of U.S. industry. The ISACs address market-access problems; barriers to trade; tariff levels; discriminatory foreign procurement practices; information, marketing, and advocacy needs of their sector; and other important trade issues.

The IFACs focus on cross-cutting issues that affect all industry sectors, such as customs matters, product standards, and intellectual property rights. Other functional issues, such as government procurement and subsidies, are handled in ad hoc meetings. Each ISAC may also select a member to serve

on each IFAC so that a broad range of industry perspectives are represented.

Committees meet an average of four times a year in Washington, D.C. Members are responsible for all travel expenses incurred to attend the meetings.

Membership

ISAC and IFAC members are appointed jointly by the Secretary of Commerce and the USTR. Appointments are made at the rechartering of each committee and periodically throughout the two-year charter period. Members serve at the discretion of the Secretary and USTR. Appointments to an ISAC/IFAC expire at the end of the committee's charter. However, members may be reappointed for one or more additional terms should the committee's charter be renewed and if the member proves to work effectively with the committee and his/her expertise is still needed.

Each committee is made up of approximately 30–50 members, based on the Committee charter. Each committee selects a chairperson from the membership of the committee.

Qualifications

For all committees, the Secretary and USTR invite nominations of U.S. citizens who are executives and managers of U.S. manufacturing or service companies that trade internationally. The Secretary and USTR also invite nominations of executives representing trade associations whose members are U.S. companies that trade internationally. Companies must be at least 51 percent beneficially-owned by U.S. persons. U.S.-based subsidiaries of foreign companies do not qualify for representation on the committees.

Nominees are considered based upon their ability to carry out the goals of section 135 of the Trade Act of 1974, as amended. Secondary criteria are ensuring that the committee is balanced in terms of points of view, demographies, geography and company size.

Application Procedures

Requests for applications should be sent to the Director of the Industry Consultations Program, U.S. Department of Commerce, 14th and Constitution Avenue, NW, Room 2015–B, Washington, D.C. 20230.

This notice is issued under the Federal Advisory Committee Act (5 U.S.C., app. 2) and 21 CFR part 14 relating to advisory committees.

Dated: February 23, 1999.

Michael J. Copps,

Assistant Secretary for Trade Development.

[FR Doc. 99–5305 Filed 3–3–99; 8:45 am]

BILLING CODE 3510–DR–U

DEPARTMENT OF COMMERCE

National Institute of Standards and Technology

Announcement of a Public Workshop Regarding Conformity Assessment Bodies for the Medicare Devices Annex of the US/EC Mutual Recognition Agreement

AGENCY: National Institute of Standards and Technology, DOC.

ACTION: Notice of public meeting.

SUMMARY: The National Institute of Standards and Technology, (NIST) invites interested parties to attend a half-day workdshop for the development of requirements for a sub-program under the National Voluntary Conformity Assessment System Evaluation (NVCASE) Program. The sub-program will satisfy the product testing and quality system registration requirements of the Medical Devices Annex of the United States/European Commission Mutual Recognition Agreement. NVCASE procedures require NIST to consult the public establishing requirements to be applied in evaluations conducted within the scope of NVCASE programs. NIST, Food and Drug Administration (FDA), and European Commission (EC) personnel will participate in this workshop. There is no fee for the workshop; however, all attendees must register in advance with the Conformity Assessment Body Response Manager no later than April 2, 1999.

DATES: The NVCASE workshop will be held on April 15, 1999, from 9:00 a.m. to 12:00 p.m.

ADDRESSES: The workshop will be held at the National Institute of Standards and Technology in the Red Auditorium, Administration Building, located at 100 Bureau Drive, Gaithersburg, MD 20899.

FOR FURTHER INFORMATION CONTACT: For further information, you may telephone 301–975–5120. You may register for the workshop by E-mail at scp@nist.gov or by fax at 301–975–5414. You may also register by U.S. mail addressed to Conformity Assessment Body Response Manager, NIST, 100 Bureau Drive, Stop 2100, Gaithersburg, MD 20899–2100.

SUPPLEMENTARY INFORMATION: In accordance with Title 15 Part 286.2(b) of the Code of Federal Regulations, NIST has established this program pursuant to a written request from a U.S. Government Agency, the Food and Drug Administration, in a letter dated March 1, 1998. The FDA announced their intend to use NIST NVCASE program for the Medical Devices Annex of the US/EC Mutual Recognition Agreement in the **Federal Register** on July 2, 1998 (63 FR 36247–36248.

The NVCASE regulations found at 15 CFR Part 286 require NIST to consult the public when establishing requirements to be applied in evaluations conducted within the scope of NVCASE programs. This program under NVCASE will allow U.S. bodies to satisfy the conformity assessment requirements of the Medical Devices Annex of the US/EC Mutual Recognition Agreement.

The NVCASE public workshop will follow the European Commission training workshop for Conformity Assessment Bodies in which EC personnel will outline the requirements of the Medical Devices Annex of the MRA. NIST, FDA and EC personnel will participate in this public workshop. Both NVCASE and EC training workshops will be held at the same location. The text of the US/EC MRA for the Medical Devices sectoral annex can be accessed on the Internet at http://www.iep.doc.gov/mra/mra.htm.

Dated: February 25, 1999.

Karen H. Brown,

Deputy Director.

[FR Doc. 99–5385 Filed 3–3–99; 8:45 am]

BILLING CODE 3510–13–M

DEPARTMENT OF COMMERCE

Patent and Trademark Office

Grant of Certificate of Interim Extension of the Term of U.S. Patent No. 4,229,449: Roboxetine Mesylate

AGENCY: Patent and Trademark Office, Commerce.

ACTION: Notice of interim patent term extension.

SUMMARY: The Patent and Trademark Office has issued a certificate under 35 U.S.C. 156(d)(5) for a one-year interim extension of the term of U.S. Patent No. 4,229,449.

FOR INFORMATION CONTACT: Karin Tyson by telephone at (703) 305–9285; by mail marked to her attention and addressed to the Assistant Commissioner for Patents, Box DAC, Washington, DC 20231; by fax marked to her attention at (703) 308–6916, or by e-mail to karin.tyson@uspto.gov.

SUPPLEMENTARY INFORMATION: Section 156 of Title 35, United States Code,

generally provides that the term of a patent may be extended for a period of up to 5 years if the patent claims a product, or a method of making or using a product, that has been subject to certain defined regulatory review. Under Section 156(e)(1), a patent is eligible for term extension only if regulatory review of the claimed product was completed before the original patent term expired.

On December 3, 1993, § 156 was amended by Pub. L. No. 103–179 to provide that if the owner of record of the patent or its agent reasonably expects the applicable regulatory review period to extend beyond the expiration of the patent, the owner or its agent may submit an application to the Commissioner of Patents and Trademarks for an interim extension of the patent term. If the Commissioner determines that, except for permission to market or use the product commercially, the patent would be eligible for a statutory extension of the patent term, the Commissioner shall issue to the applicant a certificate of interim extension for a period of not more that one year.

On October 9, 1998, patent owner Pharmacia & Upjohn, S.p.A., filed an application under 35 U.S.C. 156(d)(5) for interim extension of the term of U.S. Patent No. 4,229,449. The patent claims the active ingredient roboxetine mesylate. The application indicates that a New Drug Application for the human drug product roboxetine mesylate has been filed and is currently undergoing a regulatory review before the Food and Drug Administration for permission to market or use the product commercially.

Review of the application indicates that except for permission to market or use the product commercially, the subject patent would be eligible for an extension of the patent term under 35 U.S.C. 156. Since it is apparent that the regulatory review period will extend beyond the date of expiration of the patent, interim extension of the patent term under 35 U.S.C. 156(d)(5) is appropriate. Accordingly, an interim extension under 35 U.S.C. 156(d)(5) of the term of U.S. Patent No. 4,229,449 is granted for a period of one year from the original expiration date of the patent, January 8, 1999.

Dated: February 22, 1999.

Q. Todd Dickinson,

Acting Assistant Secretary of Commerce and Acting Commissioner of Patents and Trademarks.

[FR Doc. 99–5291 Filed 3–3–99; 8:45 am]

BILLING CODE 3510–16–P

COMMODITY FUTURES TRADING COMMISSION

Applications of the Chicago Mercantile Exchange for Designation as a Contract Market in E-Mini Nasdaq 100 Futures and Options

AGENCY: Commodity Futures Trading Commission.

ACTION: Notice of availability of terms and conditions of proposed commodity futures and options contract.

SUMMARY: The Chicago Mercantile Exchange (CME or Exchange) has applied for designation as a contract market in E-Mini Nasdaq 100 futures and options. The Acting Director of the Division of Economic Analysis (Division) of the Commission, acting pursuant to the authority delegated by Commission Regulation 140.96, has determined that publication of the proposals for comment is in the public interest, will assist the Commission in considering the views of interested persons, and is consistent with the purpose of the Commodity Exchange Act.

DATES: Comments must be received on or before March 19, 1999.

ADDRESSES: Interested persons should submit their views and comments to Jean A. Webb, Secretary, Commodity Futures Trading Commission, Three Lafayette Centre, 1155 21st Street, NW., Washington, DC 20581. In addition, comments may be sent by facsimile transmission to facsimile number (202) 418–5521 or by electronic mail to *secretary@cftc.gov*. Reference should be made to the CME E-Mini Nasdaq 100 futures and option contracts.

FOR FURTHER INFORMATION CONTACT: Please contact Thomas Leahy of the Division of Economic Analysis, Commodity Futures Trading Commission, Three Lafayette Centre, 1155 21st Street NW., Washington, DC (202) 418–5278. Facsimile number: (202) 418–5527. Electronic mail: *tleahy@cftc.gov*.

SUPPLEMENTARY INFORMATION: There are no substantive issues raised by the applications. In this regard, the proposed contracts are substantially identical (except for the contract size and the minimum price fluctuation) to previously approved contracts based on the Nasdaq 100 index. In approving the existing Nasdaq 100 index contracts, the Commission determined that those contracts satisfied the requirements of the Accord. Accordingly, the Division believes that an abbreviated 15-day comment period is appropriate for the subject applications.

Copies of the terms and conditions will be available for inspection at the Office of the Secretariat, Commodity Futures Trading Commission, Three Lafayette Centre, 1155 21st Street NW., Washington, DC 20581. Copies of the terms and conditions can be obtained through the Office of the Secretariat by mail at the above address or by phone at (202) 418–5100.

Other materials submitted by the CME in support of the applications for contract market designation may be available upon request pursuant to the Freedom of Information Act (5 U.S.C. 552) and the Commission's regulations thereunder (17 CFR Part 145 (1997)), except to the extent they are entitled to confidential treatment as set forth in 17 CFR 145.5 and 145.9. Requests for copies of such materials should be made to the FOI, Privacy and Sunshine Act Compliance Staff of the Office of Secretariat at the Commission's headquarters in accordance with 17 CFR 145.7 and 145.8.

Any person interested in submitting written data, views, or arguments on the proposed terms and conditions, or with respect to other material submitted by the CME, should send such comments to Jean A. Webb, Secretary, Commodity Futures Trading Commission, Three Lafayette Centre, 1155 21st Street NW., Washington, DC 20581 by the specified date.

Issued in Washington, DC, on February 25, 1999.

John R. Mielke,

Acting Director.

[FR Doc. 99–5366 Filed 3–3–99; 8:45 am]

BILLING CODE 6351–01–M

COMMODITY FUTURES TRADING COMMISSION

Chicago Board of Trade Petition for Exemption From the Dual Trading Prohibition in the U.S. Treasury Bond Futures Contract Traded on the Project A Electronic Trading System

AGENCY: Commodity Futures Trading Commission.

ACTION: Order.

SUMMARY: The Commodity Futures Trading Commission (''Commission'') is granting the petition of the Chicago Board of Trade (''CBT'' or ''Exchange'') for exemption from the prohibition against dual trading in the U.S. Treasury Bond futures contract traded on its Project A electronic trading system.

DATES: This Order is to be effective February 26, 1999.

FOR FURTHER INFORMATION CONTACT: Andrew S. Baer, Attorney-Advisor,

Division of Trading and Markets, Commodity Futures Trading Commission, Three Lafayette Centre, 1155 21st St., NW, Washington, DC 20581; telephone (202) 418–5490.

SUPPLEMENTARY INFORMATION: On January 31, 1998, the Chicago Board of Trade (''CBT'' or ''Exchange'') submitted a Petition for Exemption from the Dual Trading Prohibition for its affected U.S. Treasury Bond (''T-Bond'') futures contract [1] as traded on the Exchange's electronic trading system, Project A. Upon consideration of this petition and other matters of record, the Commission hereby finds that CBT meets the standards for granting a dual trading exemption contained in Section 4j(a) of the Act and Commission Regulation 155.5 with regard to Project A T-Bond futures.[2]

Subject to CBT's continuing ability to demonstrate that it meets applicable requirements, the Commission specifically finds that CBT maintains a trade monitoring system for Project A which is capable of detecting and deterring, and is used on a regular basis to detect and deter, all types of violations attributable to dual trading and, to the full extent feasible, other violations involving the making of trades and execution of customer orders, as required by Section 5a(b) of the Act and Commission Regulation 155.5. The Commission further finds that CBT's trade monitoring system for Project A T-Bonds includes audit trail and recordkeeping systems that satisfy Sections 4j(a)(3) and 5a(b) of the Act and Commission Regulations 1.35 and 155.5.[3]

With respect to each required component of the trade monitoring system, the Commission finds as follows:

(a) Physical Observation of Trading Areas—The requirements of Section 5a(b)(1)(A) of the Act are not relevant to Project A trading, insofar as Project A is a computerized, screen-based system and therefore has no floor.

(b) Audit Trail and Recordkeeping Systems—The Exchange's trade monitoring system for Project A T-Bonds satisfies the audit trail standards of Section 5a(b)(1)(B) of the Act in that it is capable of capturing essential data on the terms, participants, and sequence of transactions. The requirements of that Section regarding the capture of relevant data on unmatched trades and outtrades are not relevant to Project A trading, as unmatched trades and outtrades cannot occur on the Project A system. The Commission further finds that CBT accurately and promptly records the essential data on terms, participants, times (in increments of no more than one minute in length), and the sequence of Project A trades through a means that is unalterable, continual, independent, reliable, and precise, as required by Section 5a(b)(3) of the Act. This includes the real-time submission of trades to clearing as they are matched by the system. Consistent with the guidelines to Commission Regulation 155.5, the Commission also finds that CBT has demonstrated the use of Project A T-Bond trade timing data in its surveillance systems for dual trading-related and other abuses.

The audit trail produced by Project A for T-Bond futures includes trade execution times that are presumptively 100 percent accurate (barring computer malfunction) and precise to within 1/100th of a second. All trades are also recorded in the exact sequence of occurrence. Among other things, the order ticket timestamps required by Regulation 1.35(a–1) are automatically furnished by the system, independent of the person making the trade, as is the order number. Project A also automatically records the time at which a terminal operator enters an order, the time when an order is matched to make a trade, the time the system generates a confirmation message to a terminal operator, and the time of any changes to an order. Once entered, orders and records of changes to orders are unalterable and cannot be deleted. If an order cannot be entered immediately upon its receipt by a terminal operator, the order is recorded on a written order ticket, timestamped, and then entered when possible. For every Project A order, either this order ticket timestamp or the order entry time recorded by the system acts as the broker receipt time required by Section 5a(b)(3)(B) of the Act.

CBT satisfies the requirements of Section 5a(b)(1)(B) of the Act by maintaining an adequate recordkeeping system that is able to capture essential data on the terms, participants, and sequence of transactions executed on Project A. The Exchange uses such data as well as information on violations of such requirements on a consistent basis to bring appropriate disciplinary actions relating to Project A trading.

(c) Surveillance Systems and Disciplinary Action—As required by Sections 5a(b)(1) (C), (D) and (F) of the Act, CBT uses information generated by its trade monitoring and audit trail systems on a consistent basis to bring appropriate disciplinary action for violations relating to the making of trades and execution of customer orders on Project A. In addition, CBT assesses meaningful penalties against violators.

On a daily basis, CBT reviews computerized surveillance exception reports to detect dual trading-related and other trading abuses on Project A. All relevant trade data are included in these reports. The exception reports are

[1] An ''affected contract market'' is a contract market with an average daily volume equal to or in excess of 8,000 contracts for each of four quarters during the most recent volume year. Commission Regulation 155.5(a)(9). *See* Section 4j(a)(4) of the Commodity Exchange Act (''Act''). Under Section 4j(a) of the Act and Regulation 155.5(b), the dual trading prohibition applies to each affected contract market. The Commission, therefore, must consider separately each affected contract market. As noted by the Commission in promulgating Regulation 155.5, a contract market trading on an exchange floor will be considered separate from a contract market in the same commodity trading on a screen-based system such as Project A. *See* 58 FR 40335 (July 28, 1993). Therefore, Project A T-Bonds must be considered independently of the CBT's floor-traded T-Bond contract market, which was included in the Exchange's exemption petition for its affected open outcry contract markets.

[2] The burden to prove that the exemption standards of the Act and Commission regulations are met rests exclusively on the contract market. The dual trading provisions set forth in Section 4j of the Act and the standards for trade monitoring systems provided in Section 5a(b) of the Act were enacted as part of the Futures Trading Practices Act of 1992 (''FTPA''). Pub. L. 102–546, 101, 106 Stat. 3590 (1992). The FTPA's legislative history makes clear that the burden to prove that the exemptions standards are met rests upon the contract market. For instance, the 1992 House-Senate Conference Committee stated that ''a board of trade may satisfy the initial burden of demonstrating that each of its designated contract markets complies with trade monitoring system requirements of section 5a(b) of the Act, subject to requests for further information by the Commission, by showing that it has maintained an ongoing record of compliance with those requirements.'' H.R. Conf. Rep. No. 102–978 at 53 (1992). The Conference Committee adopted the 1991 House Bill's (H.R. 707) dual trading provisions, with amendments relating to exemptions. *Id.* at 50. The 1991 Senate Bill (S. 207) similarly placed on the exchange the burden to demonstrate the ability of its systems to meet the standards and reiterated the view, previously expressed in the 1989 Senate Bill (S. 1729), that an exchange has the best access to its own records and therefore is in the best position to show that its systems are effective and satisfactory. S. Rep. No. 102–22 at 32 (1991); S. Rep. No. 101–191 at 39–40 (1989).

[3] 17 CFR 1.35, 155.5. Section 4j(a)(3) requires the Commission to exempt a contract market from the prohibition against dual trading upon finding that the trade monitoring system in place at the contract market satisfies the requirements of Section 5a(b), governing audit trails and trade monitoring systems, with regard to violations attributable to dual trading at such contract market. If the trade monitoring system does not satisfy the requirements, Section 4j(a)(3) requires the Commission to deny the exemption or in the alternative to exempt a contract market from the prohibition against dual trading on stated conditions upon finding that there is a substantial likelihood that a dual trading prohibition would harm the public interest in hedging or price basing and that corrective actions are sufficient and appropriate to bring the contract market into compliance with the standards set forth in Section 5a(b). Regulation 155.5(b) prohibits floor brokers from dual trading in an affected contract market unless that contract market is exempted under Regulation 155.5(d).

designed to identify such suspicious activity as trading ahead, frontrunning, trading against, crossing orders, and wash trading. Since the introduction of side-by-side (simultaneous Project A and open outcry) trading of T-Bonds in September 1998, CBT has begun using a specialized exception report designed to identify certain trading ahead violations that use both the Project A and open outcry markets. The CBT has stated that it intends to develop systems and programs that integrate surveillance of its Project A and open outcry markets. The Exchange should be diligent in pursuing this process.

From January, 1997 through December, 1998, the Exchange initiated 21 investigations into all types of possible abuses on Project A, nine of which had been closed as of December, 1998. One of those nine was closed within the four-month objective set forth in Commission Regulation 8.06, and another three were closed within four to six months. Thus, only 44 percent of those Project A investigations opened and closed during 1997–98 were closed within six months. If CBT cannot complete its Project A investigations within the objective set by Regulation 8.06, it should provide the reasons why such investigations require more than four months to complete. Based on examination of its computerized surveillance reports, CBT initiated four dual trading-related investigations during that period, one of which resulted in referral to a disciplinary committee. As of December 1998 that case was still pending. In other Project A-related disciplinary actions, the Exchange levied $20,000 in fines, imposed one ten-day suspension, and issued four reprimands.

(d) Commitment of Resources—The Commission finds that CBT meets the requirements of Section 5a(b)(1)(E) by committing sufficient resources for its trade monitoring system relating to Project A, including automating elements of such trade surveillance system, to be effective in detecting and deterring violations. CBT also maintains an adequate staff to investigate and to prosecute disciplinary actions.

Accordingly, on this date, the Commission *hereby grants CBT's* Petition for exemption from the dual trading prohibition for trading on Project A of its electronically traded U.S. Treasury Bond futures contracts.

For this exemption to remain in effect, CBT must demonstrate on a continuing basis that it meets the relevant statutory and regulatory requirements. The Commission will monitor continued compliance through its rule enforcement review program and any other information it may obtain about CBT's program.

The provisions of this Order shall be effective on the date on which it is issued and shall remain in effect unless and until it is revoked in accordance with Section 8e(b)(3)(B) of the Commodity Exchange Act, 7 U.S.C. 12e(b)(3)(B). If other CBT contracts electronically traded on Project A become affected contracts after the date of this Order, the Commission may expand this Order in response to an updated petition that includes those contracts.

It is so ordered.

Dated: February 26, 1999.

Jean A. Webb,

Secretary to the Commission.

[FR Doc. 99–5335 Filed 3–3–99; 8:45 am]

BILLING CODE 6351–01–M

DEPARTMENT OF DEFENSE

Department of the Navy

Meeting of the Board of Visitors to the U.S. Naval Academy

AGENCY: Department of the Navy, DOD.

ACTION: Notice.

SUMMARY: The U.S. Naval Academy Board of Visitors will meet to make such inquiry as the Board shall deem necessary into the state of morale and discipline, the curriculum, instruction, physical equipment, fiscal affairs, and academic methods of the Naval Academy. During this meeting inquiries will relate to the internal personnel rules and practices of the Academy, may involve on-going criminal investigations, and include discussions of personal information the disclosure of which would constitute a clearly unwarranted invasion of personal privacy. The executive session of this meeting will be closed to the public.

DATES: The meeting will be held on Monday, March 8, 1999 from 8:30 a.m. to 12:00 p.m. The closed Executive Session will be from 10:30 a.m. to 12:00 p.m.

ADDRESSES: The meeting will be held in the Bo Coppedge Room of Alumni Hall at the U.S. Naval Academy, Annapolis MD.

FOR FURTHER INFORMATION CONTACT: Lieutenant Commander Gerral K. David, Executive Secretary to the Board of Visitors, Office of the Superintendent, U.S. Naval Academy, Annapolis, MD 21402–5000, telephone number (410) 293–1503.

SUPPLEMENTARY INFORMATION: This notice of meeting is provided per the Federal Advisory Committee Act (5 U.S.C. App. 2). The executive session of the meeting will consist of discussions of information, which pertain to the conduct of various midshipmen at the Naval Academy and internal Board of Visitors matters. Discussion of such information cannot be adequately segregated from other topics, which precludes opening the executive session of this meeting to the public. In accordance with 5 U.S.C. App. 2, section 10(d), the Secretary of the Navy has determined in writing that the special committee meeting shall be partially closed to the public because they will be concerned with matters as outlined in section 552(b)(2), (5), (6), and (7) of title 5, U.S.C. Due to unavoidable delay in administrative processing, the normal 15 days notice could not be provided.

Pamela A. Holden,

Lieutenant Commander, Judge Advocate General's Corps, U.S. Navy, Federal Register Liaison Officer.

[FR Doc. 99–5383 Filed 3–3–99; 8:45 am]

BILLING CODE 3810–FF–P

DEPARTMENT OF EDUCATION

Notice of Proposed Information Collection Requests

AGENCY: Department of Education.

SUMMARY: The Acting Leader, Information Management Group, Office of the Chief Information Officer, invites comments on the proposed information collection requests as required by the Paperwork Reduction Act of 1995.

DATES: Interested persons are invited to submit comments on or before May 3, 1999.

ADDRESSES: Written comments and requests for copies of the proposed information collection requests should be addressed to Patrick J. Sherrill, Department of Education, 400 Maryland Avenue, S.W., Room 5624, Regional Office Building 3, Washington, D.C. 20202–4651, or should be electronically mailed to the internet address *Pat Sherrill@ed.gov*, or should be faxed to 202–708–9346.

FOR FURTHER INFORMATION CONTACT: Patrick J. Sherrill (202) 708–8196. Individuals who use a telecommunications device for the deaf (TDD) may call the Federal Information Relay Service (FIRS) at 1–800–877–8339 between 8 a.m. and 8 p.m., Eastern time, Monday through Friday.

SUPPLEMENTARY INFORMATION: Section 3506 of the Paperwork Reduction Act of 1995 (44 U.S.C. Chapter 35) requires that the Office of Management and

Budget (OMB) provide interested Federal agencies and the public an early opportunity to comment on information collection requests. OMB may amend or waive the requirement for public consultation to the extent that public participation in the approval process would defeat the purpose of the information collection, violate State or Federal law, or substantially interfere with any agency's ability to perform its statutory obligations. The Acting Leader, Information Management Group, Office of the Chief Information Officer, publishes that notice containing proposed information collection requests prior to submission of these requests to OMB. Each proposed information collection, grouped by office, contains the following: (1) Type of review requested, e.g. new, revision, extension, existing or reinstatement; (2) Title; (3) Summary of the collection; (4) Description of the need for, and proposed use of, the information; (5) Respondents and frequency of collection; and (6) Reporting and/or Recordkeeping burden. OMB invites public comment at the address specified above. Copies of the requests are available from Patrick J. Sherrill at the address specified above.

The Department of Education is especially interested in public comment addressing the following issues: (1) is this collection necessary to the proper functions of the Department; (2) will this information be processed and used in a timely manner; (3) is the estimate of burden accurate; (4) how might the Department enhance the quality, utility, and clarity of the information to be collected; and (5) how might the Department minimize the burden of this collection on the respondents, including through the use of information technology.

Dated: February 26, 1999.

William E. Burrow,

Acting Leader, Information Management Group, Office of the Chief Information Officer.

Office of Postsecondary Education

Type of Review: New.

Title: Graduate Assistance in Areas of National Need (GAANN) Program Assessment Instrument.

Frequency: Annually.

Affected Public: Not-for-profit institutions.

Reporting and Recordkeeping Burden:
Responses: 225
Burden Hours: 2,250

Abstract: This data collection is the basis of the GAANN Program Assessment, which will report on the status and accomplishments of the GAANN program as a whole. Results will be reported to the GAANN community and program staff and to the Secretary in order to respond to Government Performance and Results Act (GPRA) requirements.

The GPRA requires the Department to measure the outcomes of its programs, compare them to what was planned, and report on the results attained.

[FR Doc. 99–5333 Filed 3–3–99; 8:45 am]

BILLING CODE 4000–01–P

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

[Docket No. MG99–5–001]

Destin Pipeline Co., L.L.C.; Notice of Filing

February 26, 1999.

Take notice that on February 16, 1999, Destin Pipeline Company, L.L.C. (Destin) filed revised standards of conduct in response to the Commission's February 1, 1999 Order on standards of Conduct. 86 FERC ¶ 61,092 (1999).

Destin states that it served copies of the standards of conduct on each of its shippers and interested state commissioners.

Any person desiring to be heard or to protest said filing should file a motion to intervene or protest with the Federal Energy Regulatory Commission, 888 First Street, N.E., Washington, D.C., 20426, in accordance with Rules 211 or 214 of the Commission's Rules of Practice and Procedure (18 CFR 385.211 or 385.214). All such motions to intervene or protest should be filed on or before March 15, 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. 99–5311 Filed 3–13–99; 8:45 am]

BILLING CODE 6717–01–M

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

[Docket No. MG99–13–000]

Dynegy Midstream Pipeline Inc.; Notice of Filing

February 26, 1999.

Take notice that on February 10, 1999, Dynegy Midstream Pipeline, Inc. (Dynegy) (formerly Warren Transportation, Inc.) filed a request for waiver of Part 284, Subpart J of the Commission's regulations, 18 CFR Part 284, Subpart J (1998), regarding the standards of conduct applicable to unbundled pipeline sales service under section 284.286 of the Commission's Regulations, 18 CFR 284.286.

Any person desiring to be heard or to protest said filing should file a motion to intervene or protest with the Federal Energy Regulatory Commission, 888 First Street, N.E., Washington, D.C., 20426, in accordance with Rules 211 or 214 of the Commission's Rules of Practice and Procedure (18 CFR 385.211 or 385.214). All such motions to intervene or protest should be filed on or before March 15, 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. 99–5313 Filed 3–3–99; 8:45 am]

BILLING CODE 6717–01–M

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

[Docket No. CP99–227–000]

Florida Gas Transmission Company; Notice of Request Under Blanket Authorization

February 26, 1999.

Take notice that on February 24, 1999, Florida Gas Transmission Company (FGT), 1400 Smith Street, Houston, Texas 77002, filed a request with the Commission in Docket No. CP99–227–000, pursuant to Sections 157.205 and 157.212 of the Commission's Regulations under the Natural Gas Act (NGA) for authorization to upgrade an existing delivery point located in Volusia County, Florida, authorized in

blanket certificate issued in Docket No. CP82–553–000, all as more fully set forth in the request on file with the Commission and open to public inspection. This filing may be viewed on the web at http://www.ferc.fed.us/online/rims.htm (call 202–208–2222 for assistance).

FGT proposes to upgrade the DeBary Delivery Point, which is being used by FGT to make deliveries of natural gas to Florida Power Corporation (FPC). FGT reports that the upgrade can be made by modifying the existing inlet header and adding a second 12-inch raiser, a valve, and other minor appurtenant facilities. FGT states that FPC would reimburse FGT for the total cost of the proposed construction which is estimated to be $71,798. The proposed upgrade would not affect FGT's contractual gas deliveries to FPC under an existing interruptible transportation agreement dated December 6, 1995, which is currently 200,000 MMBtu per day and 73,000,000 MMBtu per year, nor would it impact FGT's peak day delivery requirements for FGT's annual gas deliveries.

Any person or the Commission's staff may, within 45 days after the Commission has issued this notice, 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 NGA (18 CFR 157.205) a protest to the request. If no protest is filed within the allowed time, 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 NGA.

Linwood A. Watson, Jr.,

Acting Secretary.

[FR Doc. 99–5310 Filed 3–3–99; 8:45 am]

BILLING CODE 6717–01–M

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

[Docket No. RP99–186–000]

Florida Gas Transmission Company; Notice of Technical Conference

February 26, 1999.

In the Commission's letter order issued on February 10, 1999, the Commission directed that a technical conference be held to address issues raised by the filing.

Take notice that the technical conference will be held on Thursday, March 11, 1999, at 10:00 a.m., in a room to be designated at the offices of the Federal Energy Regulatory Commission, 888 First Street, NE, Washington, D.C. 20426.

All interested parties and Staff are permitted to attend.

Linwood A. Watson, Jr.,

Acting Secretary.

[FR Doc. 99–5314 Filed 3–3–99; 8:45 am]

BILLING CODE 6717–01–M

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

[Docket No. CP99–223–000]

Natural Gas Pipeline Company of America; Notice of Application

February 26, 1999.

Take notice that on February 22, 1999, Natural Gas Pipeline Company of America (Natural), 747 East 22nd Street, Lombard, Illinois 60148, filed in Docket No. CP99–223–000 an application pursuant to Section 7(c) of the Natural Gas Act for authorization to acquire certain pipeline facilities in Texas and Oklahoma from Caprock Pipeline Company (Caprock), all as more fully set forth in the application which is on file with the Commission and open to public inspection. This filing may be viewed on the web at http://www.ferc.fed.us/online/rims.htm (call 202–208–2222 for assistance).

Natural proposes to acquire by purchase from Caprock a 1.88 mile segment of Caprock's 20-inch pipeline known as the Beckham-Wheeler Pipeline, of which a 1.23 mile length is located in Beckham County, Oklahoma, and a 0.65 mile length is located in Wheeler County, Texas. Caprock has filed an application in Docket No. DP98–735–000 to abandon these pipeline facilities to Natural. It is asserted that Natural will operate the facilities as part of its interstate system and will assume all service obligations and operational and economic responsibilities for the subject facilities. It is stated that there is one firm transportation service using these facilities and that Natural will provide open access transportation service to shippers requesting service pursuant to Natural's FERC Gas Tariff.

It is explained that Natural has agreed to purchase the facilities from Caprock for $513,574, to be adjusted to the actual net book value as of the date of the transfer of the facilities.

Any person desiring to be heard or to make any protest with reference to said application should on or before March 19, 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 385.214 or 385.211) and the Regulations under the Natural Gas Act (18 CFR 157.10). All protests filed with the Commission will be considered by it in determining the appropriate action to be taken but will not serve to make the protestants parties to the proceeding. Any person wishing to become a party to a proceeding or to participate as a party in any hearing therein must file a motion to intervene in accordance with the Commission's Rules.

Take further notice that, pursuant to the authority contained in and subject to the jurisdiction conferred upon the Federal Energy Regulatory Commission by Sections 7 and 15 of the Natural Gas Act and the Commission's Rules of Practice and Procedures, 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. 99–5308 Filed 3–3–99; 8:45 am]

BILLING CODE 6717–01–M

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

[Docket No. CP99–224–000]

Natural Gas Pipeline Company of America; Notice of Application for Abandonment

February 26, 1999.

Take notice that on February 22, 1999, Natural Gas Pipeline Company of America (Natural), 747 East 22nd Street, Lombard, Illinois 60148, filed an application pursuant to Section 7(b) of the Natural Gas Act and Part 157 of the

Commission's Regulations requesting permission and approval to abandon in place by sale to Dominion Gas Ventures, Inc. (Dominion), a gas gatherer, a lateral and related meter facilities located in Dewitt County, Texas. The application is on file with the Commission and open to public inspection. This filing may be viewed on the web at http://www.ferc.fed.us/online/rims.htm (call 202–208–2222 for assistance).

Natural states that the facilities were originally constructed as a means of receiving gas purchased from Westland Oil Development corporation, a producer. These facilities are no longer related to any gas purchase contracts of Natural, which no longer performs a traditional merchant function. Specifically, Natural proposes to abandon approximately 2.8 miles of 6-inch pipeline lateral (''North Gohlke''), and two 3-inch meters, in Dewitt County, Texas. There are no firm transportation agreements containing primary receipt points that need to be terminated in connection with the proposed sale of the North Gohlke Lateral. As for interruptible transportation agreements under Natural's Rate Schedule ITS, shippers are entitled to utilize all points in Natural's Electronic Catalog of Receipt and Delivery Points (''Catalog of Points''). Upon transfer of the facilities at issue here, Natural will simply delete the existing points from its catalog of Points. After closing, to assure continuity of service to existing customers, Dominion will provide gathering service on an open access basis and will undertake to negotiate satisfactory arrangements with the existing shippers. Natural states that, presently, Dominion is the only shipper utilizing the North Gohlke Lateral. Natural states the facilities will be retained in place by Dominion.

The subject facilities are proposed to become part of and interconnect with Dominion's existing non-jurisdictional gathering system. Therefore, Natural requests that the Commission specify in its order in this docket that following abandonment, and transfer to Dominion, the subject facilities will be non-jurisdictional and not subject to regulation by the Commission.

Any person desiring to be heard or to make any protest with reference to said application should on or before March 19, 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 and 385.214) and the regulations under the Natural Gas Act (18 CFR 157.10). All protests filed with the Commission will be considered by it in determining the appropriate action to be taken but will not serve to make the protestants parties to the proceeding. Any person wishing to become a party in any proceeding herein must file a motion to intervene in accordance with the Commission's rules.

Take further notice that, pursuant to the authority contained in and subject to the jurisdiction conferred upon the Commission by Sections 7 and 15 of the Natural Gas Act and the Commission's Rules of Practice and Procedure, a hearing will be held without further notice before the Commission or its designee on this application if no motion to intervene is filed within the time required herein, if the Commission on its own review of the matter finds that permission and approval for the proposed abandonment are required by the public convenience and necessity. If a motion for leave to intervene is timely filed, or if the Commission on its own motion believes that 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 to be represented at the hearing.

Linwood A. Watson, Jr.,

Acting Secretary.

[FR Doc. 99–5309 Filed 3–3–99; 8:45 am]

BILLING CODE 6717–01–M

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

[Docket No. MG98–6–002]

Natural Gas Pipeline Company of America; Notice of Filing

February 26, 1999.

Take notice that on February 19, 1999, Natural Gas Pipeline, Company of America (Natural) filed an update to its February 17, 1998 Compliance Plan as required by the Commission's Order Following Staff Audit Report and Notice of Proposed Penalties. 82 FERC ¶ 61,038 (1998). Natural also states that it revised its standards of conduct to reflect addition of Standard L, to be codified at 18 CFR 161.3 (1), under Order No. 599.[1]

Natural states that it has served copies of the filing upon all of its customers, all interested state Commissions and all parties on the official service list compiled by the Secretary in this proceeding.

Any person desiring to be heard or to protest said filing should file a motion to intervene or protest with the Federal Energy Regulatory Commission, 888 First Street, N.E., Washington, D.C. 20426, in accordance with Rules 211 or 214 of the Commission's Rules of Practice and Procedure (18 CFR 385.211 or 385.214). All such motions to intervene or protest should be filed on or before March 15, 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. 99–5312 Filed 3–3–99; 8:45 am]

BILLING CODE 6717–01–M

[1] Reporting Interstate Natural Gas Pipeline Marketing Affiliates on the Internet, Order No. 599, 63 FR 43075 (August 12, 1998), FERC Stats. & Regs. 31,064 (1998).

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

[Docket No. CP99–126–000]

Reliant Energy Gas Transmission Company; Notice of Motion To Vacate

February 26, 1999.

Take notice that on February 18, 1999, Reliant Energy Gas Transmission Company (REGT), 1111 Louisiana, Houston, Texas 77002–5231, filed in Docket No. GP99–126–000 a request seeking to vacate the authority that NorAm Gas Transmission Company (Now REGT) received in Docket No. CP99–126–000 (prior notice filing) which was filed pursuant to 157.205 and 157.211 on December 18, 1998. This filing may be viewed on the web at http://www.ferc.fed.us/online/rims.htm (call 202–208–2222 for assistance).

The prior notice filing involved a request for authorization to construct and operate two 2-inch delivery taps, first cut regulators and one 4-inch meter station to serve ARKLA a division of NorAm Energy Corp. (Now a division of Reliant Energy Inc.), under REGT's blanket certificate issued in Docket No. CP82–384–000 and CP82–384–001. The prior notice filing was noticed December 24, 1998, and no protest were filed during the notice period which expired February 8, 1999.

REGT states that the taps and meter stations approved in the application have not been installed. REGT further

states that due to a landowner's request, REGT has agreed to secure new locations for the taps and meter station. REGT states that since the 45-day notice period has expired, REGT request that the authority filed for in Docket No. CP99–126–000 be vacated. REGT has also filed a new application requesting authority to install the taps and meter station at a new location in Docket number CP99–221–000.

Any person desiring to be heard or to make any protest with reference to said motion to vacate should on or before March 19, 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 385.214 or 385.211) and the Regulations under the Natural Gas Act (18 CFR 157.10). All protest filed with the Commission will be considered by it in determining the appropriate action to be taken but will not serve to make the protestants parties to the proceeding. Any person wishing to become a party to a proceeding or to participate as a party in any hearing therein must file a motion to intervene in accordance with the Commission's Rules. All persons who have heretofore filed need not file again.

Linwood A. Watson, Jr.,

Acting Secretary.

[FR Doc. 99–5307 Filed 3–3–99; 8:45 am]

BILLING CODE 6717–01–M

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

[Docket No. RP99–231–000]

Williams Gas Pipelines Central, Inc.; Notice of Filing of Cash-Out Report

February 26, 1999.

Take notice that on February 23, 1999, Williams Gas Pipelines Central Inc. (Williams) tendered for filing, pursuant to Article 9.8(d) of the General Terms and Conditions of its FERC Gas Tariff, its report of net revenue received from cash-outs.

Williams states that pursuant to the cash-out mechanism in Article 9.8(a)(iv) of its FERC Gas Tariff, Shippers were given the option of resolving their imbalances by the end of the calendar month following the month in which the imbalance occurred by cashing-out such imbalances at 100% of the spot market price applicable to Williams as published in the first issue of Inside FERC's Gas Market Report for the month in which the imbalance occurred. Net monthly imbalances which were not resolved by the end of the second month following the month in which the imbalance occurred and which exceeded the tolerance specified in Article 9.7(b) were cashed-out at a premium or discount from the spot price according to the schedules set forth in Article 9.8(c). Williams is herewith filing its report of net revenue (sales less purchase cost) received from cash-outs.

Williams states that a copy of its filing was served on all jurisdictional customers and interested state commissions.

Any person desiring to be heard or to protest said filing should file a motion to intervene or protest with the Federal Energy Regulatory Commission, 888 First Street, N.E., Washington, D.C., 20426, in accordance with Sections 385.214 or 385.211 of the Commission's Rules and Regulations. All such motions or protests must be filed on or before March 5, 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. This filing may be viewed on the web at http://www.ferc.fed.us/online/rims.htm (call 202–208–2222 for assistance).

Linwood A. Watson, Jr.,

Acting Secretary.

[FR Doc. 99–5316 Filed 3–3–99; 8:45 am]

BILLING CODE 6717–01–M

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

[Docket No. RP99–230–000]

Williston Basin Interstate Pipeline Company; Notice of Proposed Changes In FERC Gas Tariff

February 26, 1999.

Take notice that on February 19, 1999, Williston Basin Interstate Pipeline Company (Williston Basin) tendered for filing as part of its FERC Gas Tariff, Second Revised Volume No. 1, the revised tariff sheets listed on Appendix A to the filing, with an effective date of March 21, 1999.

Williston Basin states it is proposing to replace its existing Electronic Data Interchange (EDI) Trading Partner Agreement with the currently approved Gas Industry Standards Board (GISB) Trading Partner Agreement. Williston Basin further states that its current EDI Trading Partner Agreement is outdated and obsolete and it simply wishes to replace that agreement with a current GISB approved EDI Trading Partner Agreement.

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. This filing may be viewed on the web at http://www.ferc.fed.us/online/rims.htm (call 202–208–2222 for assistance).

Linwood A. Watson, Jr.,

Acting Secretary.

[FR Doc. 99–5315 Filed 3–3–99; 8:45 am]

BILLING CODE 6717–01–M

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

[Docket No. EC99–41–000, et al.; SCC–L1, L.L.C., et al.]

Electric Rate and Corporate Regulation Filings

February 25, 1999.

Take notice that the following filings have been made with the Commission:

1. SCC–L1, L.L.C., et al.

[Docket No. EC99–41–000]

Take notice that on February 23, 1999, SCC–L1, L.L.C., *et al.* (SCC–L1), on behalf of itself and present and potential owners of interests therein tendered an application for approval pursuant to Section 203 of the Federal Power Act of a change in ownership.

Comment date: March 25, 1999, in accordance with Standard Paragraph E at the end of this notice.

2. Cabrillo Power II, L.L.C.

[Docket No. EG99–77–000]

Take notice that on February 23, 1999, Cabrillo Power II, L.L.C., with its

principal office at Symphony Towers, Suite 2740, 750 B Street, San Diego, CA, filed with the Federal Energy Regulatory Commission an application for determination of exempt wholesale generator status pursuant to Part 365 of the Commission's Regulations.

Cabrillo Power II, L.L.C. is a limited liability company, organized under the laws of the State of Delaware, and engaged directly and exclusively in owning and operating the Cabrillo Power II, L.L.C. electric generating facilities (the Facilities) to be located in the San Diego area in California, and selling electric energy and related ancillary services at wholesale from the Facilities. The Facilities will consist of seventeen combustion turbine generators, nominally rated at approximately 235 MW, metering stations, and associated transmission interconnection components.

Comment date: March 18, 1999, in accordance with Standard Paragraph E at the end of this notice. The Commission will limit its consideration of comments to those that concern the adequacy or accuracy of the application.

3. Cabrillo Power I, L.L.C.

[Docket No. EG99–78–000]

Take notice that on February 23, 1999, Cabrillo Power I, L.L.C., with its principal office at Symphony Towers, Suite 2740, 750 B Street, San Diego, CA, filed with the Federal Energy Regulatory Commission an application for determination of exempt wholesale generator status pursuant to Part 365 of the Commission's Regulations.

Cabrillo Power I, L.L.C. is a limited liability company, organized under the laws of the State of Delaware, and engaged directly and exclusively in owning and operating the Cabrillo Power I, L.L.C. electric generating facility (the Facility) to be located in San Diego County, California, and selling electric energy and related ancillary services at wholesale from the Facility. The Facility will consist of five steam turbine generators, nominally rated at approximately 951 MW and one combustion turbine generator nominally rated at approximately 14 MW, for a total of 965 MW, a metering station, and associated transmission interconnection components.

Comment date: March 18, 1999, in accordance with Standard Paragraph E at the end of this notice. The Commission will limit its consideration of comments to those that concern the adequacy or accuracy of the application.

4. Brownsville Power I, L.L.C.

[Docket No. EG99–79–000]

Take notice that on February 23, 1999, Brownsville Power I, L.L.C. (Brownsville), a Delaware limited liability company with its principal place of business at Haywood County, Tennessee, filed with the Federal Energy Regulatory Commission an application for determination of exempt wholesale generator status pursuant to Part 365 of the Commission's regulations.

The Facility owned by Brownsville, that will be leased to SCC–L1, L.L.C., would consist of a 460 MW natural gas-fired simple cycle power plant in Haywood County, Tennessee. The proposed power plant is expected to commence commercial operation during the second, or early in the third, quarter 1999. All capacity and energy from the plant will be sold exclusively at wholesale.

Comment date: March 18, 1999, in accordance with Standard Paragraph E at the end of this notice. The Commission will limit its consideration of comments to those that concern the adequacy or accuracy of the application.

5. SCC–L1, L.L.C.

[Docket No. EG99–80–000]

Take notice that on February 23, 1999, SCC–L1, L.L.C. (SCC–L1), a Delaware limited liability company with its principal place of business at Chicago, Illinois, filed with the Federal Energy Regulatory Commission an application for determination of exempt wholesale generator status pursuant to Part 365 of the Commission's regulations.

The Facility that will be leased by SCC–L1 would consist of a 460 MW natural gas-fired simple cycle power plant in Haywood County, Tennessee and related equipment. The proposed power plant is expected to commence commercial operation during the second, or early in the third, quarter 1999. All capacity and energy from the plant will be sold exclusively at wholesale.

Comment date: March 18, 1999, in accordance with Standard Paragraph E at the end of this notice. The Commission will limit its consideration of comments to those that concern the adequacy or accuracy of the application.

6. Caledonia Power I, L.L.C.

[Docket No. EG99–81–000]

Take notice that on February 23, 1999, Caledonia Power I, L.L.C. (Caledonia), a Delaware limited liability company with its principal place of business at Lowndes County, Mississippi filed with the Federal Energy Regulatory Commission an application for determination of exempt wholesale generator status pursuant to Part 365 of the Commission's regulations.

The Facility owned by Caledonia, that will be leased to SCC–L2, L.L.C., would consist of a 440 MW natural gas-fired simple cycle power plant in Lowndes County, Mississippi. The proposed power plant is expected to commence commercial operation during the second, or early in the third, quarter 1999. All capacity and energy from the plant will be sold exclusively at wholesale.

Comment date: March 18, 1999, in accordance with Standard Paragraph E at the end of this notice. The Commission will limit its consideration of comments to those that concern the adequacy or accuracy of the application.

7. SCC–L2, L.L.C.

[Docket No. EG99–82–000]

Take notice that on February 23, 1999, SCC–L2, L.L.C. (SCC–L2), a Delaware limited liability company with its principal place of business at Chicago, Illinois, filed with the Federal Energy Regulatory Commission an application for determination of exempt wholesale generator status pursuant to Part 365 of the Commission's regulations.

The Facility that will be leased by SCC–L2 would consist of a 440 MW natural gas-fired simple cycle power plant in Lowndes County, Mississippi and related equipment. The proposed power plant is expected to commence commercial operation during the second, or early in the third, quarter 1999. All capacity and energy from the plant will be sold exclusively at wholesale.

Comment date: March 18, 1999, in accordance with Standard Paragraph E at the end of this notice. The Commission will limit its consideration of comments to those that concern the adequacy or accuracy of the application.

8. Florida Power & Light Company

[Docket No. ER97–2820–000]

Take notice that on February 17, 1999, Florida Power & Light Company (FPL), tendered for filing a Settlement Agreement between FPL, Florida Cities and Seminole Electric Cooperative, Inc., in the above-docketed proceeding. Initial comments on the settlement agreement should be filed on or before March 9, 1999. Reply comments are due on or before March 19, 1999.

9. Amerada Hess Corporation and Micah Tech Industries, Inc.

[Docket Nos. ER97–2153–007 and ER98–1221–002]

Take notice that on February 23, 1999 the above-mentioned power marketers filed quarterly reports with the Commission in the above-mentioned proceedings for information only. These filings are available for public inspection and copying in the Public Reference Room or on the Internet at http://www.ferc.fed.us/online/rims.htm for viewing and downloading (call 202–208–2222 for assistance).

10. PG Energy PowerPlus

[Docket No. ER98–1953–001]

Take notice that on February 22, 1999, the above-mentioned power marketer filed a quarterly report with the Commission in the above-mentioned proceeding for information only. This filing is available for public inspection and copying in the Public Reference Room or on the Internet at http://www.ferc.fed.us/online/rims.htm for viewing and downloading (call 202–208–2222 for assistance).

11. Cielo Wind Power, L.L.C.

[Docket No. ER99–964–000]

Take notice that on February 22, 1999, Cielo Wind Power, L.L.C. tendered for filing additional information in response to the February 17, 1999, letter order issued in the above-referenced docket.

Comment date: March 12, 1999, in accordance with Standard Paragraph E at the end of this notice.

12. Entergy Services, Inc.

[Docket No. ER99–1485–000]

Take notice that on February 18, 1999, the above-referenced public utility filed its quarterly transaction report for the quarter ending December 31, 1998.

Comment date: May 5, 1999, in accordance with Standard Paragraph E at the end of this notice.

13. AES Redondo Beach, L.L.C.

[Docket No. ER99–1860–000]

Take notice that on February 17, 1999, the above-referenced public utility filed its quarterly transaction report for the quarter ending September 30, 1998.

Comment date: March 9, 1999, in accordance with Standard Paragraph E at the end of this notice.

14. Virginia Electric and Power Company

[Docket No. ER99–1884–000]

Take notice that on February 22, 1999, Virginia Electric and Power Company (Virginia Power), tendered for filing a Service Agreement for Long Term Firm Point-to-Point Transmission Service with PECO Energy Company (Transmission Customer). Under the tendered Service Agreement, Virginia Power will provide Long Term Firm Point-to-Point Transmission Service to the Transmission Customer for the period January 1, 1999 to December 31, 2000 under the Company's Open Access Transmission Tariff to Eligible Purchasers dated July 14, 1997.

Virginia Power requests waiver of Notice for an effective date of January 1, 1999.

Copies of the filing were served upon the Transmission Customer, the Virginia State Corporation Commission and the North Carolina Utilities Commission.

Comment date: March 12, 1999, in accordance with Standard Paragraph E at the end of this notice.

15. Virginia Electric and Power Company

[Docket No. ER99–1885–000]

Take notice that on February 22, 1999, Virginia Electric and Power Company (Virginia Power), tendered for filing two (2) Service Agreements for Long Term Firm Point-to-Point Transmission Service with the Company's Wholesale Power Group (Transmission Customer). Under the Service Agreements, Virginia Power will provide Long Term Firm Point-to-Point Transmission Service for the period January 1, 1999 to December 31, 2000 to the Transmission Customer under the Company's Open Access Transmission Tariff to Eligible Purchasers dated July 14, 1997.

Virginia Power requests an effective date of January 1, 1999.

Copies of the filing were served upon the Transmission Customer, the Virginia State Corporation Commission and the North Carolina Utilities Commission.

Comment date: March 12, 1999, in accordance with Standard Paragraph E at the end of this notice.

16. Virginia Electric and Power Company

[Docket No. ER99–1886–000]

Take notice that on February 22, 1999, Virginia Electric and Power Company (Virginia Power), tendered for filing an unexecuted Amendment to the Service Agreement for Non-Firm Point-to-Point Transmission Service (Amendment) with The Cincinnati Gas & Electric Company, PSI Energy, Inc., and Cinergy Services, Inc., under the Open Access Transmission Tariff to Eligible Purchasers dated July 14, 1997. Under the tendered Amendment, Virginia Power will provide non-firm point-to-point service to the Transmission Customers under the rates, terms and conditions of the Open Access Transmission Tariff.

Virginia Power requests an effective date for the Amendment of September 11, 1998, the date Virginia Power first provided services under the Amendment.

Copies of the filing were served upon The Cincinnati Gas & Electric Company, PSI Energy, Inc., Cinergy Services, Inc., the Virginia State Corporation Commission and the North Carolina Utilities Commission.

Comment date: March 12, 1999, in accordance with Standard Paragraph E at the end of this notice.

17. Southern Company Services, Inc.

[Docket No. ER99–1887–000]

Take notice that on February 22, 1999, Southern Company Services, Inc. (SCS), on behalf of Alabama Power Company (APC), tendered for filing a service agreement with the city of Robertsdale under Rate Schedule MUN–1 of Alabama Power Company's FERC Electric Tariff Original Volume No. 1 (Tariff). Under that service agreement, a new delivery point will be added between the parties' systems and will be located near County Road 48 in Baldwin County, Alabama. In addition, the filing also made certain ministerial changes to the Tariff to reflect the addition of the new delivery point.

Accordingly, APC requests that the Commission waive the 60 day prior notice requirement and that the service agreement filed hereunder be given an effective date of March 1, 1999.

Comment date: March 12, 1999, in accordance with Standard Paragraph E at the end of this notice.

18. Indeck Pepperell Power Associates

[Docket No. ER99–1888–000]

Take notice that on February 22, 1999, Indeck Pepperell Power Associates, Inc. (Indeck Pepperell), tendered for filing with the Federal Energy Regulatory Commission a Power Purchase and Sale Agreement (Service Agreement) between Indeck Pepperell and Green Mountain Power Corporation (GMP), dated January 28, 1999, for service under Indeck Pepperell's Rate Schedule FERC No. 1.

Indeck Pepperell requests that the Service Agreement be made effective as of January 28, 1999.

Comment date: March 12, 1999, in accordance with Standard Paragraph E at the end of this notice.

19. Allegheny Power Service Corp., on behalf of Monongahela Power Co., The Potomac Edison Company, and West Penn Power Company (Allegheny Power)

[Docket No. ER99–1891–000]

Take notice that on February 22, 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. 10–4 to add Statoil Energy, Inc., to Allegheny Power's Open Access Transmission Service Tariff.

The proposed effective date under the 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, and the West Virginia Public Service Commission.

Comment date: March 12, 1999, in accordance with Standard Paragraph E at the end of this notice.

20. CH Resources, Inc.

[Docket No. ER99–1892–000]

Take notice that on February 22, 1999, CH Resources, Inc. (Resources), tendered for filing a Service Agreement for Electric Power Sales between CH Resources, Inc., and Central Hudson Enterprise Corporation (CHEC). The service agreement provides for the sale by Resources of electric capacity and energy to CHEC from time to time pursuant to Resources' market-based rate schedule which was accepted for filing by the Commission in Docket No. ER99–1001–000.

Comment date: March 12, 1999, in accordance with Standard Paragraph E at the end of this notice.

21. Central Hudson Gas and Electric Corporation

[Docket No. ER99–1893–000]

Take notice that on February 22, 1999, Central Hudson Gas and Electric Corporation (CHG&E), tendered for filing pursuant to Section 35.12 of the Federal Energy Regulatory Commission's (Commission) Regulations in 18 CFR a Service Agreement between CHG&E and Select Energy Inc. The terms and conditions of service under this Agreement are made pursuant to CHG&E's FERC Electric Rate Schedule, Original Volume No. 1 (Power Sales Tariff) accepted by the Commission in Docket No. ER97–890–000.

CHG&E requests an effective date of December 24, 1998, and also has requests waiver of the 60-day notice provision pursuant to 18 CFR Section 35.11.

A copy of this filing has been served on the Public Service Commission of the State of New York.

Comment date: March 12, 1999, in accordance with Standard Paragraph E at the end of this notice.

22. Northeast Utilities Service Company

[Docket No. ER99–1895–000]

Take notice that on February 22, 1999, Northeast Utilities Service Company (NUSCO), tendered for filing a Service Agreement to provide Firm Point-To-Point Transmission Service to H.Q. Energy Services (U.S.) Inc., under the NU System Companies' Open Access Transmission Service Tariff No. 9.

NUSCO requests that the Service Agreement become effective February 26, 1999.

NUSCO states that a copy of this filing has been mailed to H.Q. Energy Services (U.S.) Inc.

Comment date: March 12, 1999, in accordance with Standard Paragraph E at the end of this notice.

23. Northeast Utilities Service Company

[Docket No. ER99–1896–000]

Take notice that on February 22, 1999, Northeast Utilities Service Company (NUSCO), tendered for filing a Service Agreement to provide Non-Firm Point-To-Point Transmission Service to H.Q. Energy Services (U.S.) Inc., under the NU System Companies' Open Access Transmission Service Tariff No. 9.

NUSCO requests that the Service Agreement become effective February 26, 1999.

NUSCO states that a copy of this filing has been mailed to H.Q. Energy Services (U.S.) Inc.

Comment date: March 12, 1999, in accordance with Standard Paragraph E at the end of this notice.

24. National Fuel Resources, Inc.

[Docket No. ER99–1897–000]

Take notice that on February 22, 1999, National Fuel Resources, Inc., tendered for filing notice that Gateway Energy, Inc., has merged into National Fuel Resources, Inc., effective July 27, 1998. Gateway Energy, Inc., no longer exists as a separate entity, therefore it respectfully notifies the Commission that its rate schedule in the above-referenced docket is hereby terminated.

Comment date: March 12, 1999, in accordance with Standard Paragraph E at the end of this notice.

25. Atlantic City Electric Company

[Docket No. ER99–1898–000]

Take notice that on February 22, 1999, Atlantic City Electric Company (Atlantic), tendered for filing a Service Agreement with Delmarva Power & Light Company under its FERC Electric Tariff Second Revised, Volume No. 1.

Atlantic requests waiver of the Commission's Regulations to permit the Service Agreement to become effective on February 22, 1999, the day upon which it was filed.

Comment date: March 12, 1999, in accordance with Standard Paragraph E at the end of this notice.

26. Southern Company Services, Inc.

[Docket No. ER99–1899–000]

Take notice that on February 22, 1999, Southern Company Services, Inc. (SCS), acting on behalf of Alabama Power Company, Georgia Power Company, Gulf Power Company, Mississippi Power Company, and Savannah Electric and Power Company (collectively referred to as Southern Company), tendered for filing four (4) service agreements for firm point-to-point transmission service between SCS, as agent for Southern Company, and (i) Commonwealth Edison Company, (ii) Ameren Services Company, (iii) NorAm Energy Services, Inc. and (iv) SCANA Energy Marketing, Inc., and one (1) service agreement for non-firm point-to-point transmission service between SCS, as agent for Southern Company, and Ameren Services Company under the Open Access Transmission Tariff of Southern Company.

Accordingly SCS requests that the Commission waive its 60 day prior notice requirement and that the service agreements filed be given an effective date of February 19, 1999.

Comment date: March 12, 1999, in accordance with Standard Paragraph E at the end of this notice.

27. Oklahoma Gas and Electric Company

[Docket No. OA97–185–002]

Take notice that on February 12, 1999 Oklahoma Gas and Electric Company (OG&E) submitted revised standards of conduct in Docket No. OA97–185–002 in response to a Commission order issued on November 13, 1998.[1] On December 14, 1998, the Commission issued a Notice of Extension of Time in the above-captioned proceeding permitting OG&E to file revised

[1] Alliant Services, Inc., et al., 85 FERC ¶ 61,227 (1998).

standards of conduct no later than February 12, 1999.

Comment date: March 12, 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 such filing should file a motion to intervene or protest with the Federal Energy Regulatory Commission, 888 First Street, N.E., Washington, D.C. 20426, in accordance with Rules 211 and 214 of the Commission's Rules of Practice and Procedure (18 CFR 385.211 and 385.214). All such motions or protests should be filed on or before 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. This filing may also be viewed on the Internet at http://www.ferc.fed.us/online/rims.htm (call 202–208–2222 for assistance).

David P. Boergers,

Secretary.

[FR Doc. 99–5340 Filed 3–3–99; 8:45 am]

BILLING CODE 6717–01–U

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

[Docket No. EC99–42–000, et al.]

SCC–L2, L.L.C. et al.; Electric Rate and Corporate Regulation Filings

February 26, 1999.

Take notice that the following filings have been made with the Commission:

1. SCC–L2, L.L.C., et al.

[Docket No. EC99–42–000]

Take notice that on February 24, 1999, SCC–L2, L.L.C., et al. (SCC–L2), on behalf of itself and present and potential owners of interests therein tendered an application for approval pursuant to Section 203 of the Federal Power Act of a change in ownership.

Comment date: March 26, 1999, in accordance with Standard Paragraph E at the end of this notice.

2. SCC–L3, L.L.C., et al.

[Docket No. EC99–43–000]

Take notice that on February 24, 1999, SCC–L3, L.L.C., et al. (SCC–L3), on behalf of itself and present and potential owners of interests therein tendered an application for approval pursuant to Section 203 of the Federal Power Act of a change in ownership.

Comment date: March 26, 1999, in accordance with Standard Paragraph E at the end of this notice.

3. Dominion Energy Services Company, Inc.

[Docket No. EG99–83–000]

Take notice that on February 24, 1999, Dominion Energy Services Company, Inc. (DESCO) filed with the Federal Energy Regulatory Commission an application for determination of exempt wholesale generator status pursuant to Part 365 of the Commission's regulations.

DESCO, a Virginia corporation, is a wholly-owned subsidiary of Dominion Energy, Inc. (DEI) also a Virginia corporation. DEI is a wholly-owned subsidiary of Dominion Resources, Inc., a Virginia corporation.

DESCO's application is based on its operation of the Kincaid Generation Facility and the Morgantown Cogeneration Facility. The Kincaid Generation Facility, located in Kincaid, Illinois, consists of two 554 MW coal-fired cyclone boiler generating units with a total net capacity of approximately 1108 MW, two main power transformers, four system auxiliary transformers, four unit auxiliary transformers, coal unloading and handling facilities and associated real and personal property. The Morgantown Cogeneration Facility, located in Morgantown, West Virginia, is a 60.8 MW topping cycle qualifying cogeneration facility consisting of two circulating fluidized bed boilers and an extraction/Condensing steam turbine generator.

Comment date: March 19, 1999, in accordance with Standard Paragraph E at the end of this notice. The Commission will limit its consideration of comments to those that concern the adequacy or accuracy of the application.

4. SCC–L3, L.L.C.

[Docket No. EG99–84–000]

Take notice that on February 24, 1999, SCC–L3, L.L.C. (SCC–L3), a Delaware limited liability company with its principal place of business at Chicago, Illinois, filed with the Federal Energy Regulatory Commission an application for determination of exempt wholesale generator status pursuant to Part 365 of the Commission'S regulations.

The Facility that will be leased by SCC–L3 would consist of a 390 MW natural gas-fired simple cycle power plant in Union County, Mississippi and related equipment. The proposed power plant is expected to commence commercial operation during the second, or early in the third, quarter 1999. All capacity and energy from the plant will be sold exclusively at wholesale.

Comment date: March 19, 1999, in accordance with Standard Paragraph E at the end of this notice. The Commission will limit its consideration of comments to those that concern the adequacy or accuracy of the application.

5. New Albany Power I, L.L.C.

[Docket No. EG99–85–000]

Take notice that on February 24, 1999, New Albany Power I, L.L.C. (New Albany), a Delaware limited liability company with its principal place of business at Union County, Mississippi, filed with the Federal Energy Regulatory Commission an application for determination of exempt wholesale generator status pursuant to Part 365 of the Commission's regulations.

The Facility owned by New Albany, that will be leased to SCC–L3, L.L.C., would consist of a 390 MW natural gas-fired simple cycle power plant in Union County, Mississippi. The proposed power plant is expected to commence commercial operation during the second, or early in the third, quarter 1999. All capacity and energy from the plant will be sold exclusively at wholesale.

Comment date: March 19, 1999, in accordance with Standard Paragraph E at the end of this notice. The Commission will limit its consideration of comments to those that concern the adequacy or the accuracy of the application.

6. AES Ironwood, L.L.C.

[Docket No. EG99–86–000]

Take notice that on February 24, 1999, AES Ironwood, L.L.C. (Applicant), who is developing a generating facility in south central Pennsylvania, filed with the Federal Energy Regulatory Commission an application for a determination of Exempt Wholesale Generator Status pursuant to Part 365 of the Commission's regulations.

Applicant will own and operate a combined-cycle electric generating facility located in southeastern Pennsylvania and will sell energy, capacity and ancillary services exclusively at wholesale. The electric generating facility has a design net generating capacity of approximately 705 MW.

Comment date: March 19, 1999, in accordance with Standard Paragraph E at the end of this notice. The Commission will limit its consideration

of comments to those that concern the adequacy or accuracy of the application.

7. Nordic Electric, L.L.C.

[Docket No. ER96–127–006]

Take notice that on February 23, 1999, the above-mentioned power marketer filed a quarterly report with the Commission in the above-mentioned proceeding for information only. This filing is available for public inspection and copying in the Public Reference Room or on the Internet at www.ferc.fed.us/Online/rims.htm for viewing and downloading (call 202–208–2222 for assistance).

8. Agway Energy Services, Inc., Total Gas & Electric, Inc., and NRG Power Marketing, Inc.

[Docket Nos. ER97–4186–005, ER97–4202–006 and ER97–4281–005]

Take notice that on February 24, 1999, the above-mentioned power marketers filed quarterly reports with the Commission in the above-mentioned proceedings for information only. These filings are available for public inspection and copying in the Public Reference Room or on the Internet at www.ferc.fed.us/online/rims.htm for viewing and downloading (call 202–208–2222 for assistance).

9. Central Vermont Public Service Corporation

[Docket No. ER99–1677–000]

Take notice that on February 22, 1999, the above-referenced public utility filed an amendment to its quarterly transaction report filed on February 1, 1999 for the quarter ending December 31, 1998.

Comment date: March 15, 1999, in accordance with Standard Paragraph E at the end of this notice.

10. Mid-Continent Area Power Pool

[Docket No. ER99–1894–000]

Take notice that on February 22, 1999, Mid-Continent Area Power Pool filed an informational filing saying that Ameren Services Company (Ameren), Illinois Power Company (Illinois Power), and Western Resources, Inc. (Western) are Power and Energy Market (PEM) Participants, with rights and obligations associated with use of the PEM schedules pursuant to Article 9 of the MAPP Restated Agreement.

Comment date: March 15, 1999, in accordance with Standard Paragraph E at the end of this notice.

11. Commonwealth Electric Company

[Docket No. ER99–1900–000]

Take notice that on February 22, 1999, the above-referenced public utilities filed their quarterly transaction reports for the quarter ending December 31, 1998.

Comment date: March 15, 1999, in accordance with Standard Paragraph E at the end of this notice.

12. Delmarva Power & Light Company

[Docket No. ER99–1901–000]

Take notice that on February 23, 1999, Delmarva Power & Light Company (Delmarva), tendered for filing an executed umbrella service agreement with NYSEG Solutions, Inc., under Delmarva's market rate sales tariff.

Comment date: March 15, 1999, in accordance with Standard Paragraph E at the end of this notice.

13. Virginia Electric and Power Company

[Docket No. ER99–1902–000]

Take notice that on February 23, 1999, Virginia Electric and Power Company (Virginia Power), tendered for filing a Service Agreement for Non-Firm Point-to-Point Transmission Service with American Municipal Power-Ohio, Inc., under the Open Access Transmission Tariff to Eligible Purchasers dated July 14, 1997. Under the tendered Service Agreement, Virginia Power will provide non-firm point-to-point service to the Transmission Customer under the rates, terms and conditions of the Open Access Transmission Tariff.

Virginia Power requests an effective date of February 23, 1999, the date of filing the Service Agreement.

Copies of the filing were served upon American Municipal Power-Ohio, Inc., the Virginia State Corporation Commission and the North Carolina Utilities Commission.

Comment date: March 15, 1999, in accordance with Standard Paragraph E at the end of this notice.

14. Florida Power & Light Company

[Docket No. ER99–1903–000]

Take notice that on February 23, 1999, Florida Power & Light Company (FPL), tendered for filing proposed service agreements with Merrill Lynch Capital Services, Inc., for Short-Term Firm and Non-Firm transmission service under FPL's Open Access Transmission Tariff.

FPL requests that the proposed service agreements are permitted to become effective on February 1, 1999.

FPL states that this filing is in accordance with Part 35 of the Commission's Regulations.

Comment date: March 15, 1999, in accordance with Standard Paragraph E at the end of this notice.

15. Louisville Gas And Electric Co./ Kentucky Utilities Company

[Docket No. ER99–1904–000]

Take notice that on February 23, 1999, Louisville Gas and Electric Company/ Kentucky Utilities (LG&E/KU), tendered for filing an executed Service Agreement for Non-Firm Point-To-Point Transmission Service between LG&E/KU and Merrill Lynch Capital Services, Inc., under LG&E/KU's Open Access Transmission Tariff.

Comment date: March 15, 1999, in accordance with Standard Paragraph E at the end of this notice.

16. Tampa Electric Company

[Docket No. ER99–1905–000]

Take notice that on February 23, 1999, Tampa Electric Company (Tampa Electric), tendered for filing a revised Exhibit A to the Contract for Interchange Service between Tampa Electric and Florida Power Corporation (FPC). Tampa Electric included with the filing a Certificate of Concurrence executed by FPC in lieu of an independent filing.

Tampa Electric requests that the revised Exhibit A be made effective on March 1, 1999 and therefore requests waiver of the Commission's notice requirement.

Copies of the filing have been served on FPC and the Florida Public Service Commission.

Comment date: March 15, 1999, in accordance with Standard Paragraph E at the end of this notice.

17. Virginia Electric and Power Company

[Docket No. ER99–1906–000]

Take notice that on February 23, 1999, Virginia Electric and Power Company (Virginia Power), tendered for filing the Service Agreement between Virginia Electric and Power Company and H.Q. Energy Services (U.S.), Inc. Under the Service Agreement, Virginia Power will provide services to H.Q. Energy Services (U.S.), Inc., under the terms of the Company's Revised Market-Based Rate Tariff designated as 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.

Virginia Power requests an effective date of February 23, 1999.

Copies of the filing were served upon H.Q. Energy Services (U.S.), Inc., the Virginia State Corporation Commission and the North Carolina Utilities Commission.

Comment date: March 15, 1999, in accordance with Standard Paragraph E at the end of this notice.

18. Louisville Gas and Electric Co./ Kentucky Utilities Company

[Docket No. ER99–1908–000]

Take notice that on February 23, 1999, Louisville Gas and Electric Company/ Kentucky Utilities (LG&E/KU), tendered for filing an executed Service Agreement for Firm Point-To-Point Transmission Service between LG&E/ KU and Merrill Lynch Capital Services, Inc., under LG&E/KU's Open Access Transmission Tariff.

Comment date: March 15, 1999, in accordance with Standard Paragraph E at the end of this notice.

19. Ameren Services Company

[Docket No. ER99–1909–000]

Take notice that on February 23, 1999, Northern Indiana Public Service Company (Northern), tendered for filing an executed Standard Transmission Service Agreement for Non-Firm Point-to-Point Transmission Service between Northern and Ameren Services Company(Transmission Customer). Under the Transmission Service Agreement, Northern will provide Point-to-Point Transmission Service to the Transmission Customer pursuant to the Transmission Service Tariff filed by Northern in Docket No. OA96–47–000 and allowed to become effective by the Commission.

Northern requests that the Commission grant a waiver of the Commission's notice requirements to allow the Standard Transmission Service Agreement to become effective as of February 1, 1999.

Copies of this filing have been sent to the Indiana Utility Regulatory Commission and the Indiana Office of Utility Consumer Counselor.

Comment date: March 15, 1999, in accordance with Standard Paragraph E at the end of this notice.

20. Tampa Electric Company

[Docket No. ER99–1910–000]

Take notice that on February 23, 1999, Tampa Electric Company (Tampa Electric), tendered for filing service agreements with the Florida Municipal Power Agency (FMPA) for firm point-to-point transmission service and non-firm point-to-point transmission service under Tampa Electric's open access transmission tariff.

Tampa Electric proposes an effective date of February 1, 1999, for the service agreements, and therefore requests waiver of the Commission's notice requirement.

Copies of the filing have been served on FMPA and the Florida Public Service Commission.

Comment date: March 15, 1999, in accordance with Standard Paragraph E at the end of this notice.

21. Commonwealth Edison Company

[Docket No. ER99–1911–000]

Take notice that on February 23, 1999, Commonwealth Edison Company (ComEd), tendered for filing Non-Firm Service Agreements with PP&L Energy Plus Co. (PP&L), Merrill Lynch Capital Services, Inc. (MLCS), and Statoil Energy Trading, Inc. (SETI), under the terms of ComEd's Open Access Transmission Tariff (OATT).

ComEd requests an effective date of February 23, 1999, for the service agreements, and accordingly, seeks waiver of the Commission's notice requirements.

Copies of this filing were served on PP&L, MLCS, and SETI.

Comment date: March 15, 1999, in accordance with Standard Paragraph E at the end of this notice.

22. Ohio Edison Company and Pennsylvania Power Company

[Docket No. ER99–1912–000]

Take notice that on February 23, 1999, Ohio Edison Company tendered for filing on behalf of itself and Pennsylvania Power Company, Service Agreements with Statoil Energy Services, Inc., and Pepco Services, Inc. (d/b/a Power Choice), under Ohio Edison's Power Sales Tariff. This filing is made pursuant to Section 205 of the Federal Power Act.

Ohio Edison requests that the Commission waive the notice requirement and allow the Service Agreements to become effective on February 1, 1999.

Comment date: March 15, 1999, in accordance with Standard Paragraph E at the end of this notice.

23. Virginia Electric and Power Company

[Docket No. ER99–1913–000]

Take notice that on February 23, 1999, Virginia Electric and Power Company tendered for filing amended tariff sheets under its open access transmission tariff.

Virginia Power requests that these tariff revisions be allowed to become effective on February 24, 1999.

Comment date: March 15, 1999, in accordance with Standard Paragraph E at the end of this notice.

24. SCC–L1, L.L.C.

[Docket No. ER99–1914–000]

Take notice that on February 23, 1999, SCC–L1, L.L.C. (SCC–L1), tendered for filing an application for Commission acceptance of SCC–L1 Rate Schedule FERC No. 1; the granting of certain blanket approvals, including the authority to sell electricity at market-based rates; and the waiver of certain Commission regulations. SCC–L1's application also seeks Commission acceptance and approval of two power purchase agreements with Enron Power Marketing, Inc., and an Interconnection Agreement with the Tennessee Valley Authority.

SCC–L1 intends to engage in wholesale electric power and energy purchases and sales as a marketer.

Comment date: March 15, 1999, in accordance with Standard Paragraph E at the end of this notice.

25. American Electric Power Service Corporation

[Docket No. ER99–1916–000]

Take notice that on February 23, 1999, the American Electric Power Service Corporation (AEPSC), tendered for filing 1) blanket service agreements by the AEP Companies under the Wholesale Market Tariff of the AEP Operating Companies (Power Sales Tariff), (2) letters of assignment under the Power Sales Tariff and (3) a notice to terminate the service agreement under the Power Sales Tariff with PanCanadian Energy Services, Inc. The Power Sales Tariff was accepted for filing effective October 10, 1997 and has been designated AEP Operating Companies' FERC Electric Tariff Original Volume No. 5.

AEPSC respectfully requests waiver of notice to permit the service agreements, assignments and notice of termination to be made effective as specified in the submittal letter to the Commission with this filing.

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: March 15, 1999, in accordance with Standard Paragraph E at the end of this notice.

26. Ameren Services Company

[Docket No. ER99–1918–000]

Take notice that on February 23, 1999, Ameren Services Company (Ameren Services), tendered for filing a Network Operating Agreement and a Service Agreement for Network Integration Transmission Service between Ameren Services and the City of Marceline, Missouri (the City). Ameren Services asserts that the purpose of the Agreement is to permit Ameren Services to provide transmission service to the City pursuant to Ameren's Open Access Tariff.

Ameren Services requests that the Network Service Agreement and Network Operating Agreement filed herewith be allowed to become effective as of February 1, 1999.

Comment date: March 15, 1999, in accordance with Standard Paragraph E at the end of this notice.

27. American Electric Power Service Corporation

[Docket No. ER99–1921–000]

Take notice that on February 23, 1999, the American Electric Power Service Corporation (AEPSC), tendered for filing a service agreement with Cleveland Public Power by the AEP Companies under the Wholesale Market Tariff of the AEP Operating Companies (Power Sales Tariff). The Power Sales Tariff was accepted for filing effective October 10, 1997 and has been designated AEP Operating Companies' FERC Electric Tariff Original Volume No. 5.

AEPSC respectfully requests waiver of notice to permit this service agreement to be made effective on or prior to March 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: March 15, 1999, in accordance with Standard Paragraph E at the end of this notice.

28. Somerset Power LLC

[Docket No. ER99–1922–000]

Take notice that on February 23, 1999, Somerset Power LLC tendered for filing, pursuant to Section 205 of the Federal Power Act, a Notice of Adoption and Succession to the interests of NRG Energy, Inc., under an interconnection agreement between NRG Energy, Inc., and Montaup Electric Company, FERC Rate Schedule No. 124, to be effective upon closing of Somerset Power LLC's purchase of the Somerset Generating Station, which is scheduled to occur on or before March 31, 1999.

Somerset Power LLC intends to sell electric power and ancillary services at wholesale. Rate Schedule No. 124 sets forth the terms and conditions for the interconnection of Somerset Power LLC's generation facilities with the transmission system of Montaup Electric Company.

Comment date: March 15, 1999, in accordance with Standard Paragraph E at the end of this notice.

29. Virginia Electric and Power Company

[Docket No. ER99–1923–000]

Take notice that on February 23, 1999, Virginia Electric and Power Company (Virginia Power), tendered for filing a Service Agreement for Firm Point-to-Point Transmission Service with American Municipal Power—-Ohio, Inc., under the Open Access Transmission Tariff to Eligible Purchasers dated July 14, 1997. Under the tendered Service Agreement, Virginia Power will provide firm point-to-point service to the Transmission Customer under the rates, terms and conditions of the Open Access Transmission Tariff.

Virginia Power requests an effective date of February 23, 1999, the date of filing the Service Agreement.

Copies of the filing were served upon American Municipal Power—Ohio, Inc., the Virginia State Corporation Commission and the North Carolina Utilities Commission.

Comment date: March 15, 1999, in accordance with Standard Paragraph E at the end of this notice.

30. FirstEnergy Corp., and Pennsylvania Power Company

[Docket No. ER99–1924–000]

Take notice that on February 23, 1999, FirstEnergy Corp., tendered for filing on behalf of itself and Pennsylvania Power Company, Service Agreements for Network Integration Service and Operating Agreements for the Network Integration Transmission Service under the Pennsylvania Electric Choice Program with PEPCO Services, Inc., and Columbia Energy Power Marketing Corporation pursuant to the FirstEnergy System Open Access Tariff. These agreements will enable the parties to obtain Network Integration Service under the Pennsylvania Electric Choice Program in accordance with the terms of the Tariff.

The proposed effective date under these agreements is February 18, 1999.

Comment date: March 15, 1999, in accordance with Standard Paragraph E at the end of this notice.

31. South Carolina Electric and Gas Company

[Docket No. OA97–416–004]

Take notice that on February 17, 1999, South Carolina Electric and Gas Company (SCE&G), tendered a letter certifying that it will prohibit its wholesale merchant function from having access to its Control Center in response the Commission's January 28, 1999, Order on Standards of Conduct and Rehearing. (86 FERC] 61,079 (1999)).

Comment date: March 12, 1999, in accordance with Standard Paragraph E at the end of this notice.

32. Sabine Cogen L.P.

[Docket No. QF98–119–000]

Take notice that on February 18, 1999, Sabine Cogen L.P., whose address is c/o AL Cogen, Inc., c/o Air Liquide America Corporation, 2700 Post Oak Boulevard, Suite 2100, Houston, Texas 77056, filed with the Federal Energy Regulatory Commission a supplement to its application for certification of a facility as a qualifying cogeneration facility which was filed with the Commission on September 18, 1998.

The purpose of the resubmitted filing is to comply with the Commission's request for supplemental information.

The Facility is a combined cycle facility whose principal components are two combination turbine generators, each with an associated waste heat recovery steam generator, and a single steam turbine generator. The Facility will interconnect with the transmission system of Entergy Gulf States, Inc.

Comment date: March 18, 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 such filing should file a motion to intervene or protest with the Federal Energy Regulatory Commission, 888 First Street, N.E., Washington, D.C. 20426, in accordance with Rules 211 and 214 of the Commission's Rules of Practice and Procedure (18 CFR 385.211 and 385.214). All such motions or protests should be filed on or before 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. This filing may also be viewed on the Internet at http://www.ferc.fed.us/ online/rims.htm (call 202–208–2222 for assistance).

David P. Boergers,

Secretary.

[FR Doc. 99–5341 Filed 3–3–99; 8:45 am]

BILLING CODE 6717–01–P

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

[Docket No. RM95–9–003]

Open Access Same-Time Information System and Standards of Conduct; Notice of Filing of Emergency Motion for Clarification

February 26, 1999.

Take notice that on February 25, 1999, Enron Power Marketing, Inc. (EPMI) and Coral Poser, L.L.C. (collectively Movants) jointly filed an emergency motion for clarification of the Commission's notice of proposed rulemaking issued in this proceeding on February 3, 1999.[1] Movants state that, on February 23, 1999, Mid-Continent Area Power Pool (MAPP) notified EPMI and others that, starting on March 1, 1999, MAPP intends to change the confirmation time limits in Schedule F of its Individual Open Access Tariff,[2] to match the guides on confirmation time limits contained in Table 4–2 of the ''Industry Report to the Federal Energy Regulatory Commission on OASIS Phase IA Business Practices'' jointly submitted to the Commission by the Commercial Practices Working Group and the OASIS How Working Group.

Movants argue that the Commission should clarify that MAPP and other transmission providers may not implement any of the proposals in the NOPR until they demonstrate that those proposals are consistent with or superior to the pro forma tariff or until the Commission issues a final rule after review of the comments to the NOPR (due on or before April 5, 1999).

Any person desiring to be heard or to protest said filing should file an answer with the Federal Energy Regulatory Commission, 888 First Street, NE, Washington, DC 20426, in accordance with Rule 213 of the Commission's Rules of Practice and Procedure (18 CFR 385.213). All such answers should be filed on or before March 12, 1999. Copies of this filing are on file with the Commission and are available for public inspection.

David P. Boergers,

Secretary.

[FR Doc. 99–5339 Filed 3–3–99; 8:45 am]

BILLING CODE 6717–01–M

[1] Open Access Same-Time Information System and Standards of Conduct, *notice of proposed rulemaking,* 64 Fed. Reg. 5206 (1999) (NOPR).

[2] *See* Attachment A to MAPP filing in Docket No. ER99–993–000, dated December 23, 1998. This filing was approved by the Commission in Mid-Continent Area Power Pool, 86 FERC ¶ 61,155 (1999).

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

[Project No. 2042–010]

Public Utility District No. 1 of Pend Oreille County; Notice of Availability of Environmental Assessment

February 26, 1999.

In accordance with the National Environmental Policy Act of 1969 and the Federal Energy Regulatory Commission's regulations, 18 CFR Part 380 (Order No. 486, 52 FR 47910), the Office of Hydropower Licensing (OHL) reviewed the proposal to add project lands in the upstream portion of the project reservoir that were not included within the original project boundary for the Box Canyon Hydroelectric Project in Pend Oreille County, Washington. In addition OHL reviewed an Offer of Settlement made by the parties to this proceeding. The Commission prepared an environmental assessment (EA) for the proposed action and offer of settlement. In the EA, the Commission concludes that approval of the proposed boundary change and offer of settlement will not constitute a major federal action significantly affecting the quality of the human environment.

A copy of the EA 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 EA may be viewed on the web at www.ferc.fed.us/online/rims.htm (call 202–208–2222 for assistance).

Any questions on this notice should be addressed to James Hastreiter, E-mail address james.hastreiter@ferc.fed.us, or telephone 503–326–5858, ext. 225.

Linwood A. Watson, Jr.,

Acting Secretary.

[FR Doc. 99–5338 Filed 3–3–99; 8:45 am]

BILLING CODE 6717–01–M

ENVIRONMENTAL PROTECTION AGENCY

[FRL–6306–3]

San Fernando Valley—Burbank Operable Unit Superfund Site; Proposed Notice of Administrative Settlement

AGENCY: Environmental Protection Agency (EPA).

ACTION: Notice; Request for public comment.

SUMMARY: In accordance with the Comprehensive Environmental Response, Compensation and Liability Act of 1980, as amended by the Superfund Amendments and Reauthorization Act of 1986 (''CERCLA''), 42 U.S.C. 9601 *et seq.*, notice is hereby given that a proposed Prospective Purchaser Agreement associated with the San Fernando Valley North Hollywood Superfund Site—Burbank Operable Unit was executed by the United States Environmental Protection Agency (''EPA'') on December 30, 1998. The proposed Prospective Purchaser Agreement would resolve certain potential claims of the United States under sections 106 and 107 of CERCLA, 42 U.S.C. 9606 and 9607, against Cinnabar, Inc., Cinnabar California, Cinnabar Florida, and Kamork Partners (collectively the ''Purchaser''). The Purchaser plans to acquire a three-acre parcel located within the Burbank Operable Unit in Burbank, California, which the Purchaser currently leases. The Purchaser intends to continue the current use of the property as the location of its business for the manufacture of scenery, props and movie miniatures. The proposed settlement would require the Purchaser to pay EPA $ 50,000. EPA agreed to this amount based on the Purchaser's demonstration to EPA that the Purchaser has a limited ability-to-pay.

For thirty (30) calendar days following the date of publication of this notice, EPA will receive written comments relating to the proposed settlement. If requested prior to the expiration of this public comment period, EPA will provide an opportunity for a public meeting in the affected area. EPA's response to any comments received will be available for public inspection at the U.S. Environmental Protection Agency, 75 Hawthorne Street, San Francisco, CA 94105.

DATES: Comments must be submitted on or before April 5, 1999.

ADDRESSES: *Availability:* The proposed Prospective Purchaser Agreement and additional background documentation relating to the settlement are available for public inspection at the U.S. Environmental Protection Agency, 75 Hawthorne Street, San Francisco, CA 94105. A copy of the proposed settlement may be obtained from Marie M. Rongone, Assistant Regional Counsel (ORC–3), Office of Regional Counsel, U.S. EPA Region IX, 75 Hawthorne Street, San Francisco, CA 94105. Comments should reference ''Cinnabar Prospective Purchaser Agreement, San Fernando Valley Superfund Site, Burbank Operable Unit,'' and ''Docket

No. 99–04'' and should be addressed to Marie M. Rongone at the above address.

FOR FURTHER INFORMATION CONTACT: Marie M. Rongone, Assistant Regional Counsel (ORC–3), Office of Regional Counsel, U.S. EPA Region IX, 75 Hawthorne Street, San Francisco, CA 94105; E-mail: rongone.marie@epamail.epa.gov; Phone: (415) 744–1313.

Dated: February 19, 1999.

Keith Takata,

Director, Superfund Division, U.S. EPA, Region IX.

[FR Doc. 99–5238 Filed 3–3–99; 8:45 am]

BILLING CODE 6560–50–P

ENVIRONMENTAL PROTECTION AGENCY

[FRL–6237–7]

No Discharge Zone Determinations for Broad Creek, Lake Keowee, Lake Murray, Lake Thurmond, and Lake Wylie

AGENCY: Environmental Protection Agency.

ACTION: Notice.

SUMMARY: The Environmental Protection Agency (EPA) Region 4 has received petitions from the State of South Carolina requesting a determination that adequate and reasonably available pump out facilities exist for Broad Creek, Lake Keowee, Lake Murray, Lake Thurmond, and Lake Wylie. The purpose of this petition is to enable these water bodies to qualify for No Discharge Zone (NDZ) designation. The State of Georgia concurs with this determination for Lake Thurmond (known as Clarks Hill Lake in Georgia), and the State of North Carolina concurs with this determination for Lake Wylie.

The EPA Regional Administrator for Region 4 concurs with the State of South Carolina's determination. This action is taken pursuant to section 312(f)(3) of the Clean Water Act (CWA) and Public Law 92–500 as amended by Public Law 95–217 and Public Law 100–4, that adequate facilities for the safe and sanitary removal of sewage from all vessels are reasonably available for these water bodies to qualify as NDZs.

EPA's action allows prohibition regarding discharge from vessels to be applied by these States. Specifically, section 312(f)(3) of the CWA states:

After the effective date of the initial standards and regulations promulgated under this section, if any State determines that the protection and enhancement of the quality of some or all of the waters within such States require greater environmental protection, such State may completely prohibit the discharge from all vessels of any sewage, whether treated or not into such waters, except that no such prohibition shall apply until the Administrator determines that adequate facilities for the safe and sanitary removal and treatment of sewage from all vessels are reasonably available for such water to which such prohibition would apply.

According to the State of South Carolina, the following facilities and conditions exist for these five water bodies.

Broad Creek

Broad Creek is located on the Island of Hilton Head just north of Calibogue Sound. It is a shallow estuary extending across much of the island in a northeast to southwest direction, from its headwaters not far from the Atlantic Ocean to the mouth at Calibogue Sound. Its surface waters cover an area of 1.08 square miles (approximately 692 acres) in Beaufort county, South Carolina.

The facilities available for pumping out vessel holding tanks, addresses, telephone number, hours of operation, and vessel drafts are as follows:

(1) Palmetto Bay Marina; 164–D Palmetto Bay Road, Hilton Head, South Carolina 29928; 843–785–3910; 8 AM–6:30 PM (summer) 8 AM–5:30 PM (winter); 22′ draft.

(2) Wexford Lock Harbor Marina; Wexford Plantation, Hilton Head, South Carolina 29928; 843–686–8805; 8 AM–5 PM year round; 8′ draft.

(3) Shelter Cove Marina; PO Box 5628, Hilton Head, South Carolina 29938; 843–842–7001; 7:30 AM–7 PM (summer) 7:30 AM–5PM (winter); 9′ draft.

Marine toilet waste from all of these facilities will be treated in municipal wastewater treatment plants. It is estimated that 395 vessels in this area are equipped with Marine Sanitation Devices (MSD). Therefore the ratio of boats with MSDs to pump out facilities is 132 boats per pump out facility.

Lake Thurmond

Lake Thurmond (Clarks Hill Lake in Georgia) straddles the Georgia South Carolina Border. The dam is located approximately 10 miles north of Augusta, Georgia. This lake is a reservoir of approximately 70,000 acres with 1,200 miles of shoreline.

The facilities available for pumping out vessel holding tanks, addresses, telephone number, hours of operation, and vessel drafts are as follows:

(1) Plum Branch Yacht Club; PO Box 370, Plum Branch, South Carolina 29845; 864–443–1380; 9 AM–9 PM (summer) 10 AM–2 PM (winter); 15′ draft.

(2) Tradewinds Marina; 5577 Marina Parkway, Appling, Georgia 30802; 706–541–1380; 9 AM–5:30 PM year round; 30′ draft.

Marine toilet waste from these marinas will be treated in state approved septic tank systems. It is estimated that 74 vessels in this area are equipped with MSDs. Therefore, the ratio of boats with MSDs to pump out facilities is 37 boats per pump out facility.

Lake Murray

Lake Murray is located just north of the City of Columbia, South Carolina. This lake is a reservoir of approximately 78 square miles (50,000 acres) with 520 miles of shoreline.

The facilities available for pumping out vessel holding tanks, addresses, telephone number, hours of operation, and vessel drafts are as follows:

(1) Dreher Island State Park; 3677 State Park Road, Prosperity, South Carolina 29127; 803–364–4152; 6 AM–9 PM (summer) 6 AM–6 PM (winter); 12′ draft.

(2) Jakes Landing; 220 Jakes Landing Road #2, Lexington, South Carolina 29072; 803–359–9268; 9 AM–8 PM (summer) 9 AM–5 PM (winter); 8′ draft.

(3) Lake Murray Marina; 1600 Marina Road, Ballentine, South Carolina 29002; 803–781–1585; 8 AM–7 PM (summer) 8 AM–5 PM (winter); 15′ draft.

(4) Lighthouse Marina; 1925 Johnson's Marina Road, Chapin, South Carolina 29026; 8 AM–8 PM (summer) 8 AM–5 PM (winter); 8′ draft.

(5) Night Harbor; 824 Yacht Club Point, PO Box 107, Ballentine, South Carolina 29002; hours of operation not available; 13′ draft.

(6) Robisons Lakeside Marina; 3072 Hwy 378, Leesville, South Carolina 29070; 803–532–4231; 9 AM–6 PM (summer) 9 AM–5 PM (winter); 5′ draft.

(7) Windward Point Yacht Club; PO Box 327, Irmo, South Carolina 29063; 803–781–2285; open 24 hours year round; 5′ draft.

Marine toilet waste from these marinas will be treated as follows:

Dreher Island State Park—.06 mgd package plant (NPDES Permit SC0026048).

Jakes Landing, Lake Murray Marina, Windward Point—state approved septic tank Lighthouse Marina—public wastewater collection and treatment system.

Night Harbor, Robison's Lakeside Marina—holding tank which is hauled to a municipal treatment facility.

It is estimated that 256 vessels in this area are equipped with MSDs. Therefore, the ratio of boats with MSDs to pump out facilities is 37 boats per pump out facility.

Lake Keowee

Lake Keowee is located in the northwest corner of South Carolina, approximately 30 miles west of Greenville, South Carolina. The surface

waters of this reservoir/lake cover 18,400 acres and its shoreline is about 300 miles.

The facilities available for pumping out vessel holding tanks, addresses, telephone, hours of operation, and vessel drafts are as follows:

Lake Keowee Marina; 150 Keowee Marina Drive, Seneca, South Carolina 29679; 864–882–2047; 8 AM–8 PM (summer) 9 AM–5 PM (winter) closed Mondays; 20′ draft.

Marine toilet waste from this facility is treated in a state approved and regulated septic tank.

It is estimated that there are 92 vessels in this area that are equipped with MSDs.

Lake Wylie

Lake Wylie straddles the North Carolina—South Carolina border near Charlotte, North Carolina. The surface waters of this lake/reservoir cover 12,455 acres and its shoreline is about 327 miles.

The facilities available for pumping out vessel holding tanks, addresses, telephone, hours of operation, and vessel drafts are as follows:

(1) Harbortowne Marina; PO Box 6122, Charlotte, North Carolina 28207; 704–347–4224; 9 AM–7 PM (summer) 10 AM–4 PM (winter); 10′ draft.

(2) River Hills Marina Club; 12 Executive Place, Lake Wylie, South Carolina 29710; 803–831–0758; 18′ draft.

Marine toilet waste from Harbortowne Marina is treated by a state approved and regulated septic tank. Marine toilet waste from River Hills Marina Club is treated in a public waste water treatment system.

It is estimated that there are 188 vessels in this area that are equipped with MSDs. Therefore the ratio of boats with MSDs to pumpout facilities is 94 boats per pump out facility.

Comments concerning this action may be filed on or before 30 days from the date of this document. Such communication should be addressed to Wesley B. Crum, Chief, Coastal Programs and Surface Water Quality Grants Section, EPA, Region 4, Sam Nunn Federal Center, 61 Forsyth Street, Atlanta, Georgia 30303–3104. Telephone 404–562–9352.

A. Stanley Meiburg,

Acting Regional Administrator, Region 4.

[FR Doc. 99–5381 Filed 3–3–99; 8:45 am]

BILLING CODE 6560–50–P

FEDERAL COMMUNICATIONS COMMISSION

Notice of Public Information Collection(s) Submitted to OMB for Review and Approval

February 26, 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 5, 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, Washington, 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 Number: 3060–XXXX.

Title: Section 73.3534, Period of Construction for ITFS Construction Permits and Requests for Extension.

Form Number: N/A.

Type of Review: New collection.

Respondents: Business or other for-profit, state, local or tribal government.

Number of Respondents: 610.

Estimated Time Per Response: 1.0 hours per notification.

Frequency of Response: On occasion reporting requirement.

Total Annual Burden: 610 hours.

Total Annual Cost: $18,300.

Needs and Uses: On October 22, 1998, the Commission adopted a Report and Order in MM Docket Nos. 98–43 and 94–149. Among other things, this Report and Order adopted a notification procedures to be used in lieu of the FCC Form 307 for requesting an extension of time to construct an ITFS station. This notification should include a specific and detailed showing that the failure to complete construction was due to causes not under the control of the permittee. An extension of time to construct will be limited to a period of no more than 6 months. Any construction permit for which construction has not been completed shall be automatically forfeited upon expiration of the construction permit. With the adoption of this Report and Order, the Commission has abolished the FCC Form 307.

The data are used by FCC staff to ensure that legitimate obstacles are preventing permittees from the construction of ITFS facilities.

OMB Control Number: 3060–0407.

Title: Section 73.3598, Period of Construction.

Form Number: N/A.

Type of Review: Revision of a currently approved collection.

Respondents: Business or other for-profit, not-for-profit institutions.

Number of Respondents: 100.

Estimated Time Per Response: 0.5 hours per response.

Frequency of Response: On occasion reporting requirement.

Total Annual Burden: 38 hours.

Total Annual Cost: $28,500.

Needs and Uses: On October 22, 1998, the Commission adopted a Report and Order in MM Docket Nos. 98–43 and 94–149. Among other things, this Report and Order extended the time to complete construction of a new broadcast station or a modification to a licensed station to three years. This new construction period will provide all permittees an adequate and realistic time to construct their facilities and will result in the elimination of requests for additional time to construct. The Commission will toll the construction period only when construction is encumbered due to an act of God, or when a construction permit is the subject of administrative or judicial review. This Report and Order adopted a notification procedure to be used for notifying the Commission that a permit

is subject to tolling. The FCC Form 307, Application for Extension of Broadcast Construction Permit or to Replace Expired Construction Permit, will be abolished.

Specifically, when a permit is subject to tolling because construction is encumbered due to an act of God, or when a construction permit is the subject of administrative or judicial review, Section 73.3598 requires a permittee to notify the Commission as promptly as possible and, in any event, within 30 days, and to provide supporting documentation. Tolling resulting from an act of God will normally cease six months from the date of the notification. A permittee must also notify the Commission promptly when a relevant administrative or judicial review is resolved. Any construction permit for which construction has not been completed shall be automatically forfeited upon expiration of the construction permit.

The data are used by FCC staff to ensure that legitimate obstacles are preventing permittees from the construction of broadcast facilities.

Federal Communications Commission.

Magalie Roman Salas,

Secretary.

[FR Doc. 99–5355 Filed 3–3–99; 8:45 am]

BILLING CODE 6712–01–U

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 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.

Harry F. Long & Associates, Inc., d/b/a Long & Associates, 631 N. Central, Wood Dale, IL 60191, Officers: Ronald Koos, President, Everett Willerth, Vice President.

Dated: February 26, 1999.

Bryant L. VanBrakle,

Secretary.

[FR Doc. 99–5331 Filed 3–3–99; 8:45 am]

BILLING CODE 6730–01–M

FEDERAL MARITIME COMMISSION

Sunshine Act Meeting

AGENCY HOLDING THE MEETING: Federal Maritime Commission.

TIME AND DATE: 10:00 a.m.—March 9, 1999.

PLACE: 800 North Capitol Street, N.W., First Floor Hearing Room, Washington, D.C.

STATUS: Closed.

MATTER(S) TO BE CONSIDERED:

1. Brazilian Maritime Policies Affecting U.S.-Brazil Trades
2. Docket No. 98–14—Shipping Restrictions, Requirements and Practices of the People's Republic of China
3. Fact Finding Investigation No. 23—Ocean Common Carrier Practices in the Transpacific Trades

CONTACT PERSON FOR MORE INFORMATION: Bryant L. VanBrakle, Secretary, (202) 523–5725.

Bryant L. VanBrakle,

Secretary.

[FR Doc. 99–5515 Filed 3–2–99; 3:12 pm]

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 March 18, 1999.

A. Federal Reserve Bank of Kansas City (D. Michael Manies, Assistant Vice President) 925 Grand Avenue, Kansas City, Missouri 64198-0001:

1. John J. Hale, Dana Hale Nelson, Douglas L. Nelson, Lisa K. Hale, Mollie Carter Hale, all of Shawnee Mission, Kansas; and Karen Hale Young and M. Alan Young, both of Salina, Kansas; to acquire voting shares of Sunflower Banks, Inc., Salina, Kansas, and thereby indirectly acquire Sunflower Bank, N.A., Salina, Kansas.

Board of Governors of the Federal Reserve System, February 26, 1999.

Robert deV. Frierson,

Associate Secretary of the Board.

[FR Doc. 99–5301 Filed 3–3–99; 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 29, 1999.

A. Federal Reserve Bank of St. Louis (Randall C. Sumner, Vice President) 411 Locust Street, St. Louis, Missouri 63102-2034:

1. Banterra Corp., Eldorado, Illinois; to acquire 100 percent of the voting shares of Heartland Bancshares, Inc., Herrin, Illinois, and thereby indirectly acquire Heartland National Bank, Herrin, Illinois.

Board of Governors of the Federal Reserve System, February 26, 1999.

Robert deV. Frierson,

Associate Secretary of the Board.

[FR Doc. 99–5300 Filed 3–3–99; 8:45 am]

BILLING CODE 6210–01–F

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Office of the Secretary

Agency Information Collection Activities: Submission for OMB Review; Comment Request

The Department of Health and Human Services, Office of the Secretary publishes a list of information collections it has submitted to the Office of Management and Budget (OMB) for clearance in compliance with the Paperwork Reduction Act of 1995 (44 U.S.C. Chapter 35) and 5 CFR 1320.5. The following are those information collections recently submitted to OMB.

Evaluation of the Office of Minority Health's Resource Center—NEW—The Office of Minority Health proposes to survey customers of the Office of Minority Health Resource Center to determine if the Center is providing useful services to its intended audience. The information will be used to identify potential improvements in the Center's customer service procedures. Respondents: Individuals, Businesses, Non-profit institutions, Federal, State or Local Governments; Number of Respondents: 1050; Average Burden per Response: 7 minutes; Total Burden: 123 hours.

OMB Desk Officer: Allison Eydt.

Copies of the information collection packages listed above can be obtained by calling the OS Reports Clearance Officer on (202) 690–6207. Written comments and recommendations for the proposed information collection should be sent directly to the OMB desk officer designated above at the following address: Human Resources and Housing Branch, Office of Management and Budget, New Executive Office Building, Room 10235, 725 17th Street NW, Washington, DC 20503.

Comments may also be sent to Cynthia Agens Bauer, OS Reports Clearance Officer, Room 503H, Humphrey Building, 200 Independence Avenue SW, Washington, DC, 20201. Written comments should be received within 30 days of this notice.

Dated: February 22, 1999.

Dennis P. Williams,

Deputy Assistant Secretary, Budget.

[FR Doc. 99–5304 Filed 3–3–99; 8:45 am]

BILLING CODE 4150–04–M

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Centers for Disease Control and Prevention

Vessel Sanitation Operation Manual; Meeting

The National Center for Environmental Health (NCEH) of the Centers for Disease Control and Prevention (CDC) announces the following meeting:

Name: Discussion of the Draft Revised Vessel Sanitation Operation Manual—Public meeting among CDC and the cruise ship industry, private sanitation consultants, and other interested parties.

Times and Dates: 1:30 p.m.–5:30 p.m., April 14, 1999. 9 a.m.–5:30 p.m., April 15, 1999. 9 a.m.–4:30 p.m., April 16, 1999.

Place: Auditorium, Port Everglades Administration Building, 1850 Eller Drive, Fort Lauderdale, Florida 33316, telephone 954/356–6650; fax 954/356–6671.

Status: Open to the public, limited by the space available. The meeting room accommodates approximately 100 people.

Purpose: CDC announced its intention to revise the ''Vessel Sanitation Operations Manual, August 1989'' in the **Federal Register**, Volume 62, Thursday, August 23, 1997, page 44475. Comments from the public were requested of and received from the cruise ship industry, private sanitation consultants, and other interested parties. The Vessel Sanitation Program (VSP) staff has drafted a revised manual and will discuss the revisions at this public meeting.

Matters to be Discussed: Agenda items will include a thorough discussion of each section of the draft revised operations manual. A copy of the draft revised manual will be available for review by March 22, 1999. To obtain a copy, contact the VSP in Atlanta at the address or phone number below, or go to the VSP Home Page on the Internet at *http://www.cdc.gov/nceh/programs/vsp*.

For a period of 15 days following the meeting, through April 29, 1999, the official record of the meeting will remain open so that additional materials or comments may be submitted to be made part of the record of the meeting. VSP staff will then finalize the revised operations manual and publish the final version in the **Federal Register**.

Advanced registration for this important meeting is encouraged. Please provide the following information: name, title, company name, mailing address, telephone number, facsimile number, and E-mail address to Dorothy Johnson, Management Assistant, facsimile 770/488–4127 or E-mail: dgj0@cdc.gov.

Contact Person for More Information: Daniel Harper, Chief, VSP, Special Programs Group, NCEH, CDC, 4770 Buford Highway, NE, M/S F–16, Atlanta, Georgia 30341–3724, telephone 770/488–3524, E-mail: dmh2@cdc.gov, or David Forney, Public Health Advisor, telephone 770/488–7333 or E-mail: *dlf1@cdc.gov*.

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 25, 1999.

Carolyn J. Russell,

Director, Management Analysis and Services Office, Centers for Disease Control and Prevention (CDC).

[FR Doc. 99–5328 Filed 3–3–99; 8:45 am]

BILLING CODE 4163–18–P

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Centers for Disease Control and Prevention

The National Center for Environmental Health (NCEH) of the Centers for Disease Control and Prevention (CDC) Announces the Following Meeting

Name: Current Status of the Vessel Sanitation Program (VSP) and Experience to Date with Program Operations—Public meeting among CDC and the cruise ship industry, private sanitation consultants, and other interested parties.

Time and Date: 9 a.m.–12 noon, April 14, 1999.

Place: Auditorium, Port Everglades Administration Building, 1850 Eller Drive, Fort Lauderdale, Florida 33316, telephone 954/356–6650; fax 954/356–6671.

Status: Open to the public; limited by the space available. The meeting room accommodates approximately 100 people.

Purpose: Over the past 13 years, as part of the revised VSP, CDC has conducted a series of public meetings with members of the cruise ship industry, private sanitation consultants, and other interested parties.

This meeting is a continuation of that series of public meetings to discuss the current status of the VSP and its experience to date with program operations.

Matters to be Discussed: Agenda items will include a VSP Program Director Update; 1998 Program Review; Canadian/U.S. Harmonization Update; Revision of the ''Final Recommended Shipbuilding Construction Guidelines for Cruise Vessels Destined to Call on U.S. Ports''; Update on Disease Surveillance and Outbreak Investigations; and VSP Training Seminars.

For a period of 15 days following the meeting, through April 27, 1999, the official record of the meeting will remain open so that additional materials or comments may be submitted to be made part of the record of the meeting.

Advanced registration is encouraged. Please provide the following information: name, title, company name, mailing address, telephone number, facsimile number, and E-mail address to Dorothy Johnson, Management Assistant, facsimile 770/488–4127 or E-mail: dgj0@cdc.gov.

Contact Person for More Information: Daniel Harper, Chief, VSP, Special Programs Group, NCEH, CDC, 4770 Buford Highway,

NE, M/S F–16, Atlanta, Georgia 30341–3724, telephone 770/488–3524, E-mail: dmh2@cdc.gov, or David Forney, Public Health Advisor, telephone 770/488–7333 or E-mail: *dlf1@cdc.gov*.

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 25, 1999.

Carolyn J. Russell,

Director, Management Analysis and Services Office, Centers for Disease Control and Prevention (CDC).

[FR Doc. 99–5329 Filed 3–3–99; 8:45 am]

BILLING CODE 4163–18–P

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Administration for Children and Families

Proposed Information Collection Activity; Comment Request; Proposed Project

Title: Refugee State-of-Origin Report.

OMB No.: 0970–0043.

Description: The information collection of the ORR–11 (Refugee State-or-Origin Report) is designed to satisfy the statutory requirements of the Immigration and Nationality Act. Section 412(s) (of the Act requires ORR to compile and maintain data on the secondary migration of refugees within the United States after arrival.

In order to meet this legislative requirement, ORR requires each State to submit an annual count of the number of refugees who were initially resettled in another State. The State does this by counting the number of refugees with social security numbers indicating residence in another State at the time of arrival in the U.S. (The first three digits of the social security number indicate the State of residence of the applicant.)

Data submitted by the States are compiled and analyzed by the ORR statisticians, who then prepares a summary report which is included in ORR's annual Report to Congress. The primary use of the data is to quantify and analyze refugee secondary migration among the 50 States. ORR uses these data to adjust its refugee arrival totals in order to calculate the ORR social services formula allocation.

Respondents: State, Local or Tribal Govt.

ANNUAL BURDEN ESTIMATES

Instrument	Number of respondents		Average burden hours per response	Total burden hours
State-of-Origin Report	50	1	4.333	217

Estimated Total Annual Burden Hours: 217.

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, 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.

The Department specifically requests comments 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) 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. Consideration will be given to comments and suggestions submitted within 60 days of this publication.

Dated: February 26, 1999.

Bob Sargis,

Acting Reports Clearance Officer.

[FR Doc. 99–5302 Filed 3–3–99; 8:45 am]

BILLING CODE 4184–01–M

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Administration for Children and Families

Submission for OMB Review; Comment Request

Title: National Study of Child Care for Low-Income Families.

OMB No.: New.

Description: The Personal Responsibility and Work Opportunity Reconciliation Act (PRWORA) has intensified the need for information about child care for low-income families. Many policymakers, program operators, and others have emphasized that low-income families' access to adequate child care is essential to meet the broad goal set out in the Act to enable families receiving public assistance to enter and remain in the workforce. PRWORA also consolidated a variety of federal child care funds into a single block grant, the Child Care and Child Development Fund (CCDF), which gives the State broad discretion in establishing priorities for subsidy as well as levels. Faced with limited funding and a burgeoning need for child care, state policymakers are under enormous pressure to use child care funding as efficiently as possible. Their decision-making is hampered by lack of information about three important and interrelated issues: how the current set of policies and programs, for example, including work requirements, child care subsidies and regulations governing child care, affects parents' employment and child care decisions; how significant shifts in welfare and other policies, as well as funding for child care,will affect the demand for and supply of child care at the community level; and the potential implications of an increased reliance of low-income families on family child care that may or may not be regulated or monitored.

A sample of key informants at the state and community levels including governor's policy staff, child care and welfare agency staff, child care licensing and monitoring staff, child care resource and referral agency staff, and advocacy group members, representatives of private organizations such as foundations or churches, will be asked about state child care and subsidy policies and how these policies are implemented at the local level. Additionally, they will be asked about the effect of these policies on the supply

of child care. A sample of low-income families using non-parental child care will be asked about the types and cost of care used and the factors that influenced their choice of child care arrangements including the availability of child care subsidies. A sample of low-income parents using family child care will be asked about their experience with this care and how this care has affected their ability to work and to balance work and family life. Additionally, parents will be asked about their household characteristics on a voluntary basis. The family child care providers used by the sample of low-income parents will be asked about their views on child rearing and the role of the child care provider, the relationship with the parents served, and on a voluntary basis, their household characteristics. A sample of children using family child care will be observed in their child care setting. Focus groups with family child care providers and low-income parents will be used to investigate how child care subsidy policy has affected the supply and demand for child care in their communities.

ACF, working with Abt Associates and the National Center for Children in Poverty at Columbia University, will conduct the proposed data collection. Data will be collected at the three levels, with nested samples of counties within states and families and providers within counties. The first level is a sample of 17 states containing 25 counties that were selected to be a nationally-representative sample of counties with above average poverty rates. At the family level, data will be collected from two samples:

X A random sample of 5,000 low-income families with working parents and at least one child under age 13 for whom they use non-parental child care, that will be selected in the 25 counties (200/county). This sample will be used to investigate the spectrum of child care options available to and the choices made by low-income families in the 25 counties.

X A sample of 650 low-income parents who are receiving, or who are eligible for, child care subsides, and are using family child care at the start of the study will be used to examine the experiences of low-income families with this important but rarely studied mode of child care. A random sample (130 families/county) will be selected from subsidy lists and, in the case of unsubsidized families, through snowball sampling in a subsample of five of the 25 counties.

At the provider level, data will be collected from the 650 family child care providers linked to these 650 families.

Respondents: State, Local or Tribal Government.

ANNUAL BURDEN ESTIMATES

Instrument	Number of respondents	Number of responses per respondent	Average burden hours per response	Total burden hours
State Key Informant Interviews	170	2	1.00	114
Community Key Informant Interviews	250	.67	1.00	168
Community Survey (Screener)	64,474	.33	0.08	1,702
Community Survey	5,000	.33	.5	825
In-Depth Study Parent Screener	2,172	.33	0.08	57
In-Depth Study Parent Interview	650	2	1.25	1,625
In-Depth Study Student Interview	63	1	.033	21
In-Depth Study Family Child Care Provider Screener	1,458	.33	.17	82
In-Depth Study Family Care In-Depth Study Care Provider Interview	650	2	.50	65

Estimated Total Annual Burden Hours: 5,244.

Additional Information

Copies of the proposed collection may be obtained by writing to The Administration for Children and Families, Office of Information Services, 370 L'Enfant Promenade, SW, Washington, DC 20447, Attn: ACF Reports Clearance Officer.

OMB Comment

OMB is required to make a decision concerning the collection of information between 30 and 60 days after publication of this document in the **Federal Register.** Therefore, a comment is best assured of having its full effect if OMB receives it within 30 days of publication. Written comments and recommendations for the proposed information collection should be sent directly to the following: Office of Management and Budget, Paperwork Reduction Project, 725 17th Street, NW, Washington, DC 20503, Attn: Stuart Schapiro.

Dated: February 26, 1999.

Bob Sargis,

Acting Reports Clearance Officer.

[FR Doc. 99–5303 Filed 3–3–99; 8:45 am]

BILLING CODE 4184–01–M

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Food and Drug Administration

[Docket No. 98N–0222]

Agency Information Collection Activities: Proposed Collection; Comment Request; Dissemination of Information on Unapproved/New Uses for Marketed Drugs, Biologics, and Devices

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 reinstatement 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 reporting and recordkeeping requirements associated with the dissemination of unapproved or new uses for marketed drugs, biologics, and devices.

DATES: Submit written comments on the collection of information by May 3, 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: Karen L. Nelson, Office of Information Resources Management (HFA–250), Food and Drug Administration, 5600 Fishers Lane, Rockville, MD 20857, 301–827–1482.

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 reinstatement 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 in this document.

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.

Dissemination of Information on Unapproved/New Uses for Marketed Drugs, Biologics, and Devices (OMB Control Number 0910–0390)—Extension

Description: In the **Federal Register** of November 20, 1998 (63 FR 64555), FDA published a final rule to add a new part 99 (21 CFR part 99) entitled ''Dissemination of Information on Unapproved/New Uses for Marketed Drugs, Biologics, and Devices.''

The final rule implemented section 401 of the Food and Drug Administration Modernization Act (FDAMA) (Pub. L. 105–115). In brief, section 401 of FDAMA amended the act to permit drug, biologic, and device manufacturers to disseminate certain written information concerning the safety, effectiveness, or benefits of a use that is not described in the product's approved labeling to health care practitioners, pharmacy benefit managers, health insurance issuers, group health plans, and Federal and State Government agencies, provided that the manufacturer complies with certain statutory requirements. For example, the information that is to be disseminated must be about a drug or device that is being legally marketed; it must be in the form of an unabridged reprint or copy of a peer-reviewed journal article or reference publication; and it must not be derived from another manufacturer's clinical research, unless that other manufacturer has given its permission for the dissemination. The information must be accompanied by certain information, including a prominently displayed statement that the information discusses a use or uses that have not been approved or cleared by FDA. Additionally, 60 days before dissemination, the manufacturer must submit to FDA a copy of the information to be disseminated and any other clinical trial information that the manufacturer has relating to the safety or effectiveness of the new use, any reports of clinical experience that pertain to the safety of the new use, and a summary of such information.

The rule sets forth the criteria and procedures for making such submissions to FDA. Under the rule, a submission would include a certification that the manufacturer has completed clinical studies necessary to submit a supplemental application to FDA for the new use and will submit the supplemental application within 6 months after its initial dissemination of information. If the manufacturer has planned, but not completed, such studies, the submission would include proposed protocols and a schedule for conducting the studies, as well as a certification that the manufacturer will complete the clinical studies and submit a supplemental application no later than 36 months after its initial dissemination of information. The rule also permits manufacturers to request extensions of the time period for completing a study and submitting a supplemental application and to request an exemption from the requirement to submit a supplemental application. The rule prescribes the timeframe within which the manufacturer shall maintain records that would enable it to take corrective action. The rule requires the manufacturer to submit lists pertaining to the disseminated articles and reference publications and the categories of persons (or individuals) receiving the information and to submit a notice and summary of any additional research or data (and a copy of the data) relating to the product's safety or effectiveness for the new use. The rule requires the manufacturer to maintain a copy of the information, lists, records, and reports for 3 years after it has ceased dissemination of the information and to make the documents available to FDA for inspection and copying.

FDA based its estimates of the number of submissions it would receive and the number of manufacturers who would be subject to part 99 on the number of efficacy and new use supplements for approved drugs, biologics, and devices received in fiscal year (FY) 1997 and on a projected increase in supplements due to FDAMA. In FY 1997, FDA received 198 efficacy and new use supplements from 115 manufacturers. The number of supplements increased 100 percent from FY 1995 to FY 1997 as a result of two new initiatives, the Prescription Drug User Fee Act and a new pediatric labeling regulation. If FDAMA results in an additional 50 percent increase in the number of supplements and a corresponding increase in the number of manufacturers, then the estimated number of submissions under part 99 is 297 (198 + (0.5 x 198)), and the estimated number of manufacturers is 172 (115 + (0.5 x 115)). These figures are reflected in Tables 1 and 2 of this document for §§ 99.201(a)(1), 99.201(a)(2), 99.201(a)(3), 99.201(b), 99.201(c), 99.501(a)(1), 99.501(a)(2), 99.501(b)(1), 99.501(b)(3), and 99.501(c).

The estimated burden hours for these provisions follow.

Section 99.201(a)(1) requires the manufacturer to provide an identical copy of the information to be disseminated, including any required information. Because the manufacturer must compile this information in order to prepare its submission to FDA, FDA estimates that 40 hours would be required per submission. Because 297 annual responses are expected under § 99.201(a)(1), the total burden for this provision is 11,880 hours (297 responses x 40 hours per response).

Section 99.201(a)(2) requires the manufacturer to submit clinical trial information pertaining to the safety and effectiveness of the new use, clinical experience reports on the safety of the new use, and a summary of the information. FDA estimates 24 burden hours per response for this provision for

assembling, reviewing, and submitting the information and assumes that the manufacturer will have already acquired some of this information in order to decide whether to disseminate information on an unapproved use under part 99. The total burden for this provision is 7,128 hours (297 annual responses x 24 hours per response).

Section 99.201(a)(3) requires the manufacturer to explain its search strategy when assembling its bibliography. FDA estimates that only 1 hour would be required for the explanation because the manufacturer would have developed and used its search strategy before preparing the bibliography. Because 297 annual responses are expected under § 99.201(a)(3), the total burden for this provision is 297 hours (297 annual responses x 1 hour per response).

Section 99.201(b) simply requires the manufacturer's attorney, agent, or other authorized official to sign its submissions, certifications, and requests for an exemption. FDA estimates that only 30 minutes are necessary for such signatures. Because 297 annual responses are expected under § 99.201(b), the total burden for this provision is 148.5 hours (297 response x 0.5 hours per response = 148.5 hours).

Section 99.201(c) requires the manufacturer to provide two copies with its original submission. FDA does not expect that copying the submission will be time-consuming and estimates the burden to be 30 minutes. Because 297 annual responses are expected under § 99.201(c), the total burden for this provision is 148.5 hours.

Yet, while FDAMA requires manufacturers to provide a submission to FDA before they disseminate information on unapproved/new uses, it also permits manufacturers to: (1) Have completed studies and promise to submit a supplemental application for the new use within 6 months after the date of initial dissemination; (2) provide protocols and a schedule for completing studies and submitting a supplemental application for the new use within 36 months after the date of initial dissemination; (3) have completed studies and have submitted a supplemental application for the new use; or (4) request an exemption from the requirement to submit a supplemental application. These possible scenarios are addressed in §§ 99.201(a)(4)(i)(A), 99.201(a)(4)(ii)(A), 99.201(a)(5), and 99.205(b) respectively.

To determine the number of responses in §§ 99.201(a)(4)(i)(A), 99.201(a)(4)(ii)(A), 99.201(a)(5), and 99.205(b), FDA began by estimating the number of requests for an exemption under § 99.205(b). The legislative history indicates that such exemptions are to be limited. In the final rule, FDA estimated that approximately 10 percent of all respondents would seek—or 10 percent of all submissions would contain—an ''economically prohibitive'' exemption (resulting in 17 total respondents and approximately 30 annual responses) and that the estimated reporting burden per response would be 82 hours. This results in a total hour burden of 2,460 hours for § 99.205(b) (30 submissions x 82 hours per submission).

The estimated increase in the number of exemption requests results in a corresponding decrease in the remaining number of respondents and submissions under §§ 99.201(a)(4)(i)(A), 99.201(a)(4)(ii)(A), and 99.201(a)(5). FDA assumes that the remaining 267 submissions (297 total submissions—30 submissions containing an exemption request) will be divided equally among §§ 99.201(a)(4)(i)(A), 99.201(a)(4)(ii)(A), and 99.201(a)(5), resulting in 89 responses in each provision (267 submissions/3 provisions). FDA has estimated the number of respondents in a similar fashion ((172 total respondents—17 respondents submitting an exemption request)/3 provisions = 51.6, rounded up to 52 respondents per provision).

As stated earlier, § 99.201(a)(4)(i)(A)) requires the manufacturer, if the manufacturer has completed studies needed for the submission of a supplemental application for the new use, to submit the protocol(s) for the completed studies, or, if the protocol was submitted to an investigational new drug application (IND) or investigational device exemption (IDE), to submit the IND or IDE number(s), the date of submission of the protocol(s), the protocol number(s), and the date of any amendments to the protocol(s) must be submitted with the application. FDA estimates that 30 hours would be required for this response because this is information that each manufacturer already maintains for its drugs or devices. The total burden for this provision is 2,670 hours (89 annual responses x 30 hours per response).

For manufacturers who submit protocols and a schedule for conducting studies, § 99.201(a)(4)(ii)(A)) requires the manufacturer to include, in its schedule, the projected dates on which the manufacturer expects the principal study events to occur. FDA estimates a manufacturer would need approximately 60 hours to include the projected dates because it would have to contact the studies' principal investigator(s) and other company officials. The total burden for this provision is 5,340 hours (89 annual responses x 60 hours per response).

If the manufacturer has submitted a supplemental application for the new use, § 99.201(a)(5) requires a cross-reference to that supplemental application. FDA estimates that only 1 hour would be needed because manufacturers already maintain this information. The total burden for this provision is 89 hours (89 annual responses x 1 hour per response).

Under § 99.203, a manufacturer who has certified that it will complete studies necessary to submit a supplemental application within 36 months after its submission to FDA, but later finds that it will be unable to complete such studies or submit a supplemental application within that time period, may request an extension of time from FDA. Such requests for extension should be limited, occurring less than 1 percent of the time, because manufacturers and FDA, when developing or reviewing study protocols, should be able to identify when a study will require more than 36 months to complete. Section 99.203 contemplates extension requests under two different scenarios. Under § 99.203(a), a manufacturer may make an extension request *before* it makes a submission to FDA regarding the dissemination of information under part 99. The agency expects such requests to be limited, occurring less than 1 percent of the time (or 1 annual response), and that such requests will result in a reporting burden of 10 hours per request. The total burden hours for this provision, therefore, is 10 hours (1 annual response x 10 hours per response).

Section 99.203(b) specifies the contents of a request to extend the time for completing planned studies *after* the manufacturer has provided its submission to FDA. The required information includes a description of the studies, the current status of the studies, reasons why the study cannot be completed on time, and an estimate of the additional time needed. FDA estimates that 10 hours for reporting the required information under § 99.203(b) because it would require consultation between the manufacturer and key individuals (such as the study's principal investigator(s)). As in the case of § 99.203(a), the expected number of responses is very small (1 annual response), and the total burden hours for this provision is 10 hours (1 annual response x 10 hours per response).

Section 99.203(c) requires two copies of an extension request (in addition to the request required under section

554(c)(3) of the Federal Food, Drug, and Cosmetic Act (the act) (21 U.S.C. 360aaa–3(c)(3))), and FDA estimates that these copies would result in a minimal reporting burden of 30 minutes. However, this requirement would apply to extension requests under § 99.203(a) and (b), so the total number of annual responses is 2, resulting in a total burden hour for this provision of 1 hour (2 annual responses x 0.5 hours per response).

The remaining reporting and recordkeeping burdens follow.

Section 99.501(a)(1) requires the manufacturer to maintain records that identify recipients by category or individually. Under § 99.301(a)(3), FDA will notify the manufacturer whether it needs to maintain records identifying individual recipients due to special safety considerations associated with the new use. This means that, in most cases, the manufacturer will only have to maintain records identifying recipients by category. In either event, the manufacturer will know whether it must maintain records that identify individual recipients before it begins disseminating information. The time required to identify recipients individually should be minimal, and the time required to identify recipients by category should be even less. Therefore, FDA estimates the burden for this provision to be 10 hours, and, because 297 annual responses are expected under § 99.501(a)(1), the total burden for this provision is 2,970 hours (297 annual responses x 10 hours per response).

Section 99.501(a)(2) requires the manufacturer to maintain a copy of the information it disseminates. This task is not expected to be time-consuming, so FDA estimates the burden to be 1 hour. Because 297 annual responses are expected under § 99.501(a)(2), the total burden for this provision is 297 hours (297 annual responses x 1 hour per response).

Section 99.501(b)(1) requires the manufacturer to submit to FDA semiannually a list containing the articles and reference publications that were disseminated in the preceding 6-month period. FDA tentatively estimates a burden of 8 hours for this provision. The actual burden may be less if the manufacturer develops and updates the list while it disseminates articles and reference publications during the 6-month period (as opposed to generating a completely new list at the end of each 6-month period) and if the volume of disseminated materials is small. The total burden for this provision is 4,752 hours (297 responses submitted semiannually x 8 hours per response = 297 x 2 x 8 = 4,752 hours).

Section 553(a)(2) of the act (21 U.S.C. 360aaa–2(a)(2)) requires manufacturers that disseminate information to submit to FDA semiannually a list that identifies the categories of providers who received the articles and reference publications. Section 99.501(b)(2) also requires the list to identify which category of recipients received each particular article or reference publication. If each of the 297 submissions under part 99 results in disseminated information, § 99.501(b)(2) would result in 594 lists (297 submissions x 2 submissions/year) identifying which category of recipients received each particular article or reference publication. The agency estimates the burden to be only 1 hour per response because this type of information is maintained as a usual and customary business practice, and the total burden for this provision is 594 hours (594 lists x 1 hour per list).

In relation to § 99.201(a)(2), § 99.501(b)(3) requires the manufacturer to provide, on a semiannual basis, a notice and summary of any additional clinical research or other data relating to the safety and effectiveness of the new use and, if it possesses such research or data, to provide a copy to FDA. This burden should not be as extensive as that in § 99.201(a)(2), so FDA estimates the burden to be 20 hours per response, for a total burden of 11,880 hours for this provision (297 annual responses submitted semiannually x 20 hours per response = 297 x 2 x 20 = 11,880 hours).

If a manufacturer discontinues or terminates a study before completing it, § 99.501(b)(4)) requires the manufacturer to state the reasons for discontinuing or terminating the study in its next progress report. Based on FDA's regulatory experience in monitoring studies to support supplemental applications, FDA estimates this would affect only 1 percent of all applications (297 x 0.01 = 2.97, rounded up to 3) and only 2 manufacturers (172 x 0.01 = 1.72, rounded up to 2). FDA estimates 2 hours of reporting time for this requirement because the manufacturer should know the reasons for discontinuing or terminating the study and would only need to provide those reasons in its progress report. The total burden hours for this provision is 6 hours (3 annual responses x 2 hours per response).

Section 99.501(b)(5) requires the manufacturer to submit any new or additional information that relates to whether the manufacturer continues to meet the requirements for the exemption after an exemption has been granted. FDA cannot determine, at this time, how many exemption requests will be granted, but, for purposes of this information of collection, has estimated that 10 percent of all submissions will contain an exemption request (297 total submissions x 0.10 = 29.7, rounded up to 30) and has assumed that all exemption requests will be granted, for a total of 30 annual responses. The information sought under § 99.501(b)(5) pertains solely to new or additional information and is not expected to be as extensive as the information required to obtain an exemption. Thus, FDA tentatively estimates the burden for § 99.501(b)(5) to be 41 hours per response (or half the burden associated with an exemption request), for a total burden of 1,230 hours for this provision (30 annual responses x 41 hours per response).

Section 99.501(c) requires the manufacturer to maintain records for 3 years after it has ceased dissemination of the information. FDA estimates the burden hour for this provision to be 1 hour. Because 297 annual responses are expected under § 99.501(c), the total burden for this provision is 297 hours.

Description of Respondents: All manufacturers (persons and businesses, including small businesses) of drugs, biologics, and device products.

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
99.201(a)(1)	172	1.7	297	40	11,880
99.201(a)(2)	172	1.7	297	24	7,128
99.201(a)(3)	172	1.7	297	1	297
99.201(a)(4)(i)(A)	52	1.7	89	30	2,670
99.201(a)(4)(ii)(A)	52	1.7	89	60	5,340

TABLE 1.—ESTIMATED ANNUAL REPORTING BURDEN[1]—Continued

21 CFR Section	No. of Respondents	Annual Frequency per Response	Total Annual Responses	Hours per Response	Total Hours
99.201(a)(5)	52	1.7	89	1	89
99.201(b)	172	1.7	297	0.5	148.5
99.201(c)	172	1.7	297	0.5	148.5
99.203(a)	1	1	1	10	10
99.203(b)	1	1	1	10	10
99.203(c)	2	1	2	0.5	1
99.205(b)	17	1.8	30	82	2,460
99.501(b)(1)	172	3.4	594	8	4,752
99.501(b)(2)	172	3.4	594	1	594
99.501(b)(3)	172	3.4	594	20	11,880
99.501(b)(4)	2	1.7	3	2	6
99.501(b)(5)	17	1.8	30	41	1,230
Total Hours					48,644

[1] There are no capital costs or operating and maintenance costs associated with this collection of information.

TABLE 2.—ESTIMATED ANNUAL RECORDKEEPING BURDEN[1]

21 CFR Section	No. of Recordkeepers	Annual Frequency per Recordkeeping	Total Annual Records	Hours per Recordkeeper	Total Hours
99.501(a)(1)	172	1.7	297	10	2,970
99.501(a)(2)	172	1.7	297	1	297
99.501(c)	172	1.7	297	1	297
Total Hours					3,564

[1] There are no capital costs or operating and maintenance costs associated with this collection of information.

The estimated burden associated with the information collection requirements for this rule is 52,208 hours.

Dated: February 26, 1999.

William K. Hubbard,

Acting Deputy Commissioner for Policy.

[FR Doc. 99–5387 Filed 3–3–99; 8:45 am]

BILLING CODE 4160–01–F

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Food and Drug Administration

[Docket No. 98E–0841]

Determination of Regulatory Review Period for Purposes of Patent Extension; Regranex® and Becaplermin Concentrate

AGENCY: Food and Drug Administration, HHS.

ACTION: Notice.

SUMMARY: The Food and Drug Administration (FDA) has determined the regulatory review period for Regranex® and Becaplermin Concentrate and is publishing this notice of that determination as required by law. FDA has made the determination because of the submission of an application to the Commissioner of Patents and Trademarks, Department of Commerce, for the extension of a patent which claims those human biological products.

ADDRESSES: Written comments and petitions should be directed to the Dockets Management Branch (HFA–305), Food and Drug Administration, 5630 Fishers Lane, rm. 1061, Rockville, MD 20852.

FOR FURTHER INFORMATION CONTACT: Brian J. Malkin, Office of Health Affairs (HFY–20), Food and Drug Administration, 5600 Fishers Lane, Rockville, MD 20857, 301–827–6620.

SUPPLEMENTARY INFORMATION: The Drug Price Competition and Patent Term Restoration Act of 1984 (Pub. L. 98–417) and the Generic Animal Drug and Patent Term Restoration Act (Pub. L. 100–670) generally provide that a patent may be extended for a period of up to 5 years so long as the patented item (human drug product, animal drug product, medical device, food additive, or color additive) was subject to regulatory review by FDA before the item was marketed. Under these acts, a product's regulatory review period forms the basis for determining the amount of extension an applicant may receive.

A regulatory review period consists of two periods of time: A testing phase and an approval phase. For human biological products, the testing phase begins when the exemption to permit the clinical investigations of the biological becomes effective and runs until the approval phase begins. The approval phase starts with the initial submission of an application to market the human biological product and continues until FDA grants permission to market the biological product. Although only a portion of a regulatory review period may count toward the actual amount of extension that the Commissioner of Patents and Trademarks may award (for example, half the testing phase must be subtracted as well as any time that may have occurred before the patent was issued), FDA's determination of the length of a regulatory review period for a human biological product will include all of the testing phase and approval phase as specified in 35 U.S.C. 156(g)(1)(B).

FDA recently approved for marketing the human biological products Regranex® and Becaplermin Concentrate (becaplermin). Regranex® is indicated for the treatment of lower extremity diabetic neuropathic ulcers that extend into the subcutaneous tissue or beyond and have an adequate blood supply. Subsequent to this approval, the Patent and Trademark Office received a patent term restoration application for Regranex® and Becaplermin Concentrate (U.S. Patent No. 4,845,075) from ZymoGenetics, Inc., and the Patent and Trademark Office requested FDA's assistance in determining this patent's

eligibility for patent term restoration. In a letter dated January 29, 1999, FDA advised the Patent and Trademark Office that this human biological product had undergone a regulatory review period and that the approval of Regranex® and Becaplermin Concentrate represented the first permitted commercial marketing or use of the product. Shortly thereafter, the Patent and Trademark Office requested that FDA determine the product's regulatory review period.

FDA has determined that the applicable regulatory review period for Regranex® and Becaplermin Concentrate is 2,790 days. Of this time, 2,424 days occurred during the testing phase of the regulatory review period, while 366 days occurred during the approval phase. These periods of time were derived from the following dates:

1. *The date an exemption under section 505 of the Federal Food, Drug, and Cosmetic Act (the act) (21 U.S.C. 355) became effective*: April 29, 1990. The applicant claims March 30, 1990, as the date the investigational new drug application (IND) became effective. However, FDA records indicate that the IND effective date was April 29, 1990, which was 30 days after FDA receipt of the IND.

2. *The date the application was initially submitted with respect to the human biological product under section 505 of the act*: December 16, 1996. FDA has verified the applicant's claim that the product license applications (PLA's) for Regranex® (PLA 96–1408) and Becaplermin Concentrate (PLA 96–1422) were initially submitted on December 16, 1996.

3. *The date the application was approved*: December 16, 1997. FDA has verified the applicant's claim that PLA 96–1408 and PLA 96–1422 were approved on December 16, 1997.

This determination of the regulatory review period establishes the maximum potential length of a patent extension. However, the U.S. Patent and Trademark Office applies several statutory limitations in its calculations of the actual period for patent extension. In its application for patent extension, this applicant seeks 1,593 days of patent term extension.

Anyone with knowledge that any of the dates as published is incorrect may, on or before May 3, 1999, submit to the Dockets Management Branch (address above) written comments and ask for a redetermination. Furthermore, any interested person may petition FDA, on or before August 31, 1999, for a determination regarding whether the applicant for extension acted with due diligence during the regulatory review period. To meet its burden, the petition must contain sufficient facts to merit an FDA investigation. (See H. Rept. 857, part 1, 98th Cong., 2d sess., pp. 41–42, 1984.) Petitions should be in the format specified in 21 CFR 10.30.

Comments and petitions should be submitted to the Dockets Management Branch (address above) in three copies (except that individuals may submit single copies) and identified with the docket number found in brackets in the heading of this document. Comments and petitions may be seen in the Dockets Management Branch between 9 a.m. and 4 p.m., Monday through Friday.

Dated: February 16, 1999.

Thomas J. McGinnis,

Deputy Associate Commissioner for Health Affairs.

[FR Doc. 99–5388 Filed 3–3–99; 8:45 am]

BILLING CODE 4160–01–F

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Food and Drug Administration

Advisory Committees; Notice of Meetings

AGENCY: Food and Drug Administration, HHS.

ACTION: Notice.

SUMMARY: The Food and Drug Administration (FDA) is announcing a tentative schedule of forthcoming meetings of its public advisory committees for 1999. At the request of the Commissioner of Food and Drugs (the Commissioner), the Institute of Medicine (the IOM) conducted a study of the use of FDA's advisory committees. The IOM recommended that the agency publish an annual tentative schedule of its meetings in the **Federal Register**. In response to that recommendation, FDA is publishing its annual tentative schedule of meetings for 1999.

FOR FURTHER INFORMATION CONTACT: Donna M. Combs, Committee Management Office (HFA–306), Food and Drug Administration, 5600 Fishers Lane, Rockville, MD 20857, 301–827–4820.

SUPPLEMENTARY INFORMATION: The IOM, at the request of the Commissioner, undertook a study of the use of FDA's advisory committees. In its final report, the IOM recommended that FDA adopt a policy of publishing an advance yearly schedule of its upcoming public advisory committee meetings in the **Federal Register**. FDA has implemented this recommendation. A tentative schedule of forthcoming meetings will be published annually in the **Federal Register**. The annual publication of tentatively scheduled advisory committee meetings will provide both advisory committee members and the public with the opportunity, in advance, to schedule attendance at FDA's upcoming advisory committee meetings. The schedule is tentative and amendments to this notice will not be published in the **Federal Register**. FDA will, however, publish a **Federal Register** notice 15 days in advance of each upcoming advisory committee meeting, announcing the meeting (21 CFR 14.20).

The following list announces FDA's tentatively scheduled advisory committee meetings for 1999:

Committee Name	Dates of Meetings	Information Line Code
OFFICE OF THE COMMISSIONER		
Science Board to the Food and Drug Administration	June 11 September 14	12603
CENTER FOR BIOLOGICS EVALUATION AND RESEARCH		
Allergenic Products Advisory Committee	February 22 October 26	12388
Biological Response Modifiers Advisory Committee	March 18–19 July 15–16 November 18–19	12389

Committee Name	Dates of Meetings	Information Line Code
Blood Products Advisory Committee	March 25–26 June 17–18 September 16–17 December 9–10	19516
Transmissible Spongiform Encephalopathies Advisory Committee	June 2–3 November 8–9	12392
Vaccines and Related Biological Products Advisory Committee	January 29 March 11 May 10–11 July 8–9 September 14–15 November 4–5	12391
CENTER FOR DRUG EVALUATION AND RESEARCH		
Advisory Committee for Pharmaceutical Science	May 20–21 August 19–20	12539
Advisory Committee for Reproductive Health Drugs	March 18–19 September 16–17	12537
Anesthetic and Life Support Drugs Advisory Committee	January 12 May 10–11 September 13–14 December 9–10	12529
Anti-Infective Drugs Advisory Committee	March 4 July 29–30 December 1–2	12530
Antiviral Drugs Advisory Committee	February 24 May 3–5 July 26–28 September 13–15	12531
Arthritis Advisory Committee	February 23 April 20–21 July 20–21 September 21–22 November 30 December 1	12532
Cardiovascular and Renal Drugs Advisory Committee	January 28–29 April 29–30 July 26–27 October 14–15	12533
Dermatologic amd Opthalmic Drugs Advisory Committee	April 16 June 17–18 August 12–13 October 28–29 December 9–10	12534
Drug Abuse Advisory Committee	April 20 July 8–9 September 20–21	12535
Endocrinologic and Metabolic Drugs Advisory Committee	March 26 May 20–21 July 8–9 September 16–17 November 18–19	12536
Gastrointestinal Drugs Advisory Committee	May 6–7 September 16–17	12538
Medical Imaging Drugs Advisory Committee	June 21–22	12540
Nonprescription Drugs Advisory Committee	March 23 April 15–16 July 19–20 October 18–19 December 2–3	12541
Oncologic Drugs Advisory Committee	January 12–13 March 22–23 June 7–8	12542
Peripheral and Central Nervous System Drugs Advisory Committee	April 28–30 September 23–24	12543
Pharmacy Compounding Advisory Committee	May 6–7	12440
Psychopharmacologic Drugs Advisory Committee	June 1–2	12544
Pulmonary-Allergy Drugs Advisory Committee	May 27–28	12545

Committee Name	Dates of Meetings	Information Line Code
CENTER FOR FOOD SAFETY AND APPLIED NUTRITION		
Food Advisory Committee	April 26–28 August 4–6 November 18–19	10564
CENTER FOR DEVICES AND RADIOLOGICAL HEALTH		
Device Good Manufacturing Practice Advisory Committee	No meetings planned	12398
Medical Devices Advisory Committee		
Anesthesiology and Respiratory Therapy Devices Panel	March 5 June 25 August 27 November 12	12624
Circulatory System Devices Panel	March 1–2 June 2–3 September 13–14 December 9–10	12625
Clinical Chemistry and Clinical Toxicology Devices Panel	February 26 April 30 September 23–24 December 6	12514
Dental Products Panel	June 8–9 August 10–11 November 10–11	12518
Ear, Nose, and Throat Devices Panel	March 19 June 18 September 17	12522
Gastroenterology-Urology Devices Panel	April 22–23 July 29–30 November 18–19	12523
General and Plastic Surgery Devices Panel	June 16–18 August 19–20 November 15–16	12519
General Hospital and Personal Use Devices Panel	May 10–11 August 2–3 November 15–16	12520
Hematology and Pathology Devices Panel	January 19–20 April 12 July 12 September 15 December 15	12515
Immunology Devices Panel	April 9 July 16 October 15	12516
Microbiology Devices Panel	May 20–21 July 15–16 September 9–10	12517
Neurological Devices Panel	March 25–26 June 17–18 September 16–17 December 9–10	12513
Obstetrics-Gynecology Devices Panel	April 12–13 July 12–13 October 4–5	12524
Ophthalmic Devices Panel	January 12 March 11–12 May 3–4 July 22–23 September 23–24 November 18–19	12396
Orthopaedic and Rehabilitation Devices Panel	April 26–27 July 26–27 October 25–26	12521
Radiological Devices Panel	May 17 August 16 November 8	12526
National Mammography Quality Assurance Advisory Committee	June 7–8 November 8–9	12397
Technical Electronic Product Radiation Safety Standards Committee	September 15–16	12399
CENTER FOR VETERINARY MEDICINE		
Veterinary Medicine Advisory Committee	January 25–26	12548

Committee Name	Dates of Meetings	Information Line Code
NATIONAL CENTER FOR TOXICOLOGICAL RESEARCH		
Advisory Committee on Special Studies Relating to the Possible Long-Term Health Effects of Phenoxy Herbicides and Contaminants	April 28–29 September 28–29	12560
Science Board to the National Center for Toxicological Research	March 24–25	12559

Dated: February 22, 1999.

Michael A. Friedman,

Deputy Commissioner for Operations.

[FR Doc. 99–5285 Filed 3–3–99; 8:45 am]

BILLING CODE 4160–01–F

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Health Care Financing Administration

[Document Identifier: HCFA–R–65]

Agency Information Collection Activities: Proposed Collection; Comment Request

AGENCY: Health Care Financing Administration, HHS.

In compliance with the requirement of section 3506(c)(2)(A) of the Paperwork Reduction Act of 1995, the Health Care Financing Administration (HCFA), Department of Health and Human Services, is publishing the following summary of proposed collections for public comment. Interested persons are invited to send comments regarding this burden estimate or any other aspect of this collection of information, including any of the following subjects: (1) The necessity and utility of the proposed information collection for the proper performance of the agency's functions; (2) the accuracy of the estimated burden; (3) ways to enhance the quality, utility, and clarity of the information to be collected; and (4) the use of automated collection techniques or other forms of information technology to minimize the information collection burden.

Type of Information Collection Request: Extension of a currently approved collection;

Title of Information Collection: Information Collection Requirements in Final Peer Review Organization Sanction Regulations 42 CFR 1004.40, 1004.50, 1004.60, and 1004.70;

Form No.: HCFA–R–65 (OMB# 0938–0444);

Use: The Peer Review Improvement Act of 1982 amended Title XI of the Social Security Act to create the Utilization and Quality Control Peer Review Organization (PRO) program. The PRO program replaced the existing Professional Standards Review Organization (PSRO) program and streamlined peer review activities. PROs will ensure that care provided to Medicare patients is reasonable, medically necessary, appropriate, of a quality that meets professionally recognized standards of care, and that inpatient services could not be more appropriately provided on an outpatient basis or in a different type facility;

Frequency: On occasion;

Affected Public: Not-for-profit institutions, and Business or other for-profit;

Number of Respondents: 53;

Total Annual Responses: 1,060;

Total Annual Hours: 22,684.

To obtain copies of the supporting statement and any related forms for the proposed paperwork collections referenced above, access HCFA's Web Site address at http://www.hcfa.gov/regs/prdact95.htm, or E-mail your request, including your address, phone number, OMB number, and HCFA document identifier, to Paperwork@hcfa.gov, or call the Reports Clearance Office on (410) 786–1326. Written comments and recommendations for the proposed information collections must be mailed within 60 days of this notice directly to the HCFA Paperwork Clearance Officer designated at the following address: HCFA, Office of Information Services, Security and Standards Group, Division of HCFA Enterprise Standards, Attention: Dawn Willinghan, Room N2–14–26, 7500 Security Boulevard, Baltimore, Maryland 21244–1850.

Dated: February 25, 1999.

John P. Burke III,

HCFA Reports Clearance Officer, HCFA Office of Information Services, Security and Standards Group, Division of HCFA Enterprise Standards.

[FR Doc. 99–5349 Filed 3–3–99; 8:45 am]

BILLING CODE 4120–03–P

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Health Care Financing Administration

[Document Identifier: HCFA–R–131]

Agency Information Collection Activities: Proposed Collection; Comment Request

AGENCY: Health Care Financing Administration, HHS.

In compliance with the requirement of section 3506(c)(2)(A) of the Paperwork Reduction Act of 1995, the Health Care Financing Administration (HCFA), Department of Health and Human Services, is publishing the following summary of proposed collections for public comment. Interested persons are invited to send comments regarding this burden estimate or any other aspect of this collection of information, including any of the following subjects: (1) The necessity and utility of the proposed information collection for the proper performance of the agency's functions; (2) the accuracy of the estimated burden; (3) ways to enhance the quality, utility, and clarity of the information to be collected; and (4) the use of automated collection techniques or other forms of information technology to minimize the information collection burden.

Type of Information Collection Request: Extension of a currently approved collection;

Title of Information Collection: Information Collection Requirements in 42 CFR, Section 411.408;

Form No.: HCFA–R–131 (OMB# 0938–0566);

Use: Section 9332 of the Omnibus Budget Reconciliation Act of 1986, requires physicians ''who do not accept payment on an assignment-related basis'' to refund to patients any amounts they collect for services denied under section 1862(a)(1) of the Social Security Act, as ''not reasonable and necessary for the treatment of illness or injury or to improve the functioning of a malformed body member.'' Refunds are not required in either of two circumstances. First, a refund is not required if the physician informs the

beneficiary, prior to furnishing the service, that Medicare is unlikely to pay for the service and the beneficiary, after being so informed, agrees to pay out of his or her pocket. Second, a refund is not required if the physician did not know, and could not reasonably have been expected to know, that Medicare would not pay for the service. In those cases, the beneficiary is liable for the service.;

Frequency: On occasion;

Affected Public: Individuals or Households;

Number of Respondents: 237,322;

Total Annual Responses: 925,904;

Total Annual Hours: 115,738.

To obtain copies of the supporting statement and any related forms for the proposed paperwork collections referenced above, access HCFA's Web Site address at http://www.hcfa.gov/regs/prdact95.htm, or E-mail your request, including your address, phone number, OMB number, and HCFA document identifier, to Paperwork@hcfa.gov, or call the Reports Clearance Office on (410) 786–1326. Written comments and recommendations for the proposed information collections must be mailed within 60 days of this notice directly to the HCFA Paperwork Clearance Officer designated at the following address: HCFA, Office of Information Services, Security and Standards Group, Division of HCFA Enterprise Standards, Attention: Dawn Willinghan, Room N2–14–26 7500 Security Boulevard, Baltimore, Maryland 21244–1850.

Dated: February 24, 1999.

John P. Burke III,

HCFA Reports Clearance Officer, HCFA Office of Information Services, Security and Standards Group, Division of HCFA Enterprise Standards.

[FR Doc. 99–5350 Filed 3–3–99; 8:45 am]

BILLING CODE 4120–03–P

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Health Care Financing Administration

[Document Identifier: HCFA–R–43]

Agency Information Collection Activities: Proposed Collection; Comment Request

AGENCY: Health Care Financing Administration, HHS.

In compliance with the requirement of section 3506(c)(2)(A) of the Paperwork Reduction Act of 1995, the Health Care Financing Administration (HCFA), Department of Health and Human Services, is publishing the following summary of proposed collections for public comment. Interested persons are invited to send comments regarding this burden estimate or any other aspect of this collection of information, including any of the following subjects: (1) The necessity and utility of the proposed information collection for the proper performance of the agency's functions; (2) the accuracy of the estimated burden; (3) ways to enhance the quality, utility, and clarity of the information to be collected; and (4) the use of automated collection techniques or other forms of information technology to minimize the information collection burden.

Type of Information Collection Request: Extension of a currently approved collection;

Title of Information Collection: Conditions of Participation for Portable X-ray suppliers and Supporting Regulations in 42 CFR Sections 486.104, 486.106, and 486.110;

Form No.: HCFA–R–43 (OMB# 0938–0338);

Use: This information is needed to determine if portable X-ray suppliers are in compliance with published health and safety requirements. These requirements are among other requirements classified as conditions of participation or conditions for coverage. These conditions are based on a provision specified in law relating to diagnostic X-ray tests ''furnished in a place of residence used as the patient's home,'' and are designed to ensure that each supplier has a properly trained staff to provide the appropriate type and level of care, as well as, a safe physical environment for patients. HCFA uses these conditions to certify suppliers of portable X-ray services wishing to participate in the Medicare program;

Frequency: Annually;

Affected Public: Business or other for-profit;

Number of Respondents: 670;

Total Annual Responses: 670;

Total Annual Hours: 1,675.

To obtain copies of the supporting statement and any related forms for the proposed paperwork collections referenced above, access HCFA's Web Site address at http://www.hcfa.gov/regs/prdact95.htm, or E-mail your request, including your address, phone number, OMB number, and HCFA document identifier, to Paperwork@hcfa.gov, or call the Reports Clearance Office on (410) 786–1326. Written comments and recommendations for the proposed information collections must be mailed within 60 days of this notice directly to the HCFA Paperwork Clearance Officer designated at the following address: HCFA, Office of Information Services, Security and Standards Group, Division of HCFA Enterprise Standards, Attention: Dawn Willinghan, Room N2–14–26, 7500 Security Boulevard, Baltimore, Maryland 21244–1850.

Dated: February 23, 1999.

John P. Burke III,

HCFA Reports Clearance Officer, HCFA Office of Information Services, Security and Standards Group, Division of HCFA Enterprise Standards.

[FR Doc. 99–5351 Filed 3–3–99; 8:45 am]

BILLING CODE 4120–03–P

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Health Care Financing Administration

[HCFA–2041–N]

RIN 0938–AJ43

Medicaid Program; Decision on Funding for the AIDS Healthcare Foundation START Program

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

ACTION: Notice.

SUMMARY: This notice announces the award of a grant in the sum of $2 million to the AIDS Healthcare Foundation of Los Angeles, California, for a demonstration project entitled, ''START PROGRAM: Success Through Anti-Retroviral Therapy.''

EFFECTIVE DATE: This notice is effective on February 25, 1999.

FOR FURTHER INFORMATION CONTACT: Wayne Smith, Ph.D., Center for Medicaid and State Operations, (410) 786–6762.

SUPPLEMENTARY INFORMATION: This notice announces the award of a $2 million grant to the AIDS Healthcare Foundation of Los Angeles, California, for a demonstration project entitled, ''START PROGRAM: Success Through Anti-Retroviral Therapy.''

The START program is a 4 to 6 week residential program designed to increase the ''adherence'' to HIV and AIDS medication regimens of individuals at high risk for non-adherence, or a history of non-adherence. The objectives of the START program are as follows:

- Provide a supervised residential environment for initiation or continuation of the latest HIV medication therapies.
- Implement a structured educational program to meet the needs of the patient receiving complicated HIV treatment regimens.
- Provide psychosocial support to the patient hand her or his family.

• Provide direct observation therapy during residency until the patient demonstrates the knowledge and ability to self administer doses appropriately.

The purpose of this grant is to demonstrate how compliance with the complicated medication regimen for people living with HIV and AIDS who are at high risk of noncompliance can be increased by a short-term residential treatment program. The START program provides these individuals with a sheltered, structured environment in which the regimen can be established and residents can be counseled and supported.

This award is made based on the authority granted by section 1110 of the Social Security Act (the Act). Section 1110 of the Act authorizes appropriations each fiscal year for grants to pay for part of the cost of research or demonstration projects that will improve the administration and effectiveness of programs. The demonstration project above has been reviewed by our specialists and has been deemed to meet these qualifications.

(Catalog of Federal Domestic Assistance Program No. 93.778, Medical Assistance Program; No. 93.773 Medicare—Hospital Insurance Program; and No. 93.774, Medicare—Supplementary Medical Insurance Program)

Dated: February 26, 1999.

Nancy-Ann Min DeParle,

Administrator, Health Care Financing, Administration.

[FR Doc. 99–5325 Filed 3–3–99; 8:45 am]

BILLING CODE 4120–01–P

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Substance Abuse and Mental Health Services Administration

Current List of Laboratories Which Meet Minimum Standards To Engage in Urine Drug Testing for Federal Agencies, and Laboratories That Have Withdrawn From the Program

AGENCY: Substance Abuse and Mental Health Services Administration, HHS.

ACTION: Notice.

SUMMARY: The Department of Health and Human Services notifies Federal agencies of the laboratories currently certified to meet standards of Subpart C of Mandatory Guidelines for Federal Workplace Drug Testing Programs (59 FR 29916, 29925). A similar notice listing all currently certified laboratories will be published during the first week of each month, and updated to include laboratories which subsequently apply for and complete the certification process. If any listed laboratory's certification is totally suspended or revoked, the laboratory will be omitted from updated lists until such time as it is restored to full certification under the Guidelines.

If any laboratory has withdrawn from the National Laboratory Certification Program during the past month, it will be identified as such at the end of the current list of certified laboratories, and will be omitted from the monthly listing thereafter.

This Notice is now available on the internet at the following website: http://www.health.org/workpl.htm

FOR FURTHER INFORMATION CONTACT: Mrs. Giselle Hersh or Dr. Walter Vogl, Division of Workplace Programs, 5600 Fishers Lane, Rockwall 2 Building, Room 815, Rockville, Maryland 20857; Tel.: (301) 443–6014.

Special Note: Our office moved to a different building on May 18, 1998. Please use the above address for all regular mail and correspondence. For all overnight mail service use the following address: Division of Workplace Programs, 5515 Security Lane, Room 815, Rockville, Maryland 20852.

SUPPLEMENTARY INFORMATION: Mandatory Guidelines for Federal Workplace Drug Testing were developed in accordance with Executive Order 12564 and section 503 of Pub. L. 100–71. Subpart C of the Guidelines, ''Certification of Laboratories Engaged in Urine Drug Testing for Federal Agencies,'' sets strict standards which laboratories must meet in order to conduct urine drug testing for Federal agencies. To become certified an applicant laboratory must undergo three rounds of performance testing plus an on-site inspection. To maintain that certification a laboratory must participate in a quarterly performance testing program plus periodic, on-site inspections.

Laboratories which claim to be in the applicant stage of certification are not to be considered as meeting the minimum requirements expressed in the HHS Guidelines. A laboratory must have its letter of certification from SAMHSA, HHS (formerly: HHS/NIDA) which attests that it has met minimum standards.

In accordance with Subpart C of the Guidelines, the following laboratories meet the minimum standards set forth in the Guidelines:

ACL Laboratories, 8901 W. Lincoln Ave., West Allis, WI 53227, 414–328–7840, (formerly: Bayshore Clinical Laboratory)

Advanced Toxicology Network, 15201 East I–10 Freeway, Suite 125, Channelview, TX 77530, 713–457–3784/800–888–4063, (formerly: Drug Labs of Texas, Premier Analytical Laboratories)

Aegis Analytical Laboratories, Inc., 345 Hill Ave., Nashville, TN 37210, 615–255–2400

Alabama Reference Laboratories, Inc., 543 South Hull St., Montgomery, AL 36103, 800–541–4931/334–263–5745

Alliance Laboratory Services, 3200 Burnet Ave., Cincinnati, OH 45229, 513–585–9000, (formerly: Jewish Hospital of Cincinnati, Inc.)

American Medical Laboratories, Inc., 14225 Newbrook Dr., Chantilly, VA 20151, 703–802–6900

Associated Pathologists Laboratories, Inc., 4230 South Burnham Ave., Suite 250, Las Vegas, NV 89119–5412, 702–733–7866 / 800–433–2750

Associated Regional and University Pathologists, Inc. (ARUP), 500 Chipeta Way, Salt Lake City, UT 84108, 801–583–2787 / 800–242–2787

Baptist Medical Center—Toxicology Laboratory, 9601 I–630, Exit 7, Little Rock, AR 72205–7299, 501–202–2783, (formerly: Forensic Toxicology Laboratory Baptist Medical Center)

Clinical Reference Lab, 8433 Quivira Rd., Lenexa, KS 66215–2802, 800–445–6917

Cox Health Systems, Department of Toxicology, 1423 North Jefferson Ave., Springfield, MO 65802, 800–876–3652/417–269–3093, (formerly: Cox Medical Centers)

Dept. of the Navy, Navy Drug Screening Laboratory, Great Lakes, IL, P. O. Box 88–6819, Great Lakes, IL 60088–6819, 847–688–2045/847–688–4171

Diagnostic Services Inc., dba DSI, 12700 Westlinks Drive, Fort Myers, FL 33913, 941–561–8200/800–735–5416

Doctors Laboratory, Inc., P.O. Box 2658, 2906 Julia Dr., Valdosta, GA 31604, 912–244–4468

DrugProof, Division of Dynacare/Laboratory of Pathology, LLC, 1229 Madison St., Suite 500, Nordstrom Medical Tower, Seattle, WA 98104 800–898–0180/206–386–2672, (formerly: Laboratory of Pathology of Seattle, Inc., DrugProof, Division of Laboratory of Pathology of Seattle, Inc.)

DrugScan, Inc., P.O. Box 2969, 1119 Mearns Rd, Warminster, PA 18974, 215–674–9310

Dynacare Kasper Medical Laboratories,* 14940–123 Ave., Edmonton, Alberta, Canada T5V 1B4, 800–661–9876/403–451–3702

ElSohly Laboratories, Inc., 5 Industrial Park Dr., Oxford, MS 38655, 601–236–2609

Gamma-Dynacare Medical Laboratories,* 1A Division of the

Gamma-Dynacare Laboratory Partnership, 245 Pall Mall St., London, ON, Canada N6A 1P4, 519–679–1630
General Medical Laboratories, 36 South Brooks St., Madison, WI 53715, 608–267–6267
Hartford Hospital Toxicology Laboratory, 80 Seymour St., Hartford, CT 06102–5037, 860–545–6023
Info-Meth, 112 Crescent Ave., Peoria, IL 61636, 800–752–1835/309–671–5199 (Formerly: Methodist Medical Center Toxicology Laboratory)
Integrated Regional Laboratories, 1400 Northwest 12th Ave., Miami, FL 33136, 305–325–5784 (Formerly: Cedars Medical Center, Department of Pathology)
LabCorp Occupational Testing Services, Inc., 1904 Alexander Drive, Research Triangle Park, NC 27709, 919–672–6900/800–833–3984 (Formerly: CompuChem Laboratories, Inc.; CompuChem Laboratories, Inc., A Subsidiary of Roche Biomedical Laboratory; Roche CompuChem Laboratories, Inc., A Member of the Roche Group)
LabCorp Occupational Testing Services, Inc., 4022 Willow Lake Blvd., Memphis, TN 38118, 901–795–1515/800–223–6339 (Formerly: MedExpress/National Laboratory Center)
LabOne, Inc., 10101 Renner Blvd., Lenexa, KS 66219, 913–888–3927 / 800–728–4064 (formerly: Center for Laboratory Services, a Division of LabOne, Inc.)
Laboratory Corporation of America, 888 Willow St., Reno, NV 89502, 702–334–3400 (formerly: Sierra Nevada Laboratories, Inc.)
Laboratory Corporation of America Holdings, 69 First Ave., Raritan, NJ 08869, 800–437–4986/908–526–2400 (Formerly: Roche Biomedical Laboratories, Inc.)
Laboratory Specialists, Inc., 1111 Newton St., Gretna, LA 70053, 504–361–8989/800–433–3823
Marshfield Laboratories, Forensic Toxicology Laboratory, 1000 North Oak Ave., Marshfield, WI 54449, 715–389–3734/800–331–3734
MAXXAM Analytics Inc.,* 5540 McAdam Rd., Mississauga, ON, Canada L4Z 1P1, 905–890–2555 (formerly: NOVAMANN (Ontario) Inc.)
Medical College Hospitals Toxicology Laboratory, Department of Pathology, 3000 Arlington Ave., Toledo, OH 43614, 419–383–5213
MedTox Laboratories, Inc., 402 W. County Rd. D, St. Paul, MN 55112, 800–832–3244/651–636–7466
Methodist Hospital Toxicology Services of Clarian Health Partners, Inc., Department of Pathology and Laboratory Medicine, 1701 N. Senate Blvd. , Indianapolis, IN 46202, 317–929–3587
MetroLab-Legacy Laboratory Services, 1225 NE., 2nd Ave., Portland, OR 97232, 503–413–4512, 800–950–5295
Minneapolis Veterans Affairs Medical Center, Forensic Toxicology Laboratory, 1 Veterans Drive, Minneapolis, Minnesota 55417, 612–725–2088
National Toxicology Laboratories, Inc., 1100 California Ave., Bakersfield, CA 93304, 805–322–4250
NWT Drug Testing, 1141 E. 3900 South, Salt Lake City, UT 84124, 800–322–3361/801–268–2431 (Formerly: NorthWest Toxicology, Inc.)
Oregon Medical Laboratories, P.O. Box 972, 722 East 11th Ave., Eugene, OR 97440–0972, 541–341–8092
Pacific Toxicology Laboratories, 6160 Variel Ave., Woodland Hills, CA 91367, 818–598–3110 (Formerly: Centinela Hospital Airport Toxicology Laboratory
Pathology Associates Medical Laboratories, 11604 E. Indiana, Spokane, WA 99206, 509–926–2400/800–541–7891
PharmChem Laboratories, Inc., 1505–A O'Brien Dr., Menlo Park, CA 94025, 650–328–6200/800–446–5177
PharmChem Laboratories, Inc., Texas Division, 7610 Pebble Dr., Fort Worth, TX 76118, 817–595–0294 (Formerly: Harris Medical Laboratory)
Physicians Reference Laboratory, 7800 West 110th St., Overland Park, KS 66210, 913–339–0372/800–821–3627
Poisonlab, Inc., 7272 Clairemont Mesa Blvd., San Diego, CA 92111, 619–279–2600/800–882–7272
Quest Diagnostics Incorporated, 4444 Giddings Road, Auburn Hills, MI 48326, 810–373–9120/800–444–0106 (Formerly: HealthCare/Preferred Laboratories, HealthCare/MetPath, CORNING Clinical Laboratories)
Quest Diagnostics Incorporated, National Center for Forensic Science, 1901 Sulphur Spring Rd., Baltimore, MD 21227, 410–536–1485 (Formerly: Maryland Medical Laboratory, Inc., National Center for Forensic Science, CORNING National Center for Forensic Science)
Quest Diagnostics Incorporated, 4770 Regent Blvd., Irving, TX 75063, 800–526–0947/972–916–3376 (Formerly: Damon Clinical Laboratories, Damon/MetPath, CORNING Clinical Laboratories)
Quest Diagnostics Incorporated, 875 Greentree Rd., 4 Parkway Ctr., Pittsburgh, PA 15220–3610, 800–574–2474/412–920–7733 (Formerly: Med-Chek Laboratories, Inc., Med-Chek/Damon, MetPath Laboratories, CORNING Clinical Laboratories)
Quest Diagnostics of Missouri LLC, 2320 Schuetz Rd., St. Louis, MO 63146, 800–288–7293/314–991–1311 (Formerly: Quest Diagnostics Incorporated, Metropolitan Reference Laboratories, Inc., CORNING Clinical Laboratories, South Central Division)
Quest Diagnostics Incorporated, 7470 Mission Valley Rd., San Diego, CA 92108–4406, 800–446–4728/619–686–3200 (Formerly: Nichols Institute, Nichols Institute Substance Abuse Testing (NISAT), CORNING Nichols Institute, CORNING Clinical Laboratories)
Quest Diagnostics Incorporated, One Malcolm Ave., Teterboro, NJ 07608, 201–393–5590 (Formerly: MetPath, Inc., CORNING MetPath Clinical Laboratories, CORNING Clinical Laboratory)
Quest Diagnostics Incorporated, 1355 Mittel Blvd., Wood Dale, IL 60191, 630–595–3888 (Formerly: MetPath, Inc., CORNING MetPath Clinical Laboratories, CORNING Clinical Laboratories Inc.)
Scientific Testing Laboratories, Inc., 463 Southlake Blvd., Richmond, VA 23236, 804–378–9130
Scott & White Drug Testing Laboratory, 600 S. 31st St., Temple, TX 76504, 800–749–3788/254–771–8379
S.E.D. Medical Laboratories, 5601 Office Blvd., Albuquerque, NM 87109, 505–727–6300/800–999–5227
SmithKline Beecham Clinical Laboratories, 3175 Presidential Dr., Atlanta, GA 30340, 770–452–1590, (Formerly: SmithKline Bio-Science Laboratories)
SmithKline Beecham Clinical Laboratories, 8000 Sovereign Row, Dallas, TX 75247, 214–637–7236 (Formerly: SmithKline Bio-Science Laboratories)
SmithKline Beecham Clinical Laboratories, 801 East Dixie Ave., Leesburg, FL 34748, 352–787–9006 (Formerly: Doctors & Physicians Laboratory)
SmithKline Beecham Clinical Laboratories, 400 Egypt Rd., Norristown, PA 19403, 800–877–7484/610–631–4600 (Formerly: SmithKline Bio-Science Laboratories)
SmithKline Beecham Clinical Laboratories, 506 E. State Pkwy., Schaumburg, IL 60173, 847–447–4379/800–447–4379 (Formerly: International Toxicology Laboratories)
SmithKline Beecham Clinical Laboratories, 7600 Tyrone Ave., Van Nuys, CA 91405, 818–989–2520/800–877–2520

South Bend Medical Foundation, Inc., 530 N. Lafayette Blvd., South Bend, IN 46601, 219–234–4176

Southwest Laboratories, 2727 W. Baseline Rd., Tempe, AZ 85283, 602–438–8507

Sparrow Health System, Toxicology Testing Center, St. Lawrence Campus, 1210 W. Saginaw, Lansing, MI 48915, 517–377–0520 (Formerly: St. Lawrence Hospital & Healthcare System)

St. Anthony Hospital Toxicology Laboratory, 1000 N. Lee St., Oklahoma City, OK 73101, 405–272–7052

Toxicology & Drug Monitoring Laboratory, University of Missouri Hospital & Clinics, 2703 Clark Lane, Suite B, Lower Level, Columbia, MO 65202, 573–882–1273

Toxicology Testing Service, Inc., 5426 NW. 79th Ave., Miami, FL 33166, 305–593–2260

UNILAB, 18408 Oxnard St., Tarzana, CA 91356, 800–492–0800/818–996–7300 (Formerly: MetWest-BPL Toxicology Laboratory)

Universal Toxicology Laboratories, LLC, 10210 W. Highway 80, Midland, Texas 79706, 915–561–8851/888–953–8851

UTMB Pathology-Toxicology Laboratory, University of Texas Medical Branch, Clinical Chemistry Division, 301 University Boulevard, Room 5.158, Old John Sealy, Galveston, Texas 77555–0551, 409–772–3197

* The Standards Council of Canada (SCC) voted to end its Laboratory Accreditation Program for Substance Abuse (LAPSA) effective May 12, 1998. Laboratories certified through that program were accredited to conduct forensic urine drug testing as required by U.S. Department of Transportation (DOT) regulations. As of that date, the certification of those accredited Canadian laboratories will continue under DOT authority. The responsibility for conducting quarterly performance testing plus periodic on-site inspections of those LAPSA-accredited laboratories was transferred to the U.S. DHHS, with the DHHS' National Laboratory Certification Program (NLCP) contractor continuing to have an active role in the performance testing and laboratory inspection processes. Other Canadian laboratories wishing to be considered for the NLCP may apply directly to the NLCP contractor just as U.S. laboratories do. Upon finding a Canadian laboratory to be qualified, the DHHS will recommend that DOT certify the laboratory (Federal Register, 16 July 1996) as meeting the minimum standards of the ''Mandatory Guidelines for Workplace Drug Testing'' (59 Federal Register, 9 June 1994, Pages 29908–29931). After receiving the DOT certification, the laboratory will be included in the monthly list of DHHS certified laboratories and participate in the NLCP certification maintenance program.

Richard Kopanda,

Executive Officer, Substance Abuse and Mental Health Services Administration.

[FR Doc. 99–5424 Filed 3–3–99; 8:45 am]

BILLING CODE 4160–20–U

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Substance Abuse and Mental Health Services Administration

Fiscal Year (FY) 1999 Funding Opportunities

AGENCY: Substance Abuse and Mental Health Services Administration, HHS.

ACTION: Notice of funding availability.

SUMMARY: The Substance Abuse and Mental Health Services Administration (SAMHSA) Center for Substance Abuse Treatment (CSAT), announces the availability of FY 1999 funds for grants for the following activity. This activity is discussed in more detail under Section 4 of this notice. This notice is not a complete description of the activity; potential applicants *must* obtain a copy of the Guidance for Applicants (GFA) before preparing an application.

Activity	Application deadline	Estimated funds available	Estimated number of awards	Project period
Adolescent Treatment Models	5/10/99	$4 Million	12	Up to 3 yrs.

Note: SAMHSA will publish additional notices of available funding opportunities for FY 1999 in subsequent issues of the **Federal Register**.

The actual amount available for awards and their allocation may vary, depending on unanticipated program requirements and the number and quality of applications received. FY 1999 funds for the activity discussed in this announcement were appropriated by the Congress under Public Law No. 105–277. SAMHSA's policies and procedures for peer review and Advisory Council review of grant and cooperative agreement applications were published in the **Federal Register** (Vol. 58, No. 126) on July 2, 1993.

The Public Health Service (PHS) is committed to achieving the health promotion and disease prevention objectives of Healthy People 2000, a PHS-led national activity for setting priority areas. The SAMHSA Centers' substance abuse and mental health services activities address issues related to Healthy People 2000 objectives of Mental Health and Mental Disorders; Alcohol and Other Drugs; Clinical Preventive Services; HIV Infection; and Surveillance and Data Systems. Potential applicants may obtain a copy of Healthy People 2000 (Full Report: Stock No. 017–001–00474–0) or Summary Report: Stock No. 017–001–00473–1) through the Superintendent of Documents, Government Printing Office, Washington, DC 20402–9325 (Telephone: 202–512–1800).

General Instructions: Applicants must use application form PHS 5161–1 (Rev. 5/96; OMB No. 0937–0189). The application kit contains the GFA (complete programmatic guidance and instructions for preparing and submitting applications), the PHS 5161–1 which includes Standard Form 424 (Face Page), and other documentation and forms. Application kits may be obtained from the organization specified for the activity covered by this notice (see Section 4).

When requesting an application kit, the applicant must specify the particular activity for which detailed information is desired. This is to ensure receipt of all necessary forms and information, including any specific program review and award criteria.

The PHS 5161–1 application form and the full text of the activity (i.e., the GFA) described in Section 4 are available electronically via SAMHSA's World Wide Web Home Page (address: http://www.samhsa.gov).

Application Submission: Applications must be submitted to:

SAMHSA Programs, Center for Scientific Review, National Institutes of Health, Suite 1040, 6701 Rockledge Drive MSC–7710, Bethesda, Maryland 20892–7710.*

* Applicants who wish to use express mail or courier service should change the zip code to 20817.

Application Deadlines: The deadline for receipt of applications is listed in the table above.

Competing applications must be received by the indicated receipt date to be accepted for review. An application received after the deadline may only be accepted if it carries a legible proof-of-mailing date assigned by the carrier and that date is not later than one week prior to the deadline date. Private metered postmarks are not acceptable as proof of timely mailing.

Applications received after the deadline date and those sent to an address other than the address specified above will be returned to the applicant without review.

FOR FURTHER INFORMATION CONTACT: Requests for activity-specific technical information should be directed to the program contact person identified for the activity covered by this notice (see Section 4).

Requests for information concerning business management issues should be directed to the grants management contact person identified for the activity covered by this notice (see Section 4).

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1. Program Background and Objectives

SAMHSA's mission within the Nation's health system is to improve the quality and availability of prevention, early intervention, treatment, and rehabilitation services for substance abuse and mental illnesses, including co-occurring disorders, in order to improve health and reduce illness, death, disability, and cost to society.

Reinventing government, with its emphases on redefining the role of Federal agencies and on improving customer service, has provided SAMHSA with a welcome opportunity to examine carefully its programs and activities. As a result of that process, SAMHSA moved assertively to create a renewed and strategic emphasis on using its resources to generate knowledge about ways to improve the prevention and treatment of substance abuse and mental illness and to work with State and local governments as well as providers, families, and consumers to effectively use that knowledge in everyday practice.

SAMHSA's FY 1999 Knowledge Development and Application (KD&A) agenda is the outcome of a process whereby providers, services researchers, consumers, National Advisory Council members and other interested persons participated in special meetings or responded to calls for suggestions and reactions. From this input, each SAMHSA Center developed a ''menu'' of suggested topics. The topics were discussed jointly and an agency agenda of critical topics was agreed to. The selection of topics depended heavily on policy importance and on the existence of adequate research and practitioner experience on which to base studies. While SAMHSA's FY 1999 KD&A programs will sometimes involve the evaluation of some delivery of services, they are services studies and application activities, not merely evaluation, since they are aimed at answering policy-relevant questions and putting that knowledge to use.

SAMHSA differs from other agencies in focusing on needed information at the services delivery level, and in its question-focus. Dissemination and application are integral, major features of the programs. SAMHSA believes that it is important to get the information into the hands of the public, providers, and systems administrators as effectively as possible. Technical assistance, training, preparation of special materials will be used, in addition to normal communications means.

SAMHSA also continues to fund legislatively-mandated services programs for which funds are appropriated.

2. Special Concerns

SAMHSA's legislatively-mandated services programs do provide funds for mental health and/or substance abuse treatment and prevention services. However, SAMHSA's KD&A activities do not provide funds for mental health and/or substance abuse treatment and prevention services except sometimes for costs required by the particular activity's study design. Applicants are required to propose true knowledge application or knowledge development and application projects. Applications seeking funding for services projects under a KD&A activity will be considered nonresponsive.

Applications that are incomplete or nonresponsive to the GFA will be returned to the applicant without further consideration.

3. Criteria for Review and Funding

Consistent with the statutory mandate for SAMHSA to support activities that will improve the provision of treatment, prevention and related services, including the development of national mental health and substance abuse goals and model programs, competing applications requesting funding under the specific project activity in Section 4 will be reviewed for technical merit in accordance with established PHS/SAMHSA peer review procedures.

3.1 General Review Criteria

As published in the **Federal Register** on July 2, 1993 (Vol. 58, No. 126), SAMHSA's ''Peer Review and Advisory Council Review of Grant and Cooperative Agreement Applications and Contract Proposals,'' peer review groups will take into account, among other factors as may be specified in the application guidance materials, the following general criteria:

- Potential significance of the proposed project;
- Appropriateness of the applicant's proposed objectives to the goals of the specific program;
- Adequacy and appropriateness of the proposed approach and activities;
- Adequacy of available resources, such as facilities and equipment;
- Qualifications and experience of the applicant organization, the project director, and other key personnel; and
- Reasonableness of the proposed budget.

3.2 Funding Criteria for Scored Applications

Applications will be considered for funding on the basis of their overall technical merit as determined through the peer review group and the appropriate National Advisory Council review process.

Other funding criteria will include:

- Availability of funds.

Additional funding criteria specific to the programmatic activity may be included in the application guidance materials.

4. Special FY 1999 SAMHSA Activities

4.1 Grants

4.1.1. Grants for Evaluation of Treatment Models for Adolescents (Short Title: Adolescent Treatment Models, GFA No. TI 99–001)

- Application Deadline: May 10, 1999.
- Purpose: The Center for Substance Abuse Treatment (CSAT) of the Substance Abuse and Mental Health Services Administration (SAMHSA) announces the availability of funds for

grants to identify effective treatment programs or models of care that show promise for replication elsewhere. In fiscal year 1999, grants will be made available to identify promising programs that provide treatment services for adolescents. Funds are available only for evaluation and documentation purposes and may not be expended to provide treatment services.

The primary goal of this initiative is to identify currently existing models of adolescent treatment that, when evaluated for client outcomes and cost, under a rigorous study design, demonstrate effectiveness. Subsequently, documentation for these models will be developed, and those programs identified for replication, as judged by an independent panel of experts, will be invited to exhibit at a conference to disseminate their findings and showcase their models.

The target population for projects funded under this program is adolescents who have a substance abuse (alcohol and drug) problem. The age range includes individuals who are at least twelve years of age, and no older than nineteen years of age at treatment entry.

- Priorities: None.
- Eligible Applicants: Applications may be submitted by units of State or local government and by public and private nonprofit and for-profit entities such as community-based organizations, universities, colleges, and hospitals. The proposed program/model must at a minimum: (1) Be providing services for the target population for a minimum of two years. SAMHSA believes that only programs that have been providing services, based on their model, for a minimum of two years have the expertise and infrastructure to support the rigorous evaluation called for in this GFA; (2) Be collecting data on clients in the target population that include admission, course of treatment, outcome, and follow-up; and (3) Be in compliance with all local, city, county and State licensing requirements.
- Grants/Amounts: Approximately $4 million will be available to support up to 12 awards under this GFA in FY 1999. The average award is expected to range from $350,000 to $450,000 in total costs (direct + indirect). Support may be requested for a period of up to 3 years. The initial award will be for twelve months. Two subsequent twelve-month awards may be made subject to continued availability of funds and documented results. Projects will be reviewed annually to determine if ongoing funding is needed to complete program goals and to determine if adequate progress is being made.
- Catalog of Domestic Federal Assistance: 93.230.
- For Programmatic or Technical Assistance (Not for application kits), contact: Randolph D. Muck, M.Ed., Division of Practice and Systems Development, Center for Substance Abuse Treatment, SAMHSA, Rockwall II, Room 7–138, 5600 Fishers Lane, Rockville, MD 20857, (301) 443–6574.

For Grants Management Assistance, contact: Peggy Jones, Division of Grants Management, OPS, SAMHSA, Rockwall II, Room 614, 5600 Fishers Lane, Rockville, MD 20857, (301) 443–9666.

- For Application Kits, contact: National Clearinghouse for Alcohol and Drug Information, P.O. Box 2345, Rockville, MD 20847–2345, 1–800–729–6686.
- SAMHSA is sponsoring three technical assistance workshops for potential applicants. The workshops will be held at the following locations: March 11, 1999—Washington, DC; March 17, 1999—Chicago, IL; and March 19—Los Angeles, CA. For more information, please call Ms. Lisa Wilder, Workshop Coordinator, at 301–984–1471, extension 333.

5. Public Health System Reporting Requirements

This program is not subject to the Public Health System Reporting Requirements.

6. PHS Non-use of Tobacco Policy Statement

The PHS strongly encourages all grant and contract recipients to provide a smoke-free workplace and promote the non-use of all tobacco products. In addition, Public Law 103–227, the Pro-Children Act of 1994, prohibits smoking in certain facilities (or in some cases, any portion of a facility) in which regular or routine education, library, day care, health care, or early childhood development services are provided to children. This is consistent with the PHS mission to protect and advance the physical and mental health of the American people.

7. Executive Order 12372

Applications submitted in response to the FY 1999 activity listed above are subject to the intergovernmental review requirements of Executive Order 12372, as implemented through DHHS regulations at 45 CFR Part 100. E.O. 12372 sets up a system for State and local government review of applications for Federal financial assistance. Applicants (other than Federally recognized Indian tribal governments) should contact the State's Single Point of Contact (SPOC) as early as possible to alert them to the prospective application(s) and to receive any necessary instructions on the State's review process. For proposed projects serving more than one State, the applicant is advised to contact the SPOC of each affected State. A current listing of SPOCs is included in the application guidance materials. The SPOC should send any State review process recommendations directly to: Office of Extramural Activities, Policy and Review, Substance Abuse and Mental Health Services Administration, Parklawn Building, Room 17–89, 5600 Fishers Lane, Rockville, Maryland 20857.

The due date for State review process recommendations is no later than 60 days after the specified deadline date for the receipt of applications. SAMHSA does not guarantee to accommodate or explain SPOC comments that are received after the 60-day cut-off.

Dated: March 1, 1999.

Richard Kopanda,

Executive Officer, SAMHSA.

[FR Doc. 99–5386 Filed 3–3–99; 8:45 am]

BILLING CODE 4162–20–U

DEPARTMENT OF THE INTERIOR

Office of the Secretary

Delaware and Lehigh Navigation Canal National Heritage Corridor Commission Meeting

AGENCY: Office of the Secretary, Interior.

ACTION: Notice of meeting.

SUMMARY: This notice announces an upcoming meeting of the Delaware and Lehigh Navigation Canal National Heritage Corridor Commission. Notice of this meeting is required under the Federal Advisory Committee Act (Public Law 92–463).

MEETING DATE AND TIME: Friday, March 12, 1999; 1:30–4:00 p.m.

ADDRESSES: New Hope Borough Hall, 41 North Main Street, New Hope, PA 18938.

The agenda for the meeting will focus on implementation of the Management Action Plan for the Delaware and Lehigh National Heritage Corridor and State Heritage Park. The Commission was established to assist the Commonwealth of Pennsylvania and its political subdivisions in planning and implementing an integrated strategy for protecting and promoting cultural, historic and natural resources. The Commission reports to the Secretary of the Interior and to Congress.

SUPPLEMENTARY INFORMATION: The Delaware and Lehigh Navigation Canal National Heritage Corridor Commission was established by Public Law 100–692, November 18, 1988 and extended through Public Law 105–355, November 13, 1998. Also within this new legislation, the Delaware and Lehigh Navigation Canal National Heritage Corridor Commission has officially changed its name to the Delaware & Lehigh National Heritage Corridor Commission.

FOR FURTHER INFORMATION CONTACT: Denise G. Holub, Chief Financial Officer/Grants Administrator, Delaware &d Lehigh Navigation Canal National Heritage Corridor Commission, 10 E. Church Street, Room A–208, Bethlehem, PA 18018, (610) 861–9345.

Dated: February 24, 1999.

Denise G. Holub,

Chief Financial Officer/Grants Administrator, Delaware and Lehigh National Heritage Corridor Commission.

[FR Doc. 99–5363 Filed 3–3–99; 8:45 am]

BILLING CODE 6820–PE–M

DEPARTMENT OF THE INTERIOR

Fish and Wildlife Service

Notice of Receipt of Applications for Permit

The following applicants have 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.*):

PRT–007873

Applicant: Ringling Bros & Barnum & Bailey Circus, Vienna, VA

The applicant requests a permit to export, re-export and re-import captive-born Bengal tigers (*Panthera tigris tigris*), Asian elephants (*Elephas maximus*) and progeny of the animals currently held by the applicant and any animals acquired in the United States by the applicant to/from worldwide locations to enhance the survival of the species through conservation education. This notification covers activities conducted by the applicant over a three year period.

PRT–008445

Applicant: Roger R. Card, Mt. Pleasant, MI

The applicant requests a permit to import the sport-hunted trophy of one male bontebok (*Damaliscus pygargus dorcas*) culled from a captive herd maintained under the management program of the Republic of South Africa, for the purpose of enhancement of the survival of the species.

PRT–008446

Applicant: Debra L. Card, Mt. Pleasant, MI

The applicant requests a permit to import the sport-hunted trophy of one male bontebok (*Damaliscus pygargus dorcas*) culled from a captive herd maintained under the management program of the Republic of South Africa, for the purpose of enhancement of the survival of the species.

PRT–008444

Applicant: Allen G. Browne, Las Vegas, NV

The applicant requests a permit to import the sport-hunted trophy of one male bontebok (*Damaliscus pygargus dorcas*) culled from a captive herd maintained under the management program of the Republic of South Africa, for the purpose of enhancement of the survival of the species.

PRT–008213

Applicant: Neil Chamberlain, Linwood, MI

The applicant requests a permit to import the sport-hunted trophy of a cheetah (*Acinonyx jubatus*) from Namibia for the purpose of enhancement of the survival of the species.

PRT–008183

Applicant: Steven Chancellor, Evansville, IN

The applicant requests a permit to import the sport-hunted trophy of a cheetah (*Acinonyx jubatus*) from Namibia for the purpose of enhancement of the survival of the species.

PRT–008387

Applicant: John Monson, Bedford, NH

The applicant requests a permit to import the sport-hunted trophy of a straight horned markhor (*Capra falconeri jerdoni*) or a Kabul markhor (*C. f. megaceros*) from the Northwest Frontier Province of Pakistan for the purpose of enhancement of the survival of the species.

PRT–008520

Applicant: Edward Louis, Henry Doorly Zoo, Omaha, NE

The applicant requests a permit to import biological samples collected from animals in the wild for the following species: Milne-edwards sifaka (*Propethicus diadema*), black and white ruffed lemur (*varecia v. variegata*), brown lemur (*Eulemur fulvus*), lesser bamboo lemur (*Hapalemur griseus*), greater bamboo lemur (*H. simus*) and golden bamboo lemur (H. aureus) from Madagascar for the purpose of scientific research in lemur genetics. This notification covers activities conducted by the applicant for a period of five years.

PRT–008538

Applicant: Edward Louis, Henry Doorly Zoo, Omaha, NE

The applicant requests a permit to import biological samples collected from wild Bolson tortoise (*Gopherus flavomarginatus*) from Mexico for the purpose of scientific research in tortoise genetics. This notification covers activities conducted by the applicant for a period of five years.

Written data or comments should be submitted to the Director, U.S. Fish and Wildlife Service, Office of Management Authority, 4401 North Fairfax Drive, Room 700, Arlington, Virginia 22203 and must be received by the Director within 30 days of the date of this publication.

The public is invited to comment on the following applications for permits to conduct certain activities with marine mammals. The applications were submitted to satisfy requirements of the Marine Mammal Protection Act of 1972, as amended (16 U.S.C. 1361 *et seq.*) and the regulations governing marine mammals (50 CFR 18).

PRT–008172

Applicant: Marvin Urbnczyk, Whitedeer, TX

The applicant requests a permit to import a polar bear (*Ursus maritimus*) sport-hunted from the Lancaster Sound polar bear population, Northwest Territories, Canada for personal use.

PRT–008131

Applicant: Robert Matyas, Nazareth, PA

The applicant requests a permit to import a polar bear (*Ursus maritimus*) sport-hunted from the Lancaster Sound polar bear population, Northwest Territories, Canada for personal use taken prior to April 30, 1994.

PRT–008185

Applicant: Robert Ferche, St. Stephen, MN

The applicant requests a permit to import a polar bear (*Ursus maritimus*) sport-hunted from the Lancaster Sound polar bear from the Lancaster Sound polar bear population, Northwest Territories, Canada for personal use.

Written data or comments, requests for copies of the complete application, or requests for a public hearing on this application should be sent to the U.S. Fish and Wildlife Service, Office of Management Authority, 4401 N. Fairfax Drive, Room 700, Arlington, Virginia 22203, telephone 703/358–2104 or fax 703/358–2281 and must be received within 30 days of the date of publication of this notice.

Anyone requesting a hearing should give specific reasons why a hearing

would be appropriate. The holding of such a hearing is at the discretion of the Director. Documents and other information submitted with these applications are available for review, subject to the requirements of the Privacy Act and Freedom of Information Act, 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, Office of Management Authority, 4401 North Fairfax Drive, Room 700, Arlington, Virginia 22203. Phone: (703/358–2104); FAX: (703/358–2281).

Dated: February 26, 1999.

MaryEllen Amtower,

Acting Chief, Branch of Permits, Office of Management Authority.

[FR Doc. 99–5321 Filed 3–3–99; 8:45 am]

BILLING CODE 4310–55–U

DEPARTMENT OF THE INTERIOR

Bureau of Land Management

[ID–990–1020–01]

Resource Advisory Council Meeting Locations and Times

AGENCY: Bureau of Land Management, Interior.

ACTION: Resource Advisory Council meeting locations and times.

SUMMARY: In accordance with the Federal Land Policy and Management Act and the Federal Advisory Committee Act of 1972 (FACA), 5 U.S.C., the Department of the Interior, Bureau of Land Management (BLM) council meeting of the Upper Snake River Districts Resource Advisory Council will be held as indicated below. The agenda will include discussions of the implementation of rangeland standards and guides and BLM monitoring of noxious weeds. Also included will be a discussion on partnerships between public and private entities. All meetings are open to the public. The public may present written comments to the council. Each formal council meeting will have a time allocated for hearing public comments. The public comment period for the council meetings is listed below. Depending on the number of persons wishing to comment, and the time available, the time for individual oral comments may be limited. Individuals who plan to attend and need further information about the meetings, or need special assistance such as sign language interpretation or other reasonable accommodations should contact David Howell at the Upper Snake River Districts Office, 1405 Hollipark Dr., Idaho Falls, ID 83401, or telephone (208) 524–7559.

DATE AND TIME: The meeting will be held April 16, 1999 at the Herrett Center, located at the College of Southern Idaho, 315 Falls Avenue in Twin Falls, Idaho. The meeting will start at 8:30 a.m., with public comments scheduled from 8:40–9:10 a.m.

SUPPLEMENTARY INFORMATION: The purpose of the council is to advise the Secretary of the Interior, through the BLM, on a variety of planning and management issues associated with the management of the public lands.

FOR FURTHER INFORMATION CONTACT: David Howell, Upper Snake River Districts Office, 1405 Hollipark Dr., Idaho Falls, ID 83401, (208) 524–7559.

Dated: February 23, 1999.

Tom Dyer,

Area Manager.

[FR Doc. 99–5346 Filed 3–3–99; 8:45 am]

BILLING CODE 4310–GG–P

DEPARTMENT OF THE INTERIOR

National Park Service

Notice of Receipt of Application for Access to National Park Service Property for the Siting of Mobile Services Antennas

AGENCY: National Park Service, Department of the Interior.

ACTION: Public notice of the receipt of an application for a right-of-way permit for a wireless telecommunications facility, scheduling of a visual evaluation (balloon) test, and the acceptance of public comment.

SUMMARY: Public Notice is hereby given that the National Park Service (NPS) has received an application from Washington, D.C. SMSA Limited Partnership (D.C. SMSA), managing partners Cellco and Bell Atlantic Mobile, for a right-of-way permit to construct, operate and maintain a wireless telecommunication site within lands administered by the George Washington Memorial Parkway. The location within the park is at Great Falls Park, Virginia. The proposed facility would initially consist of a single one hundred and fifty-foot monopole with several design options for both the tower and the associated equipment buildings. The facility would expand on or completely replace an existing 85-foot communications tower and equipment building which currently serves as a signal relay station for the park's radio system. The actual site is located on the eastern side of Old Dominion Drive, approximately ¼ mile north of its intersection with Georgetown Pike.

In order to evaluate the visual impact of the proposed facility, a balloon test has been scheduled from March 5th through March 8th, 1999. The balloon, which will be red in color and constructed to approximate the size of one of the proposed antenna platforms, will be tethered to the boom of a crane and held at a height of 150 feet from 8:00 A.M. through 4:30 P.M. on each of the four days.

ADDRESSES: Comments concerning this application or the balloon test should be directed to: National Park Service, George Washington Memorial Parkway, Turkey Run Park, McLean, Virginia 22101. For further information call (703) 289–2516. Interested parties may review the application Monday through Friday, from 8:00 A.M. until 4:00 P.M., at the above address.

DATES: Written comments must be received on or before April 19, 1999.

SUPPLEMENTARY INFORMATION: The above-referenced application was reviewed and deemed complete on February 12th, 1999. Within 60 days of that date, the Superintendent will approve the application; approve the application with changes; deny the application; or notify the applicant of the need for further evaluation to comply with the National Environmental Policy Act (NEPA), National Historic Preservation Act, and/or other applicable laws and regulations.

Before reaching a final decision on this application, the NPS will undertake an Environmental Assessment (EA) in compliance with the NEPA. In addition, the Park Superintendent may choose to conduct a Comprehensive Assessment for wireless communications which will determine the extent to which, and the means by which, George Washington Memorial Parkway can accommodate demands for wireless telecommunication facility sites without derogating park resources, values or purposes. This assessment would also explore the feasibility of co-location of facilities.

National Park Service review of this application will be in accord with all applicable laws and regulations. The NPS regulations for right-of-way permits are located in Part 14 of Title 36 of the Code of Federal Regulations. A draft revision of these regulations was published in the **Federal Register** on December 1, 1997 (62 FR 63488). The NPS will also follow the guidelines developed by the General Services

Administration to implement Section 704(c) of the Telecommunications Act of 1996 (47 U.S.C. 332) which was published in the **Federal Register** on March 29, 1996 (61 FR 14100). Other laws applicable to the National Park System include the National Park Service Organic Act, the National Environmental Policy Act (NEPA), and the National Historic Preservation Act. (NHPA).

Dated: February 24, 1999.

Audrey F. Calhoun,

Superintendent.

[FR Doc. 99–5320 Filed 3–3–99; 8:45 am]

BILLING CODE 4310–70–P

DEPARTMENT OF THE INTERIOR

Bureau of Reclamation

Glen Canyon Technical Work Group

AGENCY: Bureau of Reclamation, Interior.

ACTION: Notice of public meetings.

SUMMARY: The Glen Canyon Technical Work Group (TWG) was formed as an official subcommittee of the Glen Canyon Adaptive Management Work Group (AMWG). The TWG members were named by members of the AMWG and provide advice and information for the AMWG to act upon. The AMWG uses this information to form recommendations to the Secretary of the Interior for guidance of the Grand Canyon Monitoring and Research Center science program and other direction as requested by the Secretary.

DATES AND LOCATION: The TWG public meetings will be held at the following times and location:

Phoenix, Arizona—March 16–17, 1999. The meeting will begin at 10:00 a.m. and conclude at 4:00 p.m. on the first day and begin at 8:00 a.m. and conclude at 12:00 noon on the second day.

Agenda: The purpose of the meeting is to address administrative issues, develop a process to review management objectives and information needs, review the cultural resources program, and select a chairman. Other items on the agenda include tribal participation, the fiscal year 2001 budget, Endangered Species Act, and basin hydrology.

Phoenix, Arizona—April 20–21, 1999. The meeting will begin at 10:00 a.m. and conclude at 4:00 p.m. on the first day and begin at 8:00 a.m. and conclude at 4:00 p.m. on the second day.

Agenda: The purpose of the meeting is to address administrative issues, the management objectives and information needs process, the fiscal year 2001 budget, and review findings of the 1998 State of the Resources Report. Other items on the agenda include the temperature control device environmental assessment, AMWG river trip, Kanab ambersnail workshop, basin hydrology and a potential beach/habitat-building flow.

Both public meetings will be held at the Embassy Suites Hotel located at 1515 North 44th Street (near the Sky Harbor Airport) in Phoenix, Arizona. Seating is limited and is available on a first come, first served basis.

Time will be allowed on both agendas for any organization or individual wishing to make formal oral comments (limited to 10 minutes) at the meetings. To allow full consideration of information by the TWG members, written notice must be provided to Bruce Moore, Bureau of Reclamation, Upper Colorado Regional Office, 125 South State Street, Room 6107, Salt Lake City, Utah 84138–1102; telephone (801) 524–3702; faxogram (801) 524–5499; E-mail at: bmooreuc.usbr.gov at least FIVE (5) days prior to the meetings. Any written comments received will be provided to the TWG members at the meetings.

FOR FURTHER INFORMATION CONTACT: Bruce Moore, telephone (801) 524–3702; faxogram (801) 524–5499; E-mail at: bmooreuc.usbr.gov.

Dated: February 26, 1999.

Eluid L. Martinez,

Commissioner, Bureau of Reclamation.

[FR Doc. 99–5322 Filed 3–3–99; 8:45 am]

BILLING CODE 4310–94–M

AGENCY FOR INTERNATIONAL DEVELOPMENT

Notice of Public Information Collection Requirements Submitted to OMB for Review

SUMMARY: U.S. Agency for International Development (USAID) has submitted the following information collections to OMB for review and clearance under the Paperwork Reduction Act of 1995, Pub. L. 104–13. Comments regarding this information collection are best assured of having their full effect if received within 30 days of this notification. Comments should be addressed to: Desk Officer for USAID, Office of Information and Regulatory Affairs, Office of Management and Budget (OMB), Washington DC 20503. Copies of submission may be obtained by calling (202) 712–1365.

SUPPLEMENTARY INFORMATION:

OMB Number: OMB 0412–0506.

Form Number: AID 1420–50.

Title: Vendor Data Base (formerly known as USAID Consultant Registry Information System (ACRIS).

Instruction Books for the Organization Profile:

Type of Submission: Renew.

Purpose: USAID procuring activities are required to establish bidders mailing lists to assure access to sources and to obtain meaningful competition (41 CFR Section 1–2.205). In compliance with this requirement, USAID's Office of Small and Disadvantaged Business Utilization/Minority Resource Center has responsibility for developing and maintaining a Contractor's Index of bidders/offerors capable of furnishing services for use by the USAID procuring activities. (AIDAR 719.271–2(b)(4)).

Annual Reporting Burden:

Respondents: 1,000.

Total annual hours requested: 1,000 hours.

Dated: February 26, 1999.

Willette L. Smith,

Chief, Information and Records Division Office Administrative Services Bureau for Management.

[FR Doc. 99–5347 Filed 3–3–99; 8:45 am]

BILLING CODE 6116–01–M

DEPARTMENT OF JUSTICE

Immigration and Naturalization Service

Agency Information Collection Activities: Extension of Existing Collection; Comment Request

ACTION: Notice of information collection under review; application by refugee for waiver of ground of excludability.

The Office of Management and Budget (OMB) approval is being sought for the information collection listed below. This proposed information collection was previously published in the **Federal Register** on August 13, 1998 at 63 FR 43415, allowing for a 60-day public comment period. No comments were received by the Immigration and Naturalization Service. The purpose of this notice is to allow an additional 30 days for public comments. Comments are encouraged and will be accepted until April 5, 1999. This process is conducted in accordance with 5 CFR 1320.10.

Written comments and/or suggestions regarding the item(s) contained in this notice, especially regarding the estimated public burden and associated response time, should be directed to the Office of Management and Budget, Office of Information and Regulatory Affairs, Attention: Stuart Shapiro, 202–

395–7316, Department of Justice Desk Officer, Washington, DC 20503. Additionally, comments may be submitted to OMB via facsimile to 202–395–7285. Comments may also be submitted to the Department of Justice (DOJ), Justice Management Division, Information Management and Security Staff, Attention: Department Clearance Officer, Suite 850, 1001 G Street, NW., Washington, DC 20530. Comments may also be submitted to DOJ via facsimile to 202–514–1534.

Written comments and suggestions from the public and affected agencies 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 agency's estimate of the burden of the proposed collection of information, including the validity of the methodology and assumptions used;

(3) Enhance the quality, utility, and clarity of the information to be collected; and

(4) Minimize the burden of the collection of information on those who are to respond, including through the use of appropriate automated, electronic, mechanical, or other technological collection techniques or other forms of information technology, e.g., permitting electronic submission of responses.

Overview of This Information Collection

(1) *Type of Information Collection:* Reinstatement without change of previously approved information collection.

(2) *Title of the Form/Collection:* Application by Refugee for Waiver of Ground of Excludability.

(3) *Agency form number, if any, and the applicable component of the Department of Justice sponsoring the collection:* Form I–602. Office of International Affairs, Immigration and Naturalization Service.

(4) *Affected public who will be asked or required to respond, as well as a brief abstract:* Primarily: Individuals or Households. This form is used by the INS to determine eligibility for waiver.

(5) *An estimate of the total number of respondents and the amount of time estimated for an average respondent to respond:* 25,000 responses at 15 minutes (.25) per response.

(6) *An estimate of the total public burden (in hours) associated with the collection:* 625 annual burden hours.

If you have additional comments, suggestions, or need a copy of the proposed information collection instrument with instructions, or additional information, please contact 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.

If additional information is required contact: Mr. Robert B. Briggs, Clearance Officer, United States Department of Justice, Information Management and Security Staff, Justice Management Division, Suite 850, Washington Center, 1001 G Street, NW., Washington, DC 20530.

Dated: February 24, 1999.

Richard A. Sloan,

Department Clearance Officer, Department of Justice, Immigration and Naturalization Service.

[FR Doc. 99–5286 Filed 3–3–99; 8:45 am]

BILLING CODE 4410–10–M

DEPARTMENT OF JUSTICE

Immigration and Naturalization Service

Agency Information Collection Activities: Comment Request

ACTION: Notice of information collection under review; application for waiver of the foreign residence requirement of Section 212(e) of the Immigration and Nationality Act.

The Department of Justice, Immigration and Naturalization Service (INS) has submitted the following information collection request to the Office of Management and Budget (OMB) for review and clearance in accordance with the Paperwork Reduction Act of 1995. The information collection was previously published in the **Federal Register** on August 13, 1998 at 63 FR 43415, allowing for a 60-day public comment period. No comments were received by the INS on this proposed information collection.

The purpose of this notice is to allow an additional 30 days for public comments. Comments are encouraged and will be accepted until April 5, 1999. This process is conducted in accordance with 5 CFR 1320.10. Written comments and/or suggestions regarding the items contained in this notice, especially regarding the estimated public burden and associate response time, should be directed to the Office of Management and Budget, Office of Information and Regulatory Affairs, Attention: Stuart Shapiro, Department of Justice Desk Officer, Room 10235, Washington, DC 20530; 202–395–7316. Written comments and suggestions from the public and affected agencies concerning the proposed collection of information should address one or more of the following four points;

(1) Evaluate whether the proposed collection of information is necessary for the proper performance of the functions of the agency, including whether the information will have practical utility;

(2) Evaluate the accuracy of the agency's estimate of the burden of the proposed collection of information, including the validity of the methodology and assumptions used;

(3) Enhance the quality, utility, and clarity of the information to be collected; and

(4) Minimize the burden of the collection of information on those who are to respond, including through the use of appropriate automated, electronic, mechanical, or other technological collection techniques or other forms of information technology, e.g., permitting electronic submission of responses.

Overview of this information collection:

(1) Type of Information Collection: Reinstatement without change of previously approved collection.

(2) Title of the Form/Collection: Application for Waiver of the Foreign Residence Requirement of Section 212(e) of the Immigration and Nationality Act.

(3) Agency form number, if any, and the applicable component of the Department of Justice sponsoring the collection: Forms I–612. Adjudications Division, 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. Section 212(e) of the Immigration and Nationality Act provides for a waiver of the foreign residence requirement in certain instances. This information will be used by the INS to determine eligibility for a waiver.

(5) An estimate of the total number of respondents and the amount of time estimated for an average respondent to respond: 1,300 respondents at 20 minutes (.333 hours) per response.

(6) An estimate of the total public burden (in hours) associated with the collection: 432 annual burden hours.

If you have additional comments, suggestions, or need a copy of the proposal information collection

instrument with instructions, or additional information, please contact Richard A. Sloan 202–514–3291, Director, Policy Directives and Instructions Branch, Immigration and Naturalization Service, U.S. Department of Justice, Room 5307, 425 I Street, NW, Washington, DC 20536. Additionally, comments and/or suggestions regarding the item(s) contained in this notice, especially regarding the estimated public burden and associated response time may also be directed to Mr. Richard A Sloan.

If additional information is required contact: Mr. Robert B. Briggs, Clearance Officer, United States Department of Justice, Information Management and Security Staff, Justice Management Division, Suite 850, Washington Center, 1001 G Street, NW, Washington, DC 20530.

Dated: February 24, 1999.

Richard A. Sloan,

Department Clearance Officer, Department of Justice, Immigration and Naturalization Service.

[FR Doc. 99–5287 Filed 3–3–99; 8:45 am]

BILLING CODE 4410–10–M

DEPARTMENT OF JUSTICE

Immigration and Naturalization Service

Agency Information Collection Activities: Extension of Existing Collection; Comment Request

ACTION: Notice of information collection under review; petition to classify orphan as an immediate relative and application for advance processing of orphan petition

The Office of Management and Budget (OMB) approval is being sought for the information collection listed below. This proposed information collection was previously published in the **Federal Register** on August 13, 1998 at 63 FR 43416, allowing for a 60-day public comment period. No comments were received by the Immigration and Naturalization Service. The purpose of this notice is to allow an additional 30 days for public comments. Comments are encouraged and will be accepted until April 5, 1999. This process is conducted in accordance with 5 CFR 1320.10.

Written comments and/or suggestions regarding the item(s) contained in this notice, especially regarding the estimated public burden and associated response time, should be directed to the Office of Management and Budget, Office of Information and Regulatory Affairs, Attention: Stuart Shapiro, 202–395–7316, Department of Justice Desk Officer, Washington, DC 20503. Additionally, comments may be submitted to OMB via facsimile to 202–395–7285. Comments may also be submitted to the Department of Justice (DOJ), Justice Management Division, Information Management and Security Staff, Attention: Department Clearance Officer, Suite 850, 1001 G Street, NW., Washington, DC 20530. Comments may also be submitted to DOJ via facsimile to 202–514–1534.

Written comments and suggestions from the public and affected agencies 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 agency's estimate of the burden of the proposed collection of information, including the validity of the methodology and assumptions used;

(3) Enhance the quality, utility, and clarity of the information to be collected; and

(4) Minimize the burden of the collection of information on those who are to respond, including through the use of appropriate automated, electronic, mechanical, or other technological collection techniques or other forms of information technology, e.g., permitting electronic submission of responses.

Overview of This Information Collection

(1) *Type of Information Collection:* Reinstatement without change of previously approved information collection.

(2) *Title of the Form/Collection:* Petition to Classify Orphan as an Immediate Relative and Application for Advance Processing of Orphan Petition.

(3) *Agency form number, if any, and the applicable component of the Department of Justice sponsoring the collection:* Form I–600 and I–600A. Adjudications Division, 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 is used by the INS to determine immigrant eligibility and advance processing of orphans.

(5) *An estimate of the total number of respondents and the amount of time estimated for an average respondent to respond:* 34,000 responses at 30 minutes (.5) per response.

(6) *An estimate of the total public burden (in hours) associated with the collection:* 17,000 annual burden hours.

If you have additional comments, suggestions, or need a copy of the proposed information collection instrument with instructions, or additional information, please contact 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.

If additional information is required contact: Mr. Robert B. Briggs, Clearance Officer, United States Department of Justice, Information Management and Security Staff, Justice Management Division, Suite 850, Washington Center, 1001 G Street, NW, Washington, DC 20530.

Dated: February 24, 1999.

Richard A. Sloan,

Department Clearance Officer, United States Department of Justice, Immigration and Naturalization Service.

[FR Doc. 99–5288 Filed 3–3–99; 8:45 am]

BILLING CODE 4410–10–M

DEPARTMENT OF JUSTICE

Immigration and Naturalization Service

Agency Information Collection Activities: Extension of Existing Collection; Comment Request

ACTION: Notice of information collection underrReview; Baggage and personal effects of detained aliens.

The Office of Management and Budget (OMB) approval is being sought for the information collection listed below. This proposed information collection was previously published in the **Federal Register** on June 22, 1998 at 63 FR 33950, allowing for a 60-day public comment period. No comments were received by the Immigration and Naturalization Service. The purpose of this notice is to allow an additional 30 days for public comments. Comments are encouraged and will be accepted until April 5, 1999. This process is conducted in accordance with 5 CFR 1320.10.

Written comments and/or suggestions regarding the item(s) contained in this notice, especially regarding the estimated public burden and associated response time, should be directed to the Office of Management and Budget, Office of Information and Regulatory Affairs, Attention: Stuart Shapiro, 202–395–7316, Department of Justice Desk Officer, Washington, DC 20503.

Additionally, comments may be submitted to OMB via facsimile to 202–395–7285. Comments may also be submitted to the Department of Justice (DOJ), Justice Management Division, Information Management and Security Staff, Attention: Department Clearance Officer, Suite 850, 1001 G Street, NW., Washington, DC 20530. Comments may also be submitted to DOJ via facsimile to 202–514–1534.

Written comments and suggestions from the public and affected agencies 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 agency's estimate of the burden of the proposed collection of information, including the validity of the methodology and assumptions used;

(3) Enhance the quality, utility, and clarity of the information to be collected; and

(4) Minimize the burden of the collection of information on those who are to respond, including through the use of appropriate automated, electronic, mechanical, or other technological collection techniques or other forms of information technology, e.g., permitting electronic submission of responses.

Overview of This Information Collection

(1) *Type of Information Collection*: Reinstatement without change of previously approved information collection.

(2) *Title of the Form/Collection*: Baggage and Personal Effects of Detained Aliens.

(3) *Agency form number, if any, and the applicable component of the Department of Justice sponsoring the collection*: Form I–43, Detention and Deportation Division, 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. The form is used by the arresting officer to ensure that the alien is afforded a reasonable opportunity to collect his or her property. The INS also uses this to protect the government from possible fraudulent claims.

(5) *An Estimate of the total number of respondents and the amount of time estimated for an average respondent to respond*: 600,000 responses at one minute (.17) per response.

(6) *An estimate of the total public burden (in hours) associated with the collection*: 10,200 annual burden hours.

If you have additional comments, suggestions, or need a copy of the proposed information collection instrument with instructions, or additional information, please contact 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.

If additional information is required contact: Mr. Robert B. Briggs, Clearance Officer, United States Department of Justice, Information Management and Security Staff, Justice Management Division, Suite 850, Washington Center, 1001 G Street, NW, Washington, DC 20530.

Dated: February 24, 1999.

Richard A. Sloan,

Department Clearance Officer, Department of Justice, Immigration and Naturalization Service.

[FR Doc. 99–5289 Filed 3–3–99; 8:45 am]

BILLING CODE 4410–10–M

DEPARTMENT OF JUSTICE

Immigration and Naturalization Service

Agency Information Collection Activities: Comment Request

ACTION: Notice of information collection under review; visa waiver nonimmigrant arrival/departure document

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The Department of Justice, Immigration and Naturalization Service (INS) has submitted the following information collection request to the Office of Management and Budget (OMB) for review and clearance in accordance with the Paperwork Reduction Act of 1995. The information collection was previously published in the **Federal Register** on August 11, 1998 at 63 FR 42876, allowing for a 60-day public comment period. No comments were received by the INS on this proposed information collection.

The purpose of this notice is to allow an additional 30 days for public comments. Comments are encouraged and will be accepted until April 5, 1999. This process is conducted in accordance with 5 CFR 1320.10. Written comments and/or suggestions regarding the items contained in this notice, especially regarding the estimated public burden and associated response time, should be directed to the Office of Management and Budget, Office of Information and Regulatory Affairs, Attention: Stuart Shapiro, Department of Justice Desk Officer, Room 10235, Washington, DC 20530; 202–395–7316. Written comments and suggestions from the public and affected agencies concerning the proposed collection of information should address one or more of the following four points:

(1) Evaluate whether the proposed collection of information is necessary for the proper performance of the functions of the agency, including whether the information will have practical utility;

(2) Evaluate the accuracy of the agency's estimate of the burden of the proposed collection of information, including the validity of the methodology and assumptions used;

(3) Enhance the quality, utility, and clarity of the information to be collected; and

(4) Minimize the burden of the collection of information on those who are to respond, including through the use of appropriate automated, electronic, mechanical, or other technological collection techniques or other forms of information technology, e.g., permitting electronic submission of responses.

Overview of this information collection:

(1) Type of Information Collection: Reinstatement without change of previously approved collection.

(2) Title of the Form/Collection: Visa Waiver Nonimmigrant Arrival/Departure Document.

(3) Agency form number, if any, and the applicable component of the Department of Justice sponsoring the collection: Forms I–94W, Inspections Division, 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 is used by nonimmigrant aliens applying for admission to the United States under the Visa Waiver Pilot Program (Section 217 of the Immigration and Nationality Act).

(5) An estimate of the total number of respondents and the amount of time estimated for an average respondent to respond: 4,000,000 responses at 6 minutes (.105) per response.

(6) An estimate of the total public burden (in hours) associated with the collection: 420,000 annual burden hours.

If you have additional comments, suggestions, or need a copy of the proposed information collection instrument with instructions, or additional information, please contract

Richard A. Sloan 202–514–3291, Director, Policy Directives and Instructions Branch, Immigration and Naturalization Service, U.S. Department of Justice, Room 5307, 425 I Street, NW., Washington, DC 20536. Additionally, comments and/or suggestions regarding the item(s) contained in this notice, especially regarding the estimated public burden and associated response time may also be directed to Mr. Richard A. Sloan.

If additional information is required contact; Mr. Robert B. Briggs, Clearance Officer, United States Department of Justice, Information Management and Security Staff, Justice Management Division, Suite 850, Washington Center, 1001 G Street, NW, Washington, DC 20530.

Dated: February 24, 1999.

Richard A. Sloan,

Department Clearance Officer, Department of Justice, Immigration and Naturalization Service.

[FR Doc. 99–5290 Filed 3–3–99; 8:45 am]

BILLING CODE 4410–10–M

DEPARTMENT OF LABOR

Occupational Safety and Health Administration

Maritime Advisory Committee for Occupational Safety and Health; Notice of Meeting

AGENCY: Occupational Safety and Health Administration (OSHA), Labor.

ACTION: Maritime Advisory Committee for Occupational Safety and Health: Notice of meeting.

SUMMARY: The Maritime Advisory Committee for Occupational Safety and Health (MACOSH), established under section 7 of the Occupational Safety and Health Act of 1970 to advise the Secretary of Labor on issues relating to occupational safety and health programs, policies, and standards in the maritime industries in the United States, will meet in Baltimore, Maryland.

DATES: The Committee will meet:

—On March 30, 1999, from 9:00 a.m. until approximately 5:00 p.m.; and

—On March 31, 1999, from 8:30 a.m. until approximately 5:00 p.m.

ADDRESSES: The Committee will meet at the Sheraton Inner Harbor at 300 South Charles Street, Baltimore, MD 21201; telephone (410) 962–8300.

Mail comments, views, or statements in response to this notice to Paul Rossi, Acting Director, Office of Maritime Standards, OSHA, U.S. Department of Labor, Room N–3621, 200 Constitution Avenue, NW, Washington, DC 20210. Phone: (202) 693–2086; fax: (202) 693–1663.

FOR FURTHER INFORMATION CONTACT: Bonnie Friedman, Director, Office of Public Affairs, OSHA; Phone (202) 693–1999.

SUPPLEMENTARY INFORMATION: All interested persons are invited to attend the public meetings of MACOSH at the time and place indicated above. Individuals with disabilities wishing to attend should contact Theda Kenney at (202) 693–2222 no later than March 8, 1999, to obtain appropriate accommodations.

Meeting Agenda

This meeting will include discussion of the following subjects: OSHA shipyard strategic planning goals; vertical tandem lifts in the marine cargo handling environment; ship scrapping initiatives and development; training partnerships; an update on ergonomics; a National Shipbuilding Research Panel (NSRP) update; a general OSHA update (including a standards update and a discussion on the shipyard fire protection negotiated rulemaking committee); and a rope walking demonstration video. MACOSH subgroups will also report on their activities.

Public Participation

Written data, views, or comments for consideration by MACOSH on the various agenda items listed above may be submitted, preferably with copies, to Paul Rossi. Submissions received by March 15, 1999, will be provided to the members of the committee and will be included in the record of the meeting. Requests to make oral presentations to the Committee may be granted if time permits. Anyone wishing to make an oral presentation to the Committee on any of the agenda items noted above should notify Paul Rossi. The request should state the amount of time desired, the capacity in which the person will appear, and a brief outline of the content of the presentation.

Authority: This notice is issued under the authority of sections 6(b)(1) and 7(b) of the Occupational Safety and Health Act of 1970 (29 U.S.C. 655, 656), the Federal Advisory Committee Act (5 U.S.C. App. 2), and 29 CFR part 1912.

Signed at Washington, DC, this 26th day of February 1999.

Charles N. Jeffress,

Assistant Secretary of Labor.

[FR Doc 99–5292 Filed 3–3–99; 8:45 am]

BILLING CODE 4510–26–M

DEPARTMENT OF LABOR

Pension and Welfare Benefits Administration

[Application No. D–10622, et al.]

Proposed Exemptions; VECO Corporation (VECO)

AGENCY: Pension and Welfare Benefits Administration, Labor.

ACTION: Notice of proposed exemptions.

SUMMARY: This document contains notices of pendency before the Department of Labor (the Department) of proposed exemptions from certain of the prohibited transaction restrictions of the Employee Retirement Income Security Act of 1974 (the Act) and/or the Internal Revenue Code of 1986 (the Code).

Written Comments and Hearing Requests

Unless otherwise stated in the Notice of Proposed Exemption, all interested persons are invited to submit written comments, and with respect to exemptions involving the fiduciary prohibitions of section 406(b) of the Act, requests for hearing within 45 days from the date of publication of this **Federal Register** Notice. Comments and requests for a hearing should state: (1) The name, address, and telephone number of the person making the comment or request, and (2) the nature of the person's interest in the exemption and the manner in which the person would be adversely affected by the exemption. A request for a hearing must also state the issues to be addressed and include a general description of the evidence to be presented at the hearing.

ADDRESSES: All written comments and request for a hearing (at least three copies) should be sent to the Pension and Welfare Benefits Administration, Office of Exemption Determinations, Room N–5649, U.S. Department of Labor, 200 Constitution Avenue, NW., Washington, DC 20210. Attention: Application No. stated in each Notice of Proposed Exemption. The applications for exemption and the comments received will be available for public inspection in the Public Documents Room of Pension and Welfare Benefits Administration, U.S. Department of Labor, Room N–5507, 200 Constitution Avenue, NW., Washington, DC 20210.

Notice to Interested Persons

Notice of the proposed exemptions will be provided to all interested persons in the manner agreed upon by the applicant and the Department within 15 days of the date of publication in the **Federal Register**. Such notice

shall include a copy of the notice of proposed exemption as published in the **Federal Register** and shall inform interested persons of their right to comment and to request a hearing (where appropriate).

SUPPLEMENTARY INFORMATION: The proposed exemptions were requested in applications filed pursuant to section 408(a) of the Act and/or section 4975(c)(2) of the Code, and in accordance with procedures set forth in 29 CFR part 2570, subpart B (55 FR 32836, 32847, August 10, 1990). Effective December 31, 1978, section 102 of Reorganization Plan No. 4 of 1978 (43 FR 47713, October 17, 1978) transferred the authority of the Secretary of the Treasury to issue exemptions of the type requested to the Secretary of Labor. Therefore, these notices of proposed exemption are issued solely by the Department.

The applications contain representations with regard to the proposed exemptions which are summarized below. Interested persons are referred to the applications on file with the Department for a complete statement of the facts and representations.

VECO Corporation (VECO), Located in Anchorage, Alaska

[Exemption Application Number D–10622]

Proposed Exemption

The Department is considering granting an exemption under the authority of section 408(a) of the Act and section 4975 (c)(2) of the Code and in accordance with the procedures set forth in 29 CFR part 2570, subpart B (55 FR 32826, 32847, August 10, 1990). If the exemption is granted, the restrictions of sections 406(a), 406(b)(1) and (2) of the Act and the sanctions resulting from the application of section 4975 of the Code, by reason of section 4975(c)(1)(A) through (E) of the Code, shall not apply to the proposed sale (the Sale) of a certain parcel of unimproved real property (the Property) from the VECO Corporation Profit Sharing Plan and Trust (the Plan) to Norcon, Inc. (Norcon), a party in interest with respect to the Plan, provided that the following conditions are met:

(a) The terms and conditions of the Sale will be at least as favorable to the Plan as those obtainable in an arm's length transaction with an unrelated party;

(b) Norcon will pay the greater of $2,940,000 or the fair market value of the Property on the date of the Sale as established by a qualified, independent appraiser;

(c) The Sale will be a one-time transaction for cash;

(d) The Plan will pay no fees or commissions with respect to the Sale; and

(e) An independent fiduciary acting on behalf of the Plan has reviewed the terms of the Sale and has represented that the transaction is in the best interest of the Plan and protective of the Plan's participants and beneficiaries.

Summary of Facts and Representations

1. VECO is an engineering, procurement, management, and construction company which is located in Anchorage, Alaska and incorporated in Delaware. Norcon is a wholly-owned subsidiary of VECO and is an electrical contracting company. Norcon is also located in Anchorage, Alaska.

2. VECO is the sponsor of the Plan. The Plan is a frozen profit sharing plan having 1,866 participants and approximately $2,959,432 in total assets, as of June 15, 1998. The trustees of the Plan (the Trustees) are all employees of VECO or an affiliate thereof. On January 1, 1992, VECO discontinued contributions to the Plan and the Plan received a favorable termination letter from the Internal Revenue Service on February 25, 1997.

3. The Property, which accounts for approximately 99% of the Plan's total assets, is comprised of approximately 40 acres of unimproved real property located at the southwest corner of King Street and 100th Avenue in Anchorage, Alaska. The Property has not been used by, or generated income for, the Plan. The Property was acquired by the Plan for investment purposes on February 6, 1981 for $1,917,363 from the Ninth Anchorage Limited Partnership (Ninth Anchorage), an unrelated party. Of this amount, the Plan paid Ninth Anchorage $288,219 in cash and obtained a promissary note (the Note) from Ninth Anchorage for the balance of $1,629,144.

4. The Plan has incurred certain holding costs as a result of its ownership of the Property. The applicant represents that the Plan has incurred certain interest expenses (the Interest Expenses) as a result of the Note. The applicant represents that, from 1981 until the Note was paid off in 1989, the Plan incurred a total of $1,213,646 in Interest Expenses.

The applicant represents that VECO has paid all of the Interest Expenses (the Interest Expense Payments) on behalf of the Plan. The applicant represents that VECO made the Interest Expense Payments directly to Ninth Anchorage and treated the Interest Expense Payments as contributions by VECO to the Plan.[1] The applicant additionally represents that VECO did not take any additional deductions with respect to the Interest Expenses Payments.

The Plan has additionally incurred certain real estate taxes (the Real Estate Taxes) with respect to its ownership of the Property. The applicant represents that the Plan has incurred a total of $497,599 in Real Estate Taxes as a result of its ownership of the Property.

The applicant represents that from 1981 to present, VECO has paid, and continues to pay, all of the Real Estate Taxes on behalf of the Plan (the Real Estate Tax Payments). The applicant represents that the Real Estate Tax Payments were made directly by VECO to the taxing authority. The Applicant represents that, from 1981 to 1991, VECO treated the Real Estate Tax Payments as a contribution by VECO to the Plan with no further deductions taken by VECO with respect to the Real Estate Tax Payments.[2]

5. In 1995, the Trustees were informed by the Department of Labor's Seattle District Office (the District Office) that a sale of the Property by the Plan was necessary to diversify the Plan's assets in accordance with the requirements of the Act. As a result, the District Office and the Trustees reached a settlement agreement pursuant to PTE 94–71 (59 FR 51216, October 7, 1994) whereby VECO would purchase the Property from the Plan provided that VECO was able to meet certain conditions.

In a letter dated April 8, 1996, the District Office stated that it had decided not to authorize the proposed sale of the property to VECO. This decision was the result of the receipt by the District Office of negative comments from the Plan's participants in response to the proposed transaction. The District Office notified VECO that a sale of the Property was still necessary and any future sale of the Property would require the oversight of an independent fiduciary acting on behalf of the Plan. As a result of the District Office's decision, the proposed sale of the Property to VECO was abandoned.

6. The applicant now seeks an exemption for the sale of the Property by the Plan to VECO's subsidiary, Norcon. The Sale will involve the oversight of an independent fiduciary. Pursuant to this, Norcon and the Plan entered into a purchase and sale agreement for the Property (the Sale

[1] The Department expresses no opinion as to the appropriateness of VECO's treatment of these payments as contributions under Internal Revenue Code sections 162 and 404.

[2] See footnote 1.

Agreement) on March 13, 1998. The Sale Agreement involves Norcon's purchase of the Property for the greater of $2,940,000 or the fair market value of the Property at the time of the Sale, as determined by a qualified, independent appraiser. The Sale Agreement is contingent on the grant of an exemption by the Department.

The applicant represents that in addition to the proposed sale of the Property by the Plan to VECO, the Plan is still trying to sell the Property on the open market. The applicant represents that in the event the Plan receives an offer for the Property in excess of the amount in the Sale Agreement, the Sale Agreement has reserved to Norcon the right to meet or exceed the amount that was offered. Thus, the applicant represents that, at a minimum, any sale of the Property by the Plan to Norcon will occur at the greater of $2,940,000 or the fair market value of the Property as of the date of the Sale.

7. The Property was appraised on June 5, 1997 by Jerry Smith (Mr. Smith) for the ACCUVAL–RESCO Appraisal Company (ACCUVAL–RESCO), an appraisal company independent of both Norcon and VECO. Mr. Smith, an appraiser certified in the State of Alaska, used the sales comparison approach in his valuation of the Property and compared the Property to five parcels of land located near the Property and the subject of recent sales. Based on these comparisons, Mr. Smith concluded that the value of the Property, as of June 3, 1997, was $2,940,000.[3]

8. The Plan hired an independent fiduciary, Al Tamagni (Mr. Tamagni) of Pension Services International, Inc. (PSI) to act on the Plan's behalf during any sale of the Property. Mr. Tamagni, who is the President of PSI, represents that he is independent of both Norcon and VECO. Mr. Tamagni additionally represents that he has several years of experience in matters involving qualified pension plans, including investment transactions similar to the Sale and the Sale Agreement. Mr. Tamagni represents further that he understands his duties and responsibilities as a fiduciary under ERISA and has accepted them.

Mr. Tamagni represents that he has reviewed the terms of both the Sale and the Sale Agreement. Mr. Tamagni represent that, based on his analysis of the Sale Agreement, he believes that the terms of the Sale and the Sale Agreement are protective of the rights of the participants and beneficiaries of the Plan. Mr. Tamagni additionally represents that, based on his analysis of the terms of the Sale, he believes that the Sale is in the best interests of the Plan's participants and beneficiaries.

9. In summary, the applicant represent that the proposed transaction satisfies the criteria of section 408(a) of the Act because:

(a) The terms and conditions of the Sale will be at least as favorable to the Plan as those obtainable in an arm's length transaction with an unrelated party;

(b) Norcon will pay the greater of $2,940,000 or the fair market value of the Property on the date of Sale as established by a qualified, independent appraiser;

(c) The Sale will be a one-time transaction for cash;

(d) The Plan will pay no fees or commissions with respect to the Sale; and

(e) An independent fiduciary acting on behalf of the Plan, Mr. Tamagni, has reviewed the terms of the Sale and has represented that the transaction is in the best interest of the Plan and protective of the Plan's participants and beneficiaries.

FOR FURTHER INFORMATION CONTACT: Christopher J. Motta of the Department, telephone (202) 219–8883 (this is not a toll free number).

Citibank, N.A. (Citibank) and Salomon Smith Barney Inc. (SSB), Located in New York, NY

[Application No. D–10674]

Proposed Exemption

The Department is considering granting an exemption under the authority of section 408(a) of the Act and section 4975(c)(2) of the Code and in accordance with the procedures set forth in 29 CFR part 2570, subpart B (55 FR 32836, 32847, August 10, 1990). If the exemption is granted, the restrictions of sections 406(a)(1)(A) through (D) and 406(b)(1) and (2) of the Act and the sanctions resulting from the application of section 4975 of the Code, by reason of section 4975(c)(1)(A) through (E) of the Code, shall not apply, effective October 8, 1998 to (1) the past and continued lending of securities to SSB and affiliated U.S. registered broker-dealers of SSB or Citibank (together, SSB/U.S.) and certain foreign affiliates (the Foreign Affiliates) of SSB and Citibank which are broker-dealers or banks based in the United Kingdom (SB/U.K.), Japan (SSB/Asia), Germany (SSB/Germany), Canada (SSB/Canada) and Australia (SSB/Australia), including their affiliates or successors,[4] by employee benefit plans (the Client Plans) or commingled investment funds holding Client Plan assets, for which Citibank or any U.S. affiliate of Citibank, acts as securities lending agent (or sub-agent), including those Client Plans for which Citibank also acts as directed trustee or custodian of the securities being lent; and (2) to the receipt of compensation by Citibank or any U.S. affiliate of Citibank in connection with these transactions, provided that the following conditions are met:

(a) For each Client Plan, neither Citibank, SSB nor any of their affiliates either has or exercises discretionary authority or control with respect to the investment of the Client Plan assets involved in the transaction, or renders investment advice (within the meaning of 29 CFR 2510.3–21(c)) with respect to those assets.

(b) Any arrangement for Citibank to lend Client Plan securities to SSB in either an agency or sub-agency capacity is approved in advance by a Client Plan fiduciary who is independent of SSB and Citibank.[5] In this regard, the independent Client Plan fiduciary also approves the general terms of the securities loan agreement (the Loan Agreement) between the Client Plan and SSB, although the specific terms of the Loan Agreement are negotiated and entered into by Citibank and Citibank acts as a liaison between the lender and the borrower to facilitate the lending transaction.

(c) The terms of each loan of securities by a Client Plan to SSB is at least as favorable to such Client Plans as those of a comparable arm's length transaction between unrelated parties.

(d) A Client Plan may terminate the agency or sub-agency arrangement at any time without penalty to such Client Plan on five business days notice.

(e) The Client Plan receives from SSB (either by physical delivery or by book entry in a securities depository located in the United States, wire transfer or similar means) by the close of business on or before the day the loaned securities are delivered to SSB, collateral consisting of cash, securities issued or guaranteed by the United

[3] Several unsuccessful attempts mere made by the Trustees to sell the Property on the open market for $3,223,440. The Trustees marketed the Property at this price in order for the Plan to receive a net amount, after real estate commissions were taken into consideration, which was approximate to the Property's appraised value.

[4] Unless otherwise noted, SSB/U.S. and the Foreign Affiliates are collectively referred to as SSB.

[5] The Department, herein, is not providing exemptive relief for securities lending transactions engaged in by primary lending agents, other than Citibank and its affiliates, beyond that provided pursuant to Prohibited Transaction Exemption (PTE) 81–6 (46 FR 7527, January 23, 1981, as amended at 52 FR 18754, May 19, 1987) and PTE 82–63 (47 FR 14804, April 6, 1982).

States Government or its agencies or instrumentalities, or irrevocable United States bank letters of credit issued by a person other than Citibank, SSB or an affiliate thereof, or any combination thereof, or other collateral permitted under PTE 81–6, as it may be amended or superseded.

(f) As of the close of business on the preceding business day, the fair market value of the collateral initially equals at least 102 percent of the market value of the loaned securities and, if the market value of the collateral falls below 100 percent, SSB delivers additional collateral on the following day such that the market value of the collateral again equals at least 102 percent.

(g) Prior to entering into the Loan Agreement, SSB furnishes Citibank its most recently available audited and unaudited statements, which is, in turn, provided to a Client Plan, as well as a representation by SSB, that as of each time it borrows securities, there has been no material adverse change in its financial condition since the date of the most recently-furnished statement that has not been disclosed to such Client Plan; provided, however, that in the event of a material adverse change, Citibank does not make any further loans to SSB unless an independent fiduciary of the Client Plan is provided notice of any material adverse change and approves the loan in view of the changed financial condition.

(h) In return for lending securities, the Client Plan either—

(1) Receives a reasonable fee, which is related to the value of the borrowed securities and the duration of the loan; or

(2) Has the opportunity to derive compensation through the investment of cash collateral. (Under such circumstances, the Client Plan may pay a loan rebate or similar fee to SSB, if such fee is not greater than the fee the Client Plan would pay in a comparable arm's length transaction with an unrelated party.)

(i) All procedures regarding the securities lending activities conform to the applicable provisions of Prohibited Transaction Exemptions PTE 81–6 and PTE 82–63 as such class exemptions may be amended or superseded as well as to applicable securities laws of the United States, the United Kingdom, Japan, Germany, Canada or Australia.

(j) Each SSB borrower indemnifies and holds harmless each lending Client Plan in the United States against any and all losses, damages, liabilities, costs and expenses (including attorney's fees) which the Client Plan may incur or suffer directly arising out of the use of securities of such Client Plan by such SSB borrower or the failure of such borrower to return such securities to the Client Plan. In the event that the Foreign Affiliate defaults on a loan, Citibank, as agent for the lending Client Plan, will liquidate the loan collateral to purchase identical securities for the Client Plan. With respect to a default by a Foreign Affiliate, if the collateral is insufficient to accomplish such purchase, Citibank will indemnify the Client Plan for any shortfall in the collateral plus interest on such amount and any transaction costs incurred. Alternatively, with respect to a default by the Foreign Affiliate, if such identical securities are not available on the market, Citibank will pay the Client Plan cash equal to (1) the market value of the borrowed securities as of the date they should have been returned to the Client Plan, plus (2) all the accrued financial benefits derived from the beneficial ownership of such loaned securities as of such date, plus (3) interest from such date to the date of payment. (The amounts paid shall include the cash collateral or other collateral that is liquidated and held by Citibank on behalf of the Client Plan.)

(k) The Client Plan receives the equivalent of all distributions made to holders of the borrowed securities during the term of the loan, including, but not limited to, cash dividends, interest payments, shares of stock as a result of stock splits and rights to purchase additional securities, or other distributions.

(l) Prior to the approval of the lending of its securities to SSB by a new Client Plan, copies of the notice of proposed exemption (the Notice) and the final exemption are provided to such Client Plan.

(m) Each Client Plan receives monthly reports with respect to its securities lending transactions, including, but not limited to the information described in Representation 28 of the Notice so that an independent fiduciary of the Client Plan may monitor such transactions with SSB.

(n) Only Client Plans with total assets having an aggregate market value of at least $50 million are permitted to lend securities to SSB; provided, however, that—

(1) In the case of two or more Client Plans which are maintained by the same employer, controlled group of corporations or employee organization (the Related Client Plans), whose assets are commingled for investment purposes in a single master trust or any other entity the assets of which are ''plan assets'' under 29 CFR 2510.3–101 (the Plan Asset Regulation), which entity is engaged in securities lending arrangements with SSB, the foregoing $50 million requirement shall be deemed satisfied if such trust or other entity has aggregate assets which are in excess of $50 million; provided that if the fiduciary responsible for making the investment decision on behalf of such master trust or other entity is not the employer or an affiliate of the employer, such fiduciary has total assets under its management and control, exclusive of the $50 million threshold amount attributable to plan investment in the commingled entity, which are in excess of $100 million.

(2) In the case of two or more Client Plans which are not maintained by the same employer, controlled group of corporations or employee organization (the Unrelated Client Plans), whose assets are commingled for investment purposes in a group trust or any other form of entity the assets of which are ''plan assets'' under the Plan Asset Regulation, which entity is engaged in securities lending arrangements with SSB, the foregoing $50 million requirement is satisfied if such trust or other entity has aggregate assets which are in excess of $50 million (excluding the assets of any Client Plan with respect to which the fiduciary responsible for making the investment decision on behalf of such group trust or other entity or any member of the controlled group of corporations including such fiduciary is the employer maintaining such Client Plan or an employee organization whose members are covered by such Client Plan). However, the fiduciary responsible for making the investment decision on behalf of such group trust or other entity—

(i) Has full investment responsibility with respect to plan assets invested therein; and

(ii) Has total assets under its management and control, exclusive of the $50 million threshold amount attributable to plan investment in the commingled entity, which are in excess of $100 million.

(In addition, none of the entities described above are formed for the sole purpose of making loans of securities.)

(o) With respect to each successive two-week period, on average, at least 50 percent or more of the outstanding dollar value of securities loans negotiated on behalf of Client Plans will be to unrelated borrowers.

(p) In addition to the above, all loans involving the Foreign Affiliates have the following supplemental requirements:

(1) Such Foreign Affiliate is registered as a broker-dealer or bank with—

(i) The Securities and Futures Authority of the United Kingdom (the

Securities and Futures Authority) in the case of SB/U.K.;

(ii) The Ministry of Finance and the Tokyo Stock Exchange in the case of SSB/Asia;

(iii) The Deutsche Bundesbank and the Federal Banking Supervisory Authority (Bundesaufsichtsamt fuer das Kreditwesen, hereinafter referred to as the BAK) in the case of SSB/Germany;

(iv) The Ontario Securities Commission and the Investment Dealers Association in the case of SSB/Canada; and

(v) The Australian Securities & Investments Commission and the Australian Stock Exchange Limited in the case of SSB/Australia.

(2) Such broker-dealer or bank is in compliance with all applicable rules and regulations thereof as well as with all requirements of Rule 15a–6 (17 CFR 240.15a–6) under the Securities Exchange Act of 1934 (the 1934 Act) which provides foreign broker-dealers and banks a limited exemption from United States registration requirements and interpretations and amendments thereof to Rule 15a–6 by the Securities and Exchange Commission (the SEC), to the extent applicable;

(3) All collateral is maintained in United States dollars or dollar-denominated securities or letters of credit;

(4) All collateral is held in the United States and Citibank maintains the situs of the securities Loan Agreements in the United States under an arrangement that complies with the indicia of ownership requirements under section 404(b) of the Act and the regulations promulgated under 29 CFR 2550.404(b)–1; and

(5) The Foreign Affiliate provides SSB (i.e., Salomon Smith Barney Inc.) a written consent to service of process in the United States for any civil action or proceeding brought in respect of the securities lending transaction, which consent provides that process may be served on such borrower by service on SSB (i.e., Salomon Smith Barney Inc.).

(q) Citibank and its affiliates maintain, or cause to be maintained within the United States for a period of six years from the date of such transaction, in a manner that is convenient and accessible for audit and examination, such records as are necessary to enable the persons described in paragraph (r)(1) to determine whether the conditions of the exemption have been met, except that—

(1) A prohibited transaction will not be considered to have occurred if, due to circumstances beyond the control of Citibank and/or its affiliates, the records are lost or destroyed prior to the end of the six year period; and

(2) No party in interest other than Citibank shall be subject to the civil penalty that may be assessed under section 502(i) of the Act, or to the taxes imposed by section 4975(a) and (b) of the Code, if the records are not maintained, or are not available for examination as required below by paragraph (r)(1).

(r)(1) Except as provided in subparagraph (r)(2) of this paragraph and notwithstanding any provisions of subsections (a)(2) and (b) of section 504 of the Act, the records referred to in paragraph (q) are unconditionally available at their customary location during normal business hours by:

(i) Any duly authorized employee or representative of the Department, the Internal Revenue Service or the SEC;

(ii) Any fiduciary of a participating Client Plan or any duly authorized representative of such fiduciary;

(iii) Any contributing employer to any participating Client Plan or any duly authorized employee representative of such employer; and

(iv) Any participant or beneficiary of any participating Client Plan, or any duly authorized representative of such participant or beneficiary.

(r)(2) None of the persons described above in paragraphs (r)(1)(ii)–(r)(1)(iv) of this paragraph (r)(1) are authorized to examine the trade secrets of SSB or commercial or financial information which is privileged or confidential.

EFFECTIVE DATE: If granted, this proposed exemption will be effective as of October 8, 1998.

Preamble

In April 1998, the Travelers Group (Travelers) and Citicorp announced a proposed merger (the Merger) whereby Citicorp would be merged into a subsidiary of Travelers and Travelers would become a bank holding company and change its name to ''Citigroup Inc.'' The Merger, which was subject to approval by shareholders of each company and various regulatory entities, occurred on October 8, 1998.

Following the Merger, some of the borrowers with which Citibank may have transacted business as securities lending agent included certain broker-dealers affiliated with Travelers and other entities which were not affiliated with Citibank prior to the Merger. Also included in this group were certain affiliates with which Citibank, as securities lending agent, had not previously engaged in securities loans on behalf of Client Plans. Although Citibank does not lend Client Plan securities to any of its current affiliates, upon consummation of the Merger, loans to SSB entity borrowers made on behalf of employee benefit plans for which Citibank acts as securities lending agent would then constitute loans to affiliates of Citibank which would be in violation of the Act.

Rather than unwind the securities loans prior to the Merger, Citibank and SSB have requested an individual exemption to continue the pre-existing lending arrangement. If granted, the proposed exemption would be effective as of the date of the Merger. In addition, the exemption would apply to successors in interest to U.S.-based affiliates and Foreign Affiliates of SSB or Citibank, provided the successors remain affiliates of such entities.

Summary of Facts and Representations

1. The parties to the transactions are described as follows:

(a) *SSB*, a Delaware corporation, is a subsidiary of Salomon Smith Barney Holdings, Inc., a Delaware Corporation, which in turn, is a subsidiary of Travelers and an affiliate of Citibank since the Merger of October 8, 1998. SSB is one of the largest full-line investment service firms in the United States. It is registered with and regulated by the SEC as a broker-dealer and as a futures commission merchant with the Commodities Futures Trading Commission. It is a member of the New York Stock Exchange and other principal securities exchanges in the United States. It is also a member of the National Association of Securities Dealers, Inc. As of December 31, 1997, Travelers had approximately $387 billion in assets and approximately $21 billion in shareholders' equity.

Acting as principal, SSB actively engages in the borrowing and lending of securities, with daily outstanding loan volume averaging several billion dollars. SSB utilizes borrowed securities to satisfy its trading requirements or to re-lend to other broker-dealers and others who need a particular security for various periods of time. All borrowings by SSB conform to the Federal Reserve Board's Regulation T. Pursuant to Regulation T, permitted borrowing purposes include making delivery of securities in the case of short sales, failures of a broker to receive securities it is required to deliver or other similar situations.

(b) *Citibank* is a wholly owned subsidiary of the Citicorp, a bank holding company organized in 1967 under the laws of the State of Delaware and also an affiliate of Travelers since the Merger of October 8, 1998. Originally organized on June 16, 1812, Citibank is a national banking association organized under the National Bank Act of 1864. As a member

of the Federal Reserve System, Citibank is a ''bank'' as defined in both section 202(a)(2) of the Investment Advisers Act of 1940 (the Advisers Act) and section 581 of the Code.[6] Citibank is the second largest commercial bank in the United States and it maintains its principal place of business at 399 Park Avenue, New York, New York.

Citibank, a major provider of trustee and related fiduciary services, is one of the largest providers of custodial services in the United States, with more than $700 billion of assets under custody in the U.S. Such assets include those held by Citibank as a global custodian for U.S. pension plans, governmental plans and other tax-exempt investors.

In addition, Citibank provides securities lending services to many of its institutional clients. On behalf of such clients, Citibank negotiates the terms of loans with borrowers and otherwise acts as a liaison between the lender and the borrower to facilitate the lending transaction. Further, Citibank has responsibility for monitoring receipt of all required collateral and marking such collateral to market daily so that adequate levels of collateral are maintained and evaluating, on a continuous basis, the performance and creditworthiness of the borrowers of securities.

From time to time, Citibank may be retained by other securities lending agents to provide securities lending services in a sub-agent capacity with respect to portfolio securities of clients of such other lending agents. As securities lending agent, Citibank's role in the lending transactions parallels those under lending transactions for which it acts as primary lending agent on behalf of its clients.

(c) *SSB/U.S.* currently consists of SSB, Citicorp Investment Services Inc. (CISI) and Citicorp Securities Services, Inc. (CSSI). CISI is a wholly owned subsidiary of Citibank. CSSI is an indirect subsidiary of Citicorp. Both CISI and CSSI, which are located in New York, are U.S. registered broker-dealers. CSSI is also a member of the New York Stock Exchange as well as certain other principal exchanges in the United States.

(d) *The Foreign Affiliates* of SSB and Citibank include SB/U.K., SSB/Asia, SSB/Germany, SSB/Canada and SSB/Australia.

(i) *SB/U.K.* currently consists of Salomon Brothers U.K. Limited, Salomon Brothers U.K. Equity Limited and Salomon Brothers International. These broker-dealers, which are indirect subsidiaries of Travelers, are located in the United Kingdom and are subject to regulation by the Securities and Futures Authority. In the future, SB/U.K. also will include any other SSB or Citibank affiliate that is based in the United Kingdom.

(ii) *SSB/Asia* currently consists of Salomon Smith Barney Asia Limited, an indirect subsidiary of Travelers and a broker-dealer. SSB/Asia is located in Japan and is subject to regulation by the Ministry of Finance and the Tokyo Stock Exchange. In the future, SSB/Asia also will include any other SSB or Citibank affiliate that is based in Japan.

(iii) *SSB/Germany,* which currently consists of Salomon Brothers AG, a bank, is subject to regulation in Germany by the Deutsche Bundesbank and the BAK. In the future, SSB/Germany also will include any other SSB or Citibank affiliate that is based in Germany.

(iv) *SSB/Canada,* which currently consists of Salomon Smith Barney Canada Inc., a broker-dealer, is subject to regulation in Canada by the Ontario Securities Commission and the Investment Dealers Association. In the future, SSB/Canada also will include any other SSB or Citibank affiliate that is based in Canada.

(v) *SSB/Australia,* which currently consists of Salomon Smith Barney Australia Securities Pty Limited, a broker-dealer, is subject to regulation in Australia by the Australian Securities & Investments Commission and the Australian Stock Exchange Limited. In the future, SSB/Australia also will include or any other SSB or Citibank affiliate that is based in Australia.

2. Although not registered with the United States SEC as broker-dealers, the Foreign Affiliates of SSB that are broker-dealers are subject to the rules, regulations and membership requirements of their respective regulatory entities (the Foreign Broker-Dealer Regulatory Entities). For example, SB/U.K. is subject to the rules and regulatory requirements of the Securities and Futures Authority. SSB/Asia subject to the rules and regulatory requirements of the Ministry of Finance and the Tokyo Stock Exchange. SSB/Canada is subject to regulation by the Ontario Securities Commission and the Investment Dealers Association, a self-regulatory organization. SSB/Australia is subject to regulation primarily by the Australian Stock Exchange Limited and, on a more limited basis, by the Australian Securities and Investment Commission. Each of the aforementioned Foreign Affiliates is subject to rules relating to minimum capitalization, reporting requirements, periodic examinations, client money and safe custody rules and books and records requirements with respect to client accounts. These rules and regulations promulgated by the Foreign Broker-Dealer Regulatory Entities and the SEC share a common objective: the protection of the investor by the regulation of the securities industry. The rules of the Foreign Broker-Dealer Regulatory Entities (the Australian Stock Exchange Limited in the case of SSB/Australia) require each firm which employs registered representatives or registered traders to have a positive tangible net worth and be able to meet its obligations as they may fall due. In addition, the rules of the Foreign Broker-Dealer Regulatory Entities (the Australian Stock Exchange Limited in the case of SSB/Australia) set forth comprehensive financial resource and reporting/disclosure rules regarding capital adequacy. Further, to demonstrate capital adequacy, the rules of the Foreign Broker-Dealer Regulatory Entities (the Australian Stock Exchange Limited in the case of SSB/Australia) impose reporting/disclosure requirements on broker-dealers with respect to risk management, internal controls, and transaction reporting and recordkeeping requirements to the effect that required records must be produced at the request of the Foreign Broker-Dealer Regulatory Entities. Finally, the rules and regulations of the Foreign Broker-Dealer Regulatory Entities impose potential fines and penalties on broker-dealers which establish a comprehensive disciplinary system.

3. Similarly, SSB/Germany is subject to regulation in Germany by the Deutsche Bundesbank and the BAK. The Deutsche Bundesbank is the central bank of the German banking system and is responsible for the regulation of the money supply and credit supply to the economy, aimed at safeguarding the Deutsche Mark. The Bundesbank also provides for bank-based execution of domestic and foreign payments. The BAK is an independent federal institution with ultimate responsibility to the German Ministry of Finance. The BAK supervises the operations of banks, banking groups, financial holding groups and branches of foreign banks in Germany, and has the authority to (a) issue and withdraw banking licenses, (b) issue regulations on capital and liquidity requirements of banks, (c) request information and conduct investigations, (d) intervene in cases of inadequate capital or liquidity or in

[6] In relevant part, section 202(a)(2) of the Advisers Act and section 581 of the Code state that a ''bank'' is a banking institution, bank or trust company incorporated and doing business under the laws of the United States.

cases of endangered deposits or risk of bankruptcy by means of temporarily prohibiting certain banking transactions.

The BAK ensures that SSB/Germany has procedures for monitoring and controlling its world-wide activities through various statutory and regulatory standards. Among these standards are requirements for adequate internal controls, oversight, administration and financial resources. The BAK reviews compliance with these limitations on operations and internal control requirements through an annual audit performed by the year-end auditor and through special audits as ordered by the BAK and the respective State Central Bank auditors.

The BAK obtains information on the condition of SSB/Germany and its branches in Tokyo and Milan by requiring the submission of periodic, consolidated financial reports and through a mandatory annual report prepared by the auditor. The BAK also receives information regarding capital adequacy, country risk exposure and foreign exchange exposures from SSB/Germany.

German banking law mandates penalties to ensure correct reporting to the BAK. The auditors face penalties for gross violation of their auditing duties.

4. Aside from the protections afforded by the Foreign Broker-Dealer Regulatory Entities and, in the case of SSB/Germany, the Deutsche Bundesbank and the BAK, SSB represents that the Foreign Affiliates will comply with all applicable provisions of Rule 15a–6 of the 1934 Act.[7] Rule 15a–6 provides foreign broker-dealers with a limited exemption from SEC registration requirements and, as described below, offers additional protections. Specifically, Rule 15a–6 provides an exemption from U.S. broker-dealer registration for a foreign broker-dealer that induces or attempts to induce the purchase or sale of any security (including over-the-counter equity and debt options) by a ''U.S. institutional investor'' or a ''U.S. major institutional investor,'' provided that the foreign broker-dealer, among other things, enters into these transactions through a U.S. registered broker-dealer intermediary. The term ''U.S. institutional investor,'' as defined in Rule 15a–6(b)(7), includes an employee benefit plan within the meaning of the Act if (a) the investment decision is made by a plan fiduciary, as defined in section 3(21) of the Act, which is either a bank, savings and loan association, insurance company or registered investment adviser, or (b) the employee benefit plan has total assets in excess of $5 million, or (c) the employee benefit plan is a self-directed plan with investment decisions made solely by persons that are ''accredited investors'' as defined in Rule 501(a)(1) of Regulation D of the Securities Exchange Act of 1933, as amended. The term ''U.S. major institutional investor'' is defined in Rule 15a–6(b)(4) as a person that is a U.S. institutional investor that has total assets in excess of $100 million or an investment adviser registered under Section 203 of the Advisers Act that has total assets under management in excess of $100 million.[8]

5. SSB represents that under Rule 15a–6, a foreign broker-dealer that induces or attempts to induce the purchase or sale of any security by a U.S. institutional or major institutional investor must, among other things—

(a) Consent to service of process for any civil action brought by, or proceeding before, the SEC or any self-regulatory organization;

(b) Provide the SEC (upon request or pursuant to agreements reached between any foreign securities authority, including any foreign government, and the SEC or the U.S. Government) with any information or documents within the possession, custody or control of the foreign broker-dealer, any testimony of any such foreign associated persons, and any assistance in taking the evidence of other persons, wherever located, that the SEC requests and that relates to transactions effected pursuant to the Rule;

(c) Rely on the U.S. registered broker-dealer[9] through which the transactions with the U.S. institutional and major institutional investors are effected to (among other things):

(1) Effect the transactions, other than negotiating their terms;

(2) Issue all required confirmations and statements;

(3) As between the foreign broker-dealer and the U.S. registered broker-dealer, extend or arrange for the extension of credit in connection with the transactions;

(4) Maintain required books and records relating to the transactions, including those required by Rules 17a–3 (Records to be Made by Certain Exchange Members) and 17a–4 (Records to be Preserved by Certain Exchange Members, Brokers and Dealers) of the 1934 Act;

(5) Receive, deliver and safeguard funds and securities in connection with the transactions on behalf of the U.S. institutional investor or U.S. major institutional investor in compliance with Rule 15c3–3 of the 1934 Act (Customer Protection—Reserves and Custody of Securities);[10] and

(6) Participate in certain oral communications (e.g., telephone calls) between the foreign associated person and the U.S. institutional investor (not the U.S. major institutional investor), and accompany the foreign associated person on certain visits with both U.S. institutional and major institutional investors. By virtue of this participation, the U.S. registered broker-dealer would become responsible for the content of all these communications.[11]

6. Citibank, as securities lending agent, pursuant to authorization from its client, will negotiate the terms of loans with borrowers pursuant to a client-approved form of Loan Agreement and will act as a liaison between the lender (and its custodian) and the borrower to facilitate the lending transaction. No loans of futures contracts will be involved. Citibank will have responsibility for monitoring receipt of

[7] According to the applicants, section 3(a)(4) of the 1934 Act defines ''broker'' to mean ''any person engaged in the business of effecting transactions in securities for the account of others, but it does not include a bank. Section 3(a)(5) of the 1934 Act provides a similar exclusion for ''banks'' in the definition of the term ''dealer.'' However, section 3(a)(6) of the 1934 Act defines ''bank'' to mean a banking institution organized under the laws of the United States or a State of the United States. Further, Rule 15(a)(6)(b)(2) provides that the term ''foreign broker or dealer'' means ''any non-U.S. resident person * * *. whose securities activities, if conducted in the United States, would be described by the definition of ''broker'' or ''dealer'' in sections 3(a)(4) or 3(a)(5) of the (1934) Act.'' Therefore, the test of whether an entity is a ''foreign broker'' or ''dealer'' is based on the nature of such foreign entity's activities and, with certain exceptions, only banks that are regulated by either the United States or a State of the United States are excluded from the definition of the term ''broker'' or ''dealer.'' Thus, for purposes of this exemption request, the applicants are willing to represent that they will comply with the applicable provisions and relevant SEC interpretations and amendments of Rule 15a–6.

[8] See also SEC No-Action Letter issued to Cleary, Gottlieb, Steen & Hamilton on April 9, 1997 (hereinafter, the April 9, No-Action Letter), expanding the definition of the term ''U.S. Major Institutional Investor.''

[9] The Foreign Affiliates, in lieu of relying on a U.S. broker-dealer and to the extent permitted by applicable U.S. securities law, may rely on a U.S. bank or trust company, including Citibank, to perform this role.

[10] Under certain circumstances described in the April 9, 1997 No-Action Letter (e.g., clearance and settlement transactions), there may be direct transfers of funds and securities between the Client Plan and a Foreign Affiliate. SSB notes that in such situations, the U.S. registered broker-dealer will not be acting as a principal with respect to any duties it is required to undertake pursuant to Rule 15a–6.

[11] Under certain circumstances, the foreign associated person may have direct communications and contact with the U.S. Institutional Investor. See April 9 SEC No-Action Letter.

all required collateral and marking such collateral to market daily so that adequate levels of collateral are maintained. Citibank also will monitor and evaluate on a continuing basis the performance and creditworthiness of the borrowers. Citibank may also act as a custodian or directed trustee with respect to the client's portfolio of securities being loaned.[12] Citibank may be authorized from time to time by a client to receive and hold pledged collateral and invest cash collateral pursuant to guidelines established by the client. All of Citibank's procedures for lending securities will be designed to comply with the applicable conditions of PTE 81–6 and PTE 82–63 (as such PTEs may be amended or superseded).[13]

7. Citibank may be retained occasionally by other securities lending agents to provide securities lending services in a sub-agent capacity with respect to portfolio securities of clients of such other lending agents. As securities lending sub-agent, Citibank's role under the lending transactions (i.e., negotiating the terms of loans with borrowers pursuant to a client-approved form of Loan Agreement and monitoring receipt of, and marking to market, required collateral) parallels those under lending transactions for which Citibank acts as primary lending agent on behalf of its clients.[14]

8. When a loan is collateralized with cash, the cash will be invested for the benefit and at the risk of the Client Plan, and resulting earnings (net of a rebate to the borrower) comprise the compensation to the Client Plan in respect of such loan. Where collateral consists of obligations other than cash, the borrower pays a fee (loan premium) directly to the lending Client Plan.

9. Accordingly, SSB and Citibank request an exemption that would be effective on October 8, 1998, the date of the Merger, with respect to (a) the lending of securities owned by employee benefit plans for which Citibank serves or will serve as securities lending agent or sub-agent (referred to herein as the Client Plans)[15] to SSB/U.S., SB/U.K., SSB/Asia, SSB/Canada, SSB/Germany and SSB/Australia, following disclosure of its affiliation with SSB, and (b) for the receipt of compensation by Citibank in connection with such transactions.[16] For each Client Plan, neither Citibank, SSB nor any affiliate will have discretionary authority or control or render investment advice over Client Plans' decisions concerning the acquisition or disposition of securities available for loan. Citibank's discretion will be limited to activities such as negotiating the terms of the securities loans with SSB and (to the extent granted by the Client Plan fiduciary) investing any cash collateral received in respect of the loans. Because Citibank, under the proposed arrangement, would have discretion to lend Client Plan securities to SSB, and because SSB is an affiliate of Citibank, the lending of securities to SSB by Client Plans for which Citibank serves as securities lending agent (or sub-agent) may be outside the scope of relief provided by PTE 81–6 and PTE 82–63. Further, loans to the Foreign Affiliates would be outside of the relief granted in PTE 81–6. Therefore, several safeguards, described more fully below, are incorporated in the application in order to ensure the protection of the Client Plan assets involved in the transactions. In addition, the applicants represent that the proposed lending program incorporates the conditions contained in PTE 81–6 and PTE 82–63 and will be in compliance with all applicable securities laws of the United States.

10. Where Citibank is the direct securities lending agent, a fiduciary of a Client Plan who is independent of Citibank and SSB will sign a securities lending agency agreement with Citibank (the Agency Agreement) before the Client Plan participates in a securities lending program. The Agency Agreement will, among other things, describe the operation of the lending program, prescribe the form of securities Loan Agreement to be entered into on behalf of the Client Plan with borrowers, specify the securities which are available to be lent, required margin and daily marking-to-market, and provide a list of permissible borrowers, including SSB. The Agency Agreement will also set forth the basis and rate for Citibank's compensation from the Client Plan for the performance of securities lending services.

11. The Agency Agreement will contain provisions to the effect that if SSB is designated by the Client Plan as an approved borrower (a) the Client Plan will acknowledge that SSB is an affiliate of Citibank and (b) Citibank will represent to the Client Plan that each and every loan made to SSB on behalf of the Client Plan will be at market rates which are no less favorable to the Client Plan than a loan of such securities, made at the same time and under the same circumstances, to an unaffiliated borrower.

12. When Citibank is lending securities under a sub-agency arrangement, the primary lending agent will enter into a securities lending agency agreement (the Primary Lending Agreement) with a fiduciary of a Client Plan who is independent of such primary lending agent, Citibank or SSB, before the Client Plan participates in the securities lending program. The primary lending agent will be unaffiliated with Citibank or SSB. Citibank will not enter into a sub-agent arrangement unless the Primary Lending Agreement contains substantive provisions akin to those in the Agency Agreement relating to the description of the operation of the lending program, use of an approved form of Loan Agreement, specification of securities which are available to be lent, required margin and daily marking-to-market, and provision of a list of approved borrowers (which will include SSB). The Primary Lending Agreement will specifically authorize the primary lending agent to appoint sub-agents, to facilitate its performance of securities lending agency functions. Where Citibank is to act as such a sub-agent, the Primary Lending Agreement will expressly disclose that Citibank is to so act. The Primary Lending Agreement will also set forth the basis and rate for the primary lending agent's compensation from the Client Plan for the performance of securities lending services and will authorize the primary lending agent to pay a portion of its fee, as the primary lending agent determines

[12] Citibank wishes to clarify the fact that an independent fiduciary of a Client Plan may also appoint Citibank or an affiliate of Citibank to manage cash collateral and to receive a reasonable and customary investment management fee, provided that the Client Plan fiduciary, after receiving full disclosure, approves the compensation arrangement, the terms of which will be described in a written agreement.

[13] PTE 81–6 provides an exemption under certain conditions from section 406(a)(1)(A) through (D) of the Act and the corresponding provisions of section 4975(c) of the Code for the lending of securities that are assets of an employee benefit plan to certain broker-dealers or banks which are parties in interest.

PTE 82–63 provides an exemption under specified conditions from section 406(b)(1) of the Act and section 4975(c)(1)(E) of the Code for the payment of compensation to a plan fiduciary for services rendered in connection with loans of plan assets that are securities.

[14] As noted previously, the Department is not providing exemptive relief herein for securities lending transactions that are engaged in by primary lending agents, other than Citibank and its affiliates, beyond that provided by PTEs 81–6 and 82–63.

[15] For the sake of simplicity, future references to Citibank's performance of services as securities lending agent should be deemed to include its parallel performance as securities lending sub-agent and references to Client Plans should be deemed to refer to plans for which Citibank is acting as sub-agent with respect to securities lending activities, unless otherwise indicated specifically or by the context of the reference.

[16] As noted above, the proposed exemption will also apply to successors in interest to U.S-based affiliates and Foreign Affiliates of SSB or Citibank, provided the successors remain affiliates of such entities.

in its sole discretion, to any sub-agent(s) it retains pursuant to the authority granted under such agreement.

Pursuant to its authority to appoint sub-agents, the primary lending agent will enter into a securities lending sub-agency agreement (the Sub-Agency Agreement) with Citibank under which the primary lending agent will retain and authorize Citibank, as sub-agent, to lend securities of the primary lending agent's Client Plans, subject to the same terms and conditions as are specified in the Primary Lending Agreement. Thus, for example, the form of Loan Agreement will be the same as that approved by the Client Plan fiduciary in the Primary Lending Agreement and the list of permissible borrowers under the Sub-Agency Agreement (which will include SSB) will be limited to those approved borrowers listed as such under the Primary Lending Agreement.

Citibank states that the Sub-Agency Agreement will contain provisions which are in substance comparable to those described in Representations 10 and 11 above, which would appear in an Agency Agreement in situations where Citibank is the primary lending agent. In this regard, Citibank will make the same representation in the Sub-Agency Agreement as described in Representation 10 above with respect to arm's length dealing with SSB. The Sub-Agency Agreement will also set forth the basis and rate for Citibank's compensation to be paid by the primary lending agent.

13. In all cases, Citibank will maintain transactional and market records sufficient to assure compliance with its representation that all loans to SSB are effectively at arm's length terms. Such records will be provided to the appropriate Client Plan fiduciary in the manner and format agreed to with the lending fiduciary, without charge to the Client Plan. A Client Plan may terminate the Agency Agreement (or the Primary Lending Agreement) at any time, without penalty to the Plan, on five business days notice.

14. Citibank will negotiate the Loan Agreement with SSB on behalf of Client Plans as it does with all other borrowers. An independent fiduciary of the Client Plan will approve the terms of the Loan Agreement. The Loan Agreement will specify, among other things, the right of the Client Plan to terminate a loan at any time and the Plan's rights in the event of any default by SSB. The Loan Agreement will explain the basis for compensation to the Client Plan for lending securities to SSB under each category of collateral. The Loan Agreement also will contain a requirement that SSB must pay all transfer fees and transfer taxes related to the security loans.

15. Before entering into the Loan Agreement, SSB will furnish its most recently available audited and unaudited financial statements to Citibank, and in turn, such statements will be provided to a Client Plan before the Client Plan is asked to approve the terms of the Loan Agreement. The Loan Agreement will contain a requirement that SSB must give prompt notice at the time of a loan of any material adverse changes in its financial condition since the date of the most recently furnished financial statements.[17] If any such changes have taken place, Citibank will not make any further loans to SSB unless an independent fiduciary of the Client Plan has approved the loan in view of the changed financial condition. Conversely, if SSB fails to provide notice of such a change in its financial condition, such failure will trigger an event of default under the Loan Agreement.

16. As noted above, the agreement by Citibank to provide securities lending services, as agent, to a Client Plan will be embodied in the Agency Agreement. The Client Plan and Citibank will agree to the arrangement under which Citibank will be compensated for its services as lending agent, including services as custodian and manager of the cash collateral received, prior to the commencement of any lending activity. Such agreed upon fee arrangement will be set forth in the Agency Agreement and thereby will be subject to the prior written approval of a fiduciary of the Client Plan who is independent of SSB and Citbank. Similarly, with respect to arrangements under which Citibank is acting as securities lending sub-agent, the agreed upon fee arrangement of the primary lending agent will be set forth in the Primary Lending Agreement, and such agreement will specifically authorize the primary lending agent to pay a portion of such fee, as the primary lending agent determines in its sole discretion, to any sub-agent, including Citibank, which is to provide securities lending services to the Client Plan.[18] The Client Plan will be provided with any reasonably available information which is necessary for the Client Plan fiduciary to make a determination whether to enter into or continue to participate under the Agency Agreement (or the Primary Lending Agreement) and any other reasonably available information which the Client Plan fiduciary may reasonably request.

17. Each time a Client Plan lends securities to SSB pursuant to the Loan Agreement, Citibank will reflect in its records the material terms of the loan, including the securities to be loaned, the required level of collateral, and the fee or rebate payable. The terms of the fee or rebate payable for each loan will be at least as favorable to the Client Plan as those of a comparable arm's length transaction between unrelated parties.

18. The Client Plan will be entitled to the equivalent of all interest, dividends and distributions on the loaned securities during the loan period. The Loan Agreement will provide that the Client Plan may terminate any loan at any time. Upon a termination, SSB will be contractually obligated to return the loaned securities to the Client Plan within five business days of notification or the customary settlement period in the respective jurisdiction, whichever is less (or such longer period of time permitted pursuant to a class exemption). If SSB fails to return the securities within the designated time, the Client Plan will have the right under

[17] With respect to capital adequacy rules for brokerage firms domiciled in the United States, including SSB, it is represented that such firms are subject to the capital adequacy rules of their respective regulatory agencies, i.e., the SEC, the New York Stock Exchange, the National Association of Securities Dealers and other self-regulatory authorities. If these brokerage firms fail to meet such requirements, they are subject to fines, penalties and possibly more stringent sanctions.

As for SB/U.K., SSB/Asia, SSB/Canada and SSB/Canada, which are subject to the capital adequacy provisions of their respective regulatory authorities, it is represented that such rules require the Foreign Affiliates to maintain, at all times, financial resources in excess of its financial resources requirement (the Financial Resources Requirement). For this purpose, financial resources include equity capital, approved subordinated debt and retained earnings, less deductions for illiquid assets. The Financial Resources Requirement includes capital requirements for market risk, credit risk, foreign exchange risk and large exposures. The rules of each applicable Foreign Broker-Dealer Regulatory Entity, require that if a firm's financial resources fall below a certain percentage (e.g., 120 percent with respect to the United Kingdom's Securities and Futures Authority and 150 percent with respect to the Ministry of Finance and the Tokyo Stock Exchange) of its Financial Resources Requirement, the such Foreign Broker-Dealer Regulatory Entity must be notified so that it can examine the terms of the firm's financial position and require an infusion of more capital, if needed. In addition, a breach of the requirement to maintain financial resources in excess of the Financial Resources Requirement may lead to sanctions by the applicable Foreign Broker-Dealer Regulatory Entity. If the breach is not promptly resolved, such Foreign Broker-Dealer Regulatory Entity may restrict the firm's activities.

[18] The foregoing provisions describe arrangements comparable to conditions (c) and (d) of PTE 82–63 which require that the payment of compensation to a ''lending fiduciary'' is made under a written instrument and is subject to prior written authorization of an independent ''authorizing fiduciary.'' In the event that a commingled investment fund will participate in the securities lending program, the special rule applicable to such funds concerning the authorization of the compensation arrangement set forth in condition (f) of PTE 82–63 will be satisfied.

the Loan Agreement to purchase securities identical to the borrowed securities and apply the collateral to payment of the purchase price and any other expenses of the Client Plan associated with the sale and/or purchase.

19. Citibank will establish each day a written schedule of lending fees [19] and rebate rates [20] in order to assure uniformity of treatment among borrowing brokers and to limit the discretion Citibank would have in negotiating securities loans to SSB. Loans to all borrowers of a given security on that day will be made at rates or lending fees on the relevant daily schedules or at rates or lending fees which may be more advantageous to the Client Plans. It is represented that in no case will loans be made to SSB at rates or lending fees that are less advantageous to the Client Plans than those on the schedule. The daily schedule of rebate rates will be based on the current value of the clients' reinvestment vehicles and on market conditions, as reflected by demand for securities by borrowers other than SSB. As with rebate rates, the daily schedule of lending fees will also be based on market conditions, as reflected by demand for securities by borrowers other than SSB, and will generally track the rebate rates with respect to the same security or class of security.

20. The rebate rates (in respect of cash-collateralized loans made by Client Plans) which are established will also take into account the potential demand for loaned securities, the applicable benchmark cost of funds indices (typically, Federal Funds, overnight repo rate or the like) and anticipated investment return on overnight investments which are permitted by the relevant Client Plan fiduciary. Further, the lending fees (in respect of loans made by Client Plans collateralized by other than cash) which are established will be set daily to reflect conditions as influenced by potential market demand.

21. Citibank will negotiate rebate rates for cash collateral payable to each borrower, including SSB, on behalf of a Client Plan. Where, for example, cash collateral derived from an overnight loan is intended to be invested in a generic repurchase agreement, any rebate fee determined with respect to an overnight repurchase agreement benchmark will be set below the applicable ''ask'' quotation therefor. Where cash collateral is derived from a loan with an expected maturity date (term loan) and is intended to be invested in instruments with similar maturities, the maximum rebate fee will be less than the expected investment return (assuming no investment default). With respect to any loan to SSB, Citibank will never negotiate a rebate rate with respect to such loan which would be expected to produce a zero or negative return to the Client Plan (assuming no default on the investments related to the cash collateral from such loan where Citibank has investment discretion over the cash collateral). Citibank represents that the written rebate rate established daily for cash collateral under loans negotiated with SSB will not exceed the rebate rate which would be paid to a similarly situated unrelated borrower with respect to a comparable securities lending transaction. Citibank will disclose the method for determining the maximum daily rebate rate as described above to an independent fiduciary of a Client Plan for approval before lending any securities to SSB on behalf of the Client Plan.

22. For collateral other than cash, the applicable loan fee in respect of any outstanding loan is reviewed daily for competitiveness and adjusted, where necessary, to reflect market terms and conditions (see Representation 24). With respect to each successive two-week period, on average, at least 50 percent or more of the outstanding dollar value of securities loans negotiated on behalf of Client Plans will be to unrelated borrowers so the competitiveness of the loan fee will be tested in the marketplace. Accordingly, loans to SSB should result in competitive rate income to the lending Client Plan. At all times, Citibank will effect loans in a prudent and diversified manner. While Citibank will normally lend securities to requesting borrowers on a ''first come, first served'' basis, as a means of assuring uniformity of treatment among borrowers, it should be recognized that in some cases it may not be possible to adhere to a ''first come, first served'' allocation. This can occur, for instance where (a) the credit limit established for such borrower by Citibank and/or the Client Plan has already been satisfied; (b) the ''first in line'' borrower is not approved as a borrower by the particular Client Plan whose securities are sought to be borrowed; and (c) the ''first in line'' borrower cannot be ascertained, as an operational matter, because several borrowers spoke to different Citibank representatives at or about the same time with respect to the same security.[21] In situations (a) and (b), loans would normally be effected with the ''second in line.'' In situation (c), securities would be allocated equitably among all eligible borrowers.

23. The method of determining the daily securities lending rates (fees and rebates), the minimum lending fees payable by SSB and the maximum rebate payable to SSB will be specified in an exhibit attached to the Agency Agreement to be executed between the independent fiduciary of the Client Plan and Citibank in cases where Citibank is the direct securities lending agent.

24. If Citibank reduces the lending fee or increases the rebate rate on any outstanding loan to an affiliated borrower (except for any change resulting from a change in the value of any third party independent index with respect to which the fee or rebate is calculated), Citibank, by the close of business on the date of such adjustment, will provide the independent fiduciary of the Client Plan with notice that it has reduced such fee or increased the rebate rate to such affiliated borrower and that the Client Plan may terminate such loan at any time. In addition, Citibank will provide the independent fiduciary of the Client Plan with such information as the fiduciary may reasonably request regarding such adjustment.

25. Under the Loan Agreement, each SSB borrower will agree to indemnify and hold harmless the applicable Client Plan (including the sponsor and fiduciaries of such Client Plan) from any and all reasonably foreseeable damages, losses, liabilities, costs and expenses (including attorney's fees) which the Client Plan may incur or suffer arising in any way from the use by such borrower of the loaned securities or any failure of such borrower to deliver loaned securities in accordance with the provisions of the Loan Agreement or to otherwise comply with the terms of the Loan Agreement except to the extent

[19] Citibank will adopt minimum daily lending fees for non-cash collateral payable by SSB to Citibank on behalf of a Client Plan. Citibank will submit the method for determining such minimum daily lending fees to an independent fiduciary of the Client Plan for approval before initially lending any securities to SSB on behalf of such Client Plan.

[20] Citibank will adopt separate maximum daily rebate rates with respect to securities loans collateralized with cash collateral. Such rebate rates will be based upon an objective methodology which takes into account several factors, including potential demand for loaned securities, the applicable benchmark cost of fund indices, and anticipated investment return on overnight investments permitted by the Client Plan's independent fiduciary. Citibank will submit the method for determining such maximum daily rebate rates to such fiduciary before initially lending any securities to SSB on behalf of the Client Plan.

[21] It is represented that the ''first come, first served'' allocation would not apply where Citibank is not acting as a securities lending agent, but rather is acting as, for example, a custodian to a Client Plan that has entered into an exclusive arrangement with the borrower. See PTE 96–56 (61 FR 37933, July 22, 1996) issued to Smith Barney, Inc.

that such losses or damages are caused by the Client Plan's negligence.

In the event the Foreign Affiliate defaults on a loan, Citibank will liquidate the loan collateral to purchase identical securities for the Client Plan. If the collateral is insufficient to accomplish such purchase,[22] Citibank will indemnify the Client Plan for any shortfall in the collateral plus interest on such amount and any transaction costs incurred. Alternatively, if such identical securities are not available on the market, Citibank will pay the Client Plan cash equal to the market value[23] of the borrowed securities as of the date they should have been returned to the Client Plan plus all interest and accrued financial benefits derived from the beneficial ownership of such loaned securities. Under such circumstances, Citibank will pay the Client Plan an amount equal to (a) the value of the securities as of the date such securities should have been returned to the Client Plan plus (b) all of the accrued financial benefits derived from the beneficial ownership of such loan securities as of such date, plus (c) interest from such date through the date of payment. (The amounts paid shall include the cash collateral or other collateral that is liquidated and held by Citibank on behalf of the Client Plan.)

26. The Client Plan will receive collateral from SSB by physical delivery, book entry in a U.S. securities depository, wire transfer or similar means by the close of business on or before the day the loaned securities are delivered to SSB. The collateral will consist of cash, securities issued or guaranteed by the U.S. Government or its agencies or irrevocable U.S. bank letters of credit (issued by a person other than Citibank, SSB or their affiliates) or such other types of collateral which might be permitted by the Department under a class exemption. The market value of the collateral on the close of business on the day preceding the day of the loan will be at least 102 percent of the market value of the loaned securities. The Loan Agreement will give the Client Plan a continuing security interest in and a lien on the collateral. Citibank will monitor the level of the collateral daily. If the market value of the collateral falls below 100 percent (or such greater percentage as agreed to by the parties) of that of the loaned securities, Citibank will require SSB to deliver by the close of business the next day sufficient additional collateral to bring the level back to at least 102 percent.

27. With respect to loans involving the Foreign Affiliates, the following additional conditions will be applicable: (a) All collateral will be maintained in United States dollars or dollar-denominated securities or letters of credit; (b) all collateral is held in the United States and Citibank maintains the situs of the securities loan agreements in the United States under an arrangement that complies with the indicia of ownership requirements under section 404(b) of the Act and the regulations promulgated under 29 CFR 2550.404(b)–1; and (c) the Foreign Affiliate provides SSB (i.e., Salomon Smith Barney Inc.) a written consent to service of process in the United States for any civil action or proceeding brought in respect of the securities lending transaction, which consent provides that process may be served on such borrower by service on SSB (i.e., Salomon Smith Barney Inc.).

28. Each Client Plan participating in the lending program will be sent a monthly transaction report. The monthly report will provide a list of all security loans outstanding and closed for a specified period. The report will identify for each open loan position, the securities involved, the value of the security for collateralization purposes, the current value of the collateral, the rebate or loan premium (as the case may be) at which the security is loaned, and the number of days the security has been on loan. In addition, if requested by the lending customer, Citibank will provide daily confirmations of securities lending transactions, and, with respect to monthly reports, if requested by the customer, Citibank will compare weekly or daily reports, setting forth for each transaction made or outstanding during the relevant reporting period, the loaned securities, the related collateral, rebates and loan premiums and such other information in such format as shall be agreed to by the parties. Further, prior to the approval by a new Client Plan of a securities lending program, SSB will provide a Client Plan fiduciary with copies of the proposed exemption and notice granting the exemption.

29. In order to provide the means for monitoring lending activity, the monthly report will compare rates on loans by the Client Plans to SSB and rates on loans to other brokers as well as the level of collateral on the loans. In this regard, the monthly report will show, on a daily basis, the market value of all outstanding security loans to SSB and to other borrowers. In addition, the monthly report will state the daily fees where collateral other than cash is utilized and will specify the details used to establish the daily rebate payable to all brokers where cash is used as collateral. The monthly report also will state, on a daily basis, the rates at which securities are loaned to SSB and the rates at which securities are loaned to other brokers. This statement will give an independent fiduciary information which can be compared to that contained in the daily rate schedule.

30. Only Client Plans with total assets having an aggregate market value of at least $50 million are permitted to lend securities to SSB. In the case of two or more Client Plans which are maintained by the same employer, controlled group of corporations or employee organization (i.e., the Related Client Plans), whose assets are commingled for investment purposes in a single master trust or any other entity the assets of which are ''plan assets'' under the Plan Asset Regulation), which entity is engaged in securities lending arrangements with SSB, the foregoing $50 million requirement will be satisfied if such trust or other entity has aggregate assets which are in excess of $50 million. However, if the fiduciary responsible for making the investment decision on behalf of such master trust or other entity is not the employer or an affiliate of the employer, such fiduciary must have total assets under its management and control, exclusive of the $50 million threshold amount attributable to plan investment in the commingled entity, which are in excess of $100 million.

In the case of two or more Client Plans which are not maintained by the same employer, controlled group of corporations or employee organization (i.e., the Unrelated Client Plans), whose assets are commingled for investment purposes in a group trust or any other form of entity the assets of which are ''plan assets'' under the Plan Asset Regulation, which entity is engaged in securities lending arrangements with SSB, the foregoing $50 million requirement will be satisfied if such trust or other entity has aggregate assets which are in excess of $50 million (excluding the assets of any Client Plan with respect to which the fiduciary responsible for making the investment decision on behalf of such group trust

[22] Of course, Citibank will not be responsible for any loss with respect to cash collateral caused by the Client Plan's investment thereof directed by or pursuant to guidelines set by the Client Plan unless it expressly agrees to such liability with the Client Plan.

[23] For purposes of this proposed exemption, the ''market value'' of securities, as of any date, shall be determined on the basis of the closing prices therefor as of the trading date (for the principal market in which the securities are traded) immediately preceding the day of valuation, such determination to be made by the independent pricing source identified to SSB by the Client Plan upon the request of SSB. Market value shall include accrued interest in the case of debt securities.

or other entity or any including such fiduciary is the employer maintaining such Client Plan or an employee organization whose members are covered by such Client Plan). However, the fiduciary responsible for making the investment decision on behalf of such group trust or other entity (a) must have full investment responsibility with respect to plan assets invested therein;[24] and (b) must have total assets under its management and control, exclusive of the $50 million threshold amount attributable to plan investment in the commingled entity, which are in excess of $100 million.

In addition, none of the entities described above must be formed for the sole purpose of making loans of securities.

31. In summary, the applicants represent that the described transactions have satisfied or will satisfy the statutory criteria for an exemption under section 408(a) of the Act because:

(a) The form of the Loan Agreement pursuant to which any loan is effected has been or will be approved by a fiduciary of the Client Plan who is independent of SSB and Citibank before a Client Plan lends any securities to SSB.

(b) The lending arrangements (1) will permit the Client Plans to lend to SSB and (2) will enable the Client Plans to diversify the list of eligible borrowers and earn additional income from the loaned securities on a secured basis, while continuing to receive any dividends, interest payments and other distributions due on those securities.

(c) The Client Plans have received or will receive sufficient information concerning SSB's financial condition before the Plan lends any securities to SSB.

(d) The collateral on each loan to SSB initially has been and will be at least 102 percent of the market value of the loaned securities, which is in excess of the 100 percent collateral required under PTE 81–6, and has been and will be monitored daily by Citibank.

(e) The Client Plans have received and will receive a monthly report which provides an independent fiduciary of the Client Plans with information on loan activity, fees, loan return/yield and the rates on loans to SSB as compared with loans to other brokers and the level of collateral on the loans.

(f) Citibank, SSB nor any affiliate has or will have discretionary authority or control over the Client Plan's acquisition or disposition of securities available for loan.

(g) The terms of the fee or rebate payable for each loan have been and will be at least as favorable to the Client Plans as those of a comparable arm's length transaction between unrelated parties.

(h) All of the procedures under the transactions have conformed or will conform to the applicable provisions of PTE 81–6 and PTE 82–63 and also have been and will be in compliance with the applicable securities laws of the United States, the United Kingdom, Japan, Germany, Canada and Australia.

Notice to Interested Persons

Notice of the proposed exemption will be provided to interested persons within 5 days of the publication of the notice of proposed exemption in the **Federal Register**. Such notice will be given to Client Plans that have outstanding securities loans with SSB. The notice will include a copy of the notice of proposed exemption as published in the **Federal Register** and a supplemental statement, as required pursuant to 29 CFR 2570.43(b)(2). The supplemental statement will inform interested persons of their right to comment on and/or to request a hearing with respect to the proposed exemption. Written comments and hearing requests are due within 35 days of the publication of the proposed exemption in the **Federal Register**.

FOR FURTHER INFORMATION CONTACT: Ms. Jan D. Broady of the Department, telephone (202) 219–8881. (This is not a toll-free number.)

State Bankshares Inc. 401(k) Profit Sharing Plan (the Plan) Located in Fargo, North Dakota

[Application No. D–10703]

Proposed Exemption

The Department is considering granting an exemption under the authority of section 408(a) of the Act and section 4975(c)(2) of the Code and in accordance with the procedures set forth in 29 CFR part 2570, subpart B (55 FR 32836, 32847, August 10, 1990). If the exemption is granted, the restrictions of sections 406(a), 406(b)(1) and (b)(2) of the Act and the sanctions resulting from the application of section 4975 of the Code, by reason of section 4975(c)(1)(A) through (E) of the Code, shall not apply to the proposed sale by the Plan of certain limited partnership interests (the Interests) to Northern Capital Trust Company (Northern), the Plan's trustee and a party in interest with respect to the Plan, for $93,552.93 in cash, provided the following conditions are satisfied: (a) The sale is a one-time transaction for cash; (b) no commissions are charged in connection with the transaction; (c) the Plan receives not less than the fair market value of the Interests at the time of the transaction; and (d) the fair market value of the Interests is determined by a qualified entity independent of the Plan and of Northern.

Summary of Facts and Representations

1. The Plan is a 401(k) profit sharing plan which is sponsored by State Bankshares Inc. (the Employer) of Fargo, North Dakota. The Plan currently has 144 participants and had assets of $5,637,308 as of September 30, 1998. The trustee of the Plan is Northern, a trust company located at 203 North 10th Street, Fargo, North Dakota. Northern has investment discretion for the Plan's assets.

2. In August 1993, the Plan purchased the Interests as an investment from an unrelated party (as discussed below). The Interests consist of a 4.2337% interest in the Courtyard Limited Partnership (the Partnership). The Partnership's sole asset is an apartment building known as ''Courtyard Apartments'' in St. Louis Park, Minnesota. The Plan paid $54,233.70 for the Interests in the Partnership. The investment was presented to Northern, as Plan trustee, by Regan Wieland Investment Co., whose name was later changed to Goldmark Investment Company (Goldmark), on behalf of the Partnership. Goldmark and the Partnership are independent of, and unrelated to, the Employer and Northern.

3. The Employer would like to permit employee directed investments and the use of a 24-hour telephone service to accommodate daily transfers by Plan participants of assets held in their individual accounts in the Plan. In order to be able to participate in the new daily valuation and transfer system, the Plan needs to divest itself of the Interests to ensure proper liquidity for all of the Plan's assets. In this regard, the applicant represents that it is necessary to transfer the Interests out of the Plan because the Interests cannot be valued on a daily basis.

4. Northern as Plan trustee has contacted Goldmark, the Managing Partner of the Partnership, to inform them that the Plan wishes to sell its Interests. Mr. Kenneth P. Regan of Goldmark has represented that the fair market value of the Plan's Interests would be approximately $93,000, if all

[24] For purposes of this proposed exemption, the term ''full investment responsibility'' means that the fiduciary responsible for making investment decisions on behalf of the group trust or other form of entity, has and exercises discretionary management authority over all of the assets of the group trust or other plan assets entity.

of the partners were to sell their Partnership interests at the present time. However, in the event only one partner, such as the Plan, were to dispose its Interests, there would be discounts from the $93,000 value to reflect the lack of marketability and minority ownership in addition to sales costs. Goldmark estimates that these expenses would be in excess of $11,000. Thus, Goldmark states that the value of the Plan's Interests, if it were to sell such Interests alone, would be approximately $81,795. Goldmark based its valuation of the Partnership on a January 12, 1998 appraisal of the Courtyard Apartments that was conducted by Robert L. Fransen (Fransen), an independent real estate broker in Minneapolis, Minnesota. Fransen specializes in the brokerage of apartment properties.

5. The applicant has requested an exemption that would permit the Plan to sell the Interests to Northern for cash. No commissions or other fees would be charged in connection with the sale. Northern has represented that they are willing to pay the Plan $93,552.93 for the Interests, an amount which reflects the book value of the Interests (based on the current net value of the Courtyard Apartments as the Partnership's only asset).[25] This amount is more than the current fair market value of the Interests (i.e., $81,795) as determined by Goldmark.

6. In summary, the applicant represents that the proposed transaction satisfies the criteria contained in section 408(a) of the Act because: (a) The sale is a one-time transaction for cash; (b) No commissions or other fees will be charged in connection with the transaction; (c) The sales price for the Interests will be an amount, based on the book value of the Interests, which reflects more than the fair market value of the Interests as determined by Goldmark, the Managing Partner for the Partnership; and (d) Goldmark based its valuation of the Partnership on an appraisal of the Courtyard Apartments performed by Fransen, an independent real estate expert.

FOR FURTHER INFORMATION CONTACT: Gary H. Lefkowitz of the Department, telephone (202) 219–8881. (This is not a toll-free number.)

[25] The current net value of the Courtyard Apartments is $2,209,722, based on Fransen's appraisal of the gross value less outstanding liabilities and other costs. Thus, since the Interests represent a 4.2337% interest in the Partnership, the Interests have a book value of approximately $93,553 (i.e., $2,209,722 × .042337 = $93,553).

vonRoll isola Savings Plan (the Plan) Located in Schenectady, New York

[Application No. D–10729]

Proposed Exemption

The Department is considering granting an exemption under the authority of section 408(a) of the Act and section 4975(c)(2) of the Code and in accordance with the procedures set forth in 29 CFR part 2570, subpart B (55 FR 32836, 32847, August 10, 1990). If the exemption is granted, the restrictions of sections 406(a), 406(b)(1) and (b)(2) of the Act and the sanctions resulting from the application of section 4975 of the Code, by reason of section 4975(c)(1)(A) through (E) of the Code, shall not apply to: (1) The making by State Street Bank and Trust Company (the Bank) of interest-free advances of cash (the Advances) to the Plan during the period from July 8, 1997 through June 22, 1998, in the aggregate amount of $824,812.60; and (2) the repayment of the Advances by the Plan, without interest, on June 22, 1998, provided the following conditions were satisfied:

(a) No interest or expense was incurred by the Plan in connection with the Advances;

(b) The proceeds of the Advances were used only to facilitate the payment of benefits (including participant loans and in-service withdrawals) to Plan participants, and to facilitate the making of investment transfers elected by Plan participants;

(c) The Advances were unsecured;

(d) The Plan participants who remained invested in the Plan's stable value fund, which consisted primarily of a Group Flexible Annuity Contract (the GIC) from the Travelers Insurance Company (Travelers), continued to receive the full contract rate on the full amount of the GIC;

(e) The Plan's sponsor was notified of the Advances;

(f) The repayment of the Advances was made at the direction of the Plan's sponsor and was restricted to amounts received from the proceeds of the installment payments made by Travelers under the GIC, and no other plan assets were used for that purpose;

(g) The Bank will maintain or cause to be maintained for a period of six years from the date of the granting of the exemption proposed herein the records necessary to enable the persons described in paragraph (h) to determine whether the conditions of this exemption have been met, except that:

(1) A prohibited transaction will not be considered to have occurred, if due to circumstances beyond the control of the Bank, the records are lost or destroyed prior to the end of the six year period; and

(2) No party in interest, other than the Bank, shall be subject to the civil penalty that may be assessed under section 502(i) of the Act, or to the taxes imposed by section 4975(a) and (b) of the Code, if the records are not maintained, or are not available for examination as required by paragraph (h); and

(h)(1) Except as provided in paragraph (h)(2) and notwithstanding any provisions of subsections (a)(2) and (b) of section 504 of the Act, the records referred to in paragraph (g) are unconditionally available at their customary location for examination during normal business hours by:

(A) Any duly authorized employee or representative of the Department or the Internal Revenue Service;

(B) Any fiduciary of the Plan, or any duly authorized employee or representative of such fiduciary; and

(C) Any participant or beneficiary of the Plan or duly authorized representative of such participant or beneficiary;

(2) None of the persons described in paragraph (h)(1)(B) and (h)(1)(C) shall be authorized to examine trade secrets of the Bank or commercial or financial information which is privileged or confidential.

EFFECTIVE DATES: If the proposed exemption is granted, the exemption will be effective from July 8, 1997 through June 22, 1998.

Summary of Facts and Representations

1. The Bank is a Massachusetts trust company that provides trustee, custodial, investment management, participant recordkeeping and other related services to employee benefit plans. vonRoll isola USA, Inc. (VRI), f/k/a Insulating Materials Incorporated, is a New York corporation that sponsors the Plan. The Plan is a qualified profit sharing plan under section 401(a) of the Code which contains a qualified cash or deferred arrangement as described in Code section 401(k). The Plan was most recently amended and restated effective April 1, 1997. The Plan currently has 182 participants and beneficiaries and had assets with a total fair market value of approximately $8,295,000 as of June 30, 1998.

In March, 1997, the Plan entered into a Benefit Plan Recordkeeping Services Contract and a Defined Contribution Plans Master Trust Agreement with the Bank, pursuant to which the Bank was appointed as trustee and recordkeeper for the Plan, effective July 1, 1997. As a result, the Plan's interests were transferred to the Bank for the Bank to

hold as the Plan's new trustee, as of July 1, 1997. These agreements between the Plan and the Bank remain effective. The applicant represents that the Bank's role as Plan trustee and recordkeeper has made it a service provider and party in interest with respect to the Plan at all times since July 1, 1997.

2. Prior to July 1, 1997, the Plan offered six investment options into which Plan participants could direct their investments. One of these investment options was a so-called ''stable value'' fund which consisted of the GIC. The Plan had purchased the GIC from Travelers on June 22, 1993. On and after January 1, 1997, and in anticipation of the transfer of the Plan's assets to the Bank, no new Plan assets were allowed to be invested in the GIC. At the time of the transfer of the Plan's assets to the Bank on July 1, 1997, all assets of the Plan, except for the assets invested in the GIC (which amounted to approximately 40% of the total Plan assets at the time), were transferred to and invested in five new investment options selected by VRI. These options consisted of five different mutual funds. In addition, VRI designated, as a sixth investment option, a ''stable value'' fund to be managed by the Bank (the Stable Value Fund). Despite the lack of benefit responsiveness of the GIC, it was included in the Stable Value Fund and, at the outset, represented substantially all of the assets of that Fund.[26] No amounts deposited in the Stable Value Fund after July 1, 1997 were invested in the GIC; rather, all such amounts were held in a cash buffer to provide liquidity for any additional transfers by Plan participants out of that fund.

3. The GIC was issued by Travelers on June 22, 1993. It was not a ''benefit responsive contract'' and by its terms severely restricted transfers out of the contract for benefit payments to, or investment transfers by, participants.[27] The GIC initially was subject to a surrender charge for a period of ten years. In an attempt to address the liquidity issues created by the lack of benefit responsiveness and given the anticipated transfer of the Plan's assets to the Bank in July, 1997, the GIC was renegotiated by VRI and Travelers in February, 1997. As a result, the parties agreed that the contract would be liquidated in a series of annual installment payments by Travelers to the Plan beginning in June, 1997 and continuing through June, 2001.

4. On July 8, 1997, eight days after the Plan's assets were transferred to the Bank, the liquidity available under the Stable Value Fund (including the June, 1997 installment payment made by Travelers to the Plan pursuant to the liquidation agreement) was depleted. This rapid and unanticipated depletion of liquidity resulted from the very high level of investment transfers elected by Plan participants in conjunction with the transfer of the Plan's assets to the Bank. The applicant states that these investment transfers were the result of the new investment options available to Plan participants after the Plan's assets were transferred to the Bank. To meet the liquidity requirements created by the Plan participants' elections to make substantial transfers of their assets out of the Stable Value Fund, the Bank made the Advances to the Plan on an interest-free and unsecured basis. The Bank continued to make the Advances to the Plan as needed for these purposes until June 22, 1998. All of the Advances were made in cash. The total amount of the Advances was $824,812.60. The existence and amount of all such Advances was communicated to, and discussed with, VRI periodically during the period they were made.

5. The Bank did not at any time charge the Plan any interest on the Advances it made to the Plan. By contrast, the GIC continued to earn interest at the contract rate, which interest earnings were allocated to the accounts of those Plan participants who continued to be invested in the Stable Value Fund. Thus, the Advances made by the Bank facilitated the ability of the Plan's participants who had an investment in the Stable Value Fund to receive timely benefit payments and make investment transfers without being limited by the illiquidity of the GIC. In addition, the Advances provided Plan participants who elected to stay in the Stable Value Fund with assurances that the Fund would remain a viable investment option during this period and that their Plan accounts would continue to receive all interest payments due under the GIC.

6. On June 22, 1998, pursuant to further negotiations between VRI and Travelers, Travelers advanced a payment of $1,073,745.44 to the Plan. This amount represented 100% of the June 1998 and June 1999 installment payments due to the Plan under the renegotiated GIC. At the direction of VRI, this cash amount was used by the Plan to repay the entire amount of the Advances from the Bank, with the remainder creating a cash buffer for future benefit payments from the Stable Value Fund. The advance payment on the GIC by Travelers was subject to an early withdrawal charge equal to $60,398.19. VRI and a Plan service provider[28] in the aggregate paid Travelers $43,266 of this early withdrawal charge, with the result that the Plan actually paid only $17,132.19 or approximately 28% of the early withdrawal charge.

7. In summary, the applicant represents that the subject transactions satisfied the criteria contained in section 408(a) of the Act for the following reasons: (a) No interest or expense was incurred by the Plan in connection with the Advances; (b) the proceeds of the Advances were used only to facilitate the payment of benefits (including participant loans and in-service withdrawals) to Plan participants, and to facilitate the making of investment transfers elected by Plan participants; (c) the Advances were unsecured; (d) the Plan participants who remained invested in the Stable Value Fund, which consisted primarily of the GIC from Travelers, continued to receive the full contract interest rate on the GIC; (e) VRI, the Plan's sponsor, was notified of the Advances; and (f) the repayment of the Advances by the Plan was made at the direction of VRI and was restricted to amounts received from the proceeds of the installment payments made by Travelers under the GIC, and no other Plan assets were used for that purpose.

FOR FURTHER INFORMATION CONTACT: Gary H. Lefkowitz of the Department, telephone (202) 219–8881. (This is not a toll-free number.)

General Information

The attention of interested persons is directed to the following:

(1) The fact that a transaction is the subject of an exemption under section 408(a) of the Act and/or section 4975(c)(2) of the Code does not relieve a fiduciary or other party in interest of disqualified person from certain other provisions of the Act and/or the Code, including any prohibited transaction provisions to which the exemption does

[26] Although the GIC was included by the Bank in the Stable Value Fund, VRI retained responsibility for managing this asset.

[27] During the period prior to January 1, 1997, this lack of benefit responsiveness was generally offset by the availability of new cash flow to this option. The applicant represents that as long as the sum of the contributions and investment transfers flowing into this investment option exceeded the sum of the benefit distributions and investment transfers out of this option, there was no need for any benefit responsiveness under the GIC. The Department is providing no opinion herein as to whether the acquisition and holding of the GIC by the Plan was either consistent with, or in violation of, the fiduciary responsibility provisions contained in Part 4 of Title I of the Act.

[28] The Plan's service provider was GE Investment Retirement Services, Inc. (GEIRS). GEIRS is a marketing affiliate of the Plan's mutual fund provider, GE Investment Management Incorporated, the sponsor of the mutual funds that have been offered to the Plan since July 1, 1997.

not apply and the general fiduciary responsibility provisions of section 404 of the Act, which among other things require a fiduciary to discharge his duties respecting the plan solely in the interest of the participants and beneficiaries of the plan and in a prudent fashion in accordance with section 404(a)(1)(b) of the act; nor does it affect the requirement of section 401(a) of the Code that the plan must operate for the exclusive benefit of the employees of the employer maintaining the plan and their beneficiaries;

(2) Before an exemption may be granted under section 408(a) of the Act and/or section 4975(c)(2) of the Code, the Department must find that the exemption is administratively feasible, in the interests of the plan and of its participants and beneficiaries and protective of the rights of participants and beneficiaries of the plan;

(3) The proposed exemptions, if granted, will be supplemental to, and not in derogation of, any other provisions of the Act and/or the Code, including statutory or administrative exemptions and transitional rules. Furthermore, the fact that a transaction is subject to an administrative or statutory exemption is not dispositive of whether the transaction is in fact a prohibited transaction; and

(4) The proposed exemptions, if granted, will be subject to the express condition that the material facts and representations contained in each application are true and complete and accurately describe all material terms of the transaction which is the subject of the exemption. In the case of continuing exemption transactions, if any of the material facts or representations described in the application change after the exemption is granted, the exemption will cease to apply as of the date of such change. In the event of any such change, application for a new exemption may be made to the Department.

Signed at Washington, DC, this 26th day of February, 1999.

Ivan Strasfeld,

Director of Exemption Determinations, Pension and Welfare Benefits Administration, Department of Labor.

[FR Doc. 99–5323 Filed 3–3–99; 8:45 am]

BILLING CODE 4510–29–P

INTERNATIONAL BOUNDARY AND WATER COMMISSION NOTICE

Meeting

AGENCY: Border Environment Cooperation Commission.

ACTION: Notice of public meeting.

SUMMARY: This notice announces the XIX public meeting of the BECC Board of Directors on Friday, March 26, 1999, from 10:00 AM–1:00 PM in the Empire Ballroom of the Holiday Inn, 181 West Broadway, Tucson, Arizona, 85701, telephone: (520)–624–8711, fax: (520)–624–9963.

FOR FURTHER INFORMATION CONTACT: M. R. Ybarra, Secretary, United States Section, International Boundary and Water Commission, telephone (915) 832–4105; or Ricardo Castañon, Public Information Director, P.O. Box 221648, El Paso, Texas 79913, telephone: 1–877–225–1149, fax: (011–52–16) 25–69–99; email: *rcastanon@cocef.org.*

SUPPLEMENTARY INFORMATION: The U.S. Section, International Boundary and Water Commission, on behalf of the Border Environment Cooperation Commission (BECC), cordially invites the public to attend the XIX Public Meeting of the Board of Directors on Friday, March 26, 1999, from 10:00 AM–1:00 PM in the Empire Ballroom of the Holiday Inn, 181 West Broadway, Tucson, Arizona.

Proposed Agenda, 10:00 AM to 1:00 PM

1. Approval of Agenda (Action)
2. Approval of Minutes from December 3, 1998 Board of Directors Meeting (Action)
3. Reports (Information)
   - Executive Committee
   - General Manager
4. Projects for Certification (Action)
   - Wastewater Treatment Plant Expansion, Heber, CA
   - Update on Project Development by region
5. Public Participation (Information)
   - Update on public participation activities
6. Technical Assistance Issues (Information)
   - Border Needs Assessment—SCERP
   - Corps of Engineers MOU
7. Administrative Issues (Information)
   - Employee of the Quarter
   - Library Presentation
8. Policy Issues (Information)
   - Rules of Procedure
9. Sustainable Development (Information)
10. Other Issues

Anyone interested in submitting written comments to the Board of Directors on any agenda item should send them to the BECC 15 days prior to the public meeting. Anyone interested in making a brief statement to the Board may do so during the public meeting.

Dated: February 26, 1999.

M.R. Ybarra,

Secretary, U.S. IBWC.

[FR Doc. 99–5327 Filed 3–3–99; 8:45 am]

BILLING CODE 7010–01–P

NATIONAL COMMUNICATIONS SYSTEM

Telecommunications Service Priority System Oversight Committee; Notice of Meeting

AGENCY: National Communications System (NCS).

ACTION: Notice of meeting.

A meeting of the Telecommunications Service Priority (TSP) System Oversight Committee will convene Tuesday March 30, 1999 from 9 a.m. to 12:00 p.m. The meeting will be held at 701 South Court House Road, Arlington, VA in the NCS conference room on the 2nd floor.

—Opening/Administrative Remarks
—Status of the TSP Program
—NCC Y2K Briefing

Anyone interested in attending or presenting additional information to the Committee, please contact CDR Lynne Hicks, Manager, TSP Program Office, (703) 607–4930, or Betty Hoskin (703) 607–4932 by March 25, 1999.

Frank McClelland,

Federal Register Liaison Officer, National Communications System.

[FR Doc. 99–5354 Filed 3–3–99; 8:45 am]

BILLING CODE 5000–03–M

NATIONAL FOUNDATION ON THE ARTS AND THE HUMANITIES

Nondiscrimination on the Basis of Age

AGENCY: National Endowment for the Arts.

ACTION: Review of NEA programs for age distinctions.

SUMMARY: As required by the Age Discrimination Act of 1975 (the Act), *see* 42 U.S.C. 6101 et seq., the National Endowment for the Arts (NEA) has reviewed its programs for any age distinctions it imposes on its recipients by regulation, policy, or administrative practice in order to determine whether these distinctions are permissible under the Act.

The NEA's review finds that all of the NEA's programs are free from any forms of age discrimination. However, because some projects of the NEA's education program do focus on students grades pre-K through 12, special attention is given to that program in this review.

The NEA's education program does not invoke the rules against age discrimination, *see* 45 CFR 1156.6, because the program does not exclude or deny individuals the opportunity to participate. Moreover, even if the NEA's education program were determined to violate the rules against age

discrimination, the NEA finds that the program would remain viable because it falls under an exception listed in 45 CFR Section 1156.7.

45 CFR Section 1156.6 contains both a general rule and specific rules against age discrimination, and the NEA's education program complies with both. The general rule states that no person shall be excluded from participation in, be denied the benefits of, or be subjected to discrimination under any program or activity receiving Federal financial assistance. *See* 45 CFR Section 1156.6(a). The language defining the NEA's education program indicates that the program does not violate this general rule because the program does not limit its coverage of participants based upon age. *See National Endowment for the Arts: Grants to Organizations FY2000,* 11. The curriculum-based projects of the NEA's education program may focus on students grades pre-K through 12, but because these projects do not exclude, deny benefits to, or discriminate against non-students of any age group, the projects still comply with the rules against age discrimination. *See id.* More importantly, the education program's mission statement clearly illustrates the NEA's hope that the program will expand opportunities for children and adults to participate in and increase their understanding of the arts. *See id.* For instance, the field/discipline-based projects of the NEA's education program provide learning activities for children, youths, and adults. *See id.* Thus, the program is inclusive by nature, not exclusive.

The specific rules against age discrimination essentially state that a program cannot directly or indirectly (e.g., contractually, by license, etc.) use age distinctions or take any other actions that may exclude participation, deny or limit benefits, or discriminate on the basis of age. *See id.* The NEA's education program, however, does not violate these specific rules. The NEA finds that its education program complies with the specific rules because none of the program's projects exclude participants, deny or limit benefits, or discriminate based upon age through either ''direct'' or ''indirect'' means.

Even if the curriculum-based projects of the NEA's education program were determined to violate 45 CFR Section 1156.6, the NEA finds that these projects would fall under an exception provided in 45 CFR Section 1156.7. 45 CFR Section 1156.7(a) provides, in pertinent part, that a recipient of Federal financial assistance is ''permitted to take an action otherwise prohibited by [Section] 1156.6 if the action reasonably takes into account age as a factor necessary to the normal operation or the achievement of any statutory objective of a program or activity.'' The curriculum-based projects of the NEA's education program satisfy the exception because the projects take student-status (based upon age) into account as a factor necessary to the normal operation of the program. In the case of the NEA's projects, the normal operation of these projects inherently requires the use of age because grades pre-K through 12 logistically include mostly children. These projects comply with the exception under 45 CFR Section 1156.7(a) because 1) age is used to determine whether a person is a student (pre-K through 12); 2) as an educational service to schools, the curriculum-based projects, by nature, must determine whether they are serving students if they are to continue the normal operation of the program; 3) age can reasonably determine student-status; and 4) measuring student-status on an individual basis represents an impractical endeavor.

Because the NEA's education program encourages the participation of all age groups and because the curriculum-based projects do not exclude participation, deny or limit benefits, or discriminate based upon age, the NEA finds that its education program complies with the rules against age discrimination as established by 45 CFR 1156.

DATES: Comments must be filed on or before March 26, 1999.

FOR FURTHER INFORMATION CONTACT: Karen Elias, Deputy General Counsel, (202) 682–5418.

Karen Elias,

Deputy General Counsel.

[FR Doc. 99–5332 Filed 3–3–99; 8:45 am]

BILLING CODE 7536–01–M

NUCLEAR REGULATORY COMMISSION

[Docket No. 50–271]

Vermont Yankee Nuclear Power Corporation; Notice of Withdrawal of Application for Amendment to Facility Operating License

The U.S. Nuclear Regulatory Commission (the Commission) has granted the request of Vermont Yankee Nuclear Power Corporation (the licensee) to withdraw its May 1, 1998, application for proposed amendment to Facility Operating License No. DPR–28 for the Vermont Yankee Nuclear Power Station, located in Windham County, Vermont.

The proposed amendment would have revised the facility technical specifications to make several editorial changes to the Administrative Controls section including revisions due to organizational changes, quality assurance changes, editorial changes, and typographical corrections.

The Commission had previously issued a Notice of Consideration of Issuance of Amendment published in the **Federal Register** on June 17, 1998 (63 FR 33109). However, by letter dated February 1, 1999, the licensee withdrew the proposed change.

For further details with respect to this action, see the application for amendment dated May 1, 1998, and the licensee's letter dated February 1, 1999, which withdrew the application for license amendment. The above documents are available for public inspection at the Commission's Public Document Room, the Gelman Building, 2120 L Street, NW., Washington, DC, and at the local public document room located at the Brooks Memorial Library, 224 Main Street, Brattleboro, VT 05301.

Dated at Rockville, Maryland, this 11th day of February 1999.

For the Nuclear Regulatory Commission.

Richard P. Croteau,

Project Manager, Project Directorate I–2, Division of Reactor Projects—I/II, Office of Nuclear Reactor Regulation.

[FR Doc. 99–5337 Filed 3–3–99; 8:45 am]

BILLING CODE 7590–01–P

RAILROAD RETIREMENT BOARD

Agency Forms Submitted for OMB Review

SUMMARY: In accordance with the Paperwork Reduction Act of 1995 (44 U.S.C. Chapter 35), the Railroad Retirement Board (RRB) has submitted the following proposal(s) for the collection of information to the Office of Management and Budget for review and approval.

Summary of Proposal(s)

(1) *Collection title:* Railroad Separation Allowance or Severance Pay Report.

(2) *Form(s) submitted:* BA–9.

(3) *OMB Number:* 3220–0173.

(4) *Expiration date of current OMB clearance:* 4/30/1999.

(5) *Type of request:* Extension of a currently approved collection.

(6) *Respondents:* Business or other for-profit.

(7) *Estimated annual number of respondents:* 27.

(8) *Total annual responses:* 1,072.

(9) *Total annual reporting hours:* 1,340.

(10) *Collection description:* Section 6 of the Railroad Retirement Act provides for a lump-sum payment to an employee or the employee's survivor equal to the Tier II taxes paid by the employee on a separation allowance or severance payment for which the employee did not receive credits toward retirement. The collection obtains information concerning the separation allowances and severances payments from railroad employers.

FOR FURTHER INFORMATION CONTACT: Copies of the form and supporting documents can be obtained from Chuck Mierzwa, the agency clearance officer (312–751–3363). Comments regarding the information collection should be addressed to Ronald J. Hodapp, Railroad Retirement Board, 844 North Rush Street, Chicago, Illinois, 60611–2092 and the OMB reviewer, Laurie Schack (202–395–7316), Office of Management and Budget, Room 10230, New Executive Office Building, Washington, DC 20503.

Chuck Mierzwa,

Clearance Officer.

[FR Doc. 99–5348 Filed 3–3–99; 8:45 am]

BILLING CODE 7905–01–M

SECURITIES AND EXCHANGE COMMISSION

[Investment Company Act Release No. 23718; 812–11478]

Warburg Dillon Read LLC; Notice of Application

February 25, 1999.

AGENCY: Securities and Exchange Commission (''Commission'' ''or SEC'').

ACTION: Notice of application for an order under section 12(d)(J) of the Investment Company Act of 1940 (the ''Act'') for an exemption from section 12(d)(1) of the Act, under section 6(c) of the Act for an exemption from section 14(a) of the Act, and under section 17(b) of the Act for an exemption from section 17(a) of the Act.

SUMMARY OF APPLICATION: Warburg Dillon Read LLC (''Warburg'') requests an order with respect to the T–REX securities trusts (''T–REX Trusts'')[1] and future trusts that are substantially similar to T–REX Trusts for which Warburg will serve as a principal underwriter (collectively, the ''Trusts'') that would (i) permit other registered investment companies, and companies excepted from the definition of investment company under section 3(c)(1) or (c)(7) of the Act, to own a greater percentage of the total outstanding voting stock (the ''Securities'') of any Trust than that permitted by section 12(d)(1), (ii) exempt the Trusts from the initial net worth requirements of section 14(a), and (ii) permit the Trusts to purchase U.S. government securities from Warburg at the time of a Trust's initial issuance of Securities.

FILING DATE: The application was filed on January 22, 1999.

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 Warburg with a copy of the request, personally or by mail. Hearing requests should be received by the SEC by 5:30 p.m. on March 22, 1999, and should be accompanied by proof of service on Warburg, 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 a hearing by writing to the SEC's Secretary.

ADDRESSES: Secretary, SEC, 450 Fifth Street, NW, Washington, DC 20549. Applicant, 299 Park Avenue, New York, New York 10171.

FOR FURTHER INFORMATION CONTACT: Bruce R. MacNeil, Staff Attorney, at (202) 942–0634, 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. 942–8090).

Applicant's Representations

1. Each Trust will be a limited-life, grantor trust registered under the Act as a non-diversified, closed-end management investment company. Warburg will serve as a principal underwriter (as defined in section 2(a)(29) of the Act) of the Securities issued to the public by each Trust.

2. Each Trust will, at the time of its issuance of Securities, (i) enter into one or more forward purchase contracts (the ''Contracts'') with a counterparty to purchase a formulaically-determined number of a specified equity security or securities (the ''Shares'') of one specified issuer,[2] and (ii) in some cases, purchase certain U.S. Treasury securities (''Treasuries''), which may include interest-only or principal-only securities maturing at or prior to the Trust's termination. The Trusts will purchase the Contracts from counterparties that are not affiliated with either the relevant Trust or Warburg. The investment objective of each Trust will be to provide to each holder of Securities (''Holder'') (i) periodic cash distributions from the proceeds of any Treasuries, and (ii) participation in, or limited exposure to, changes in the market value of the underlying Shares.

3. In all cases, the Shares will trade in the secondary market and the issuer of the Shares will be a reporting company under the Securities Exchange Act of 1934. The number of Shares, or the value of the Shares, that will be delivered to a Trust pursuant to the Contracts may be fixed (*e.g.*, one Share per Security issued) or may be determined pursuant to a formula, the product of which will vary with the price of the Shares. A formula generally will result in each Holder of Securities receiving fewer Shares as the market value of the Shares increases, and more Shares as their market value decreases.[3] At the termination of each Trust, each Holder will receive the number of Shares per Security, or the value of the Shares, as determined by the terms of the Contracts, that is equal to the Holder's pro rata interest in the Shares or amount received by the Trust under the Contracts.[4]

4. Securities issued by the Trusts will be listed on a national securities exchange or traded on the Nasdaq National Market System. Thus, the Securities will be ''national market system'' securities subject to public

[1] ''T–REX'' is a acronym for Trust-Issued Required Equity Exchange Securities.

[2] Initially, no Trust will hold Contracts relating to the Shares of more than one issuer. However, if certain events specified in the Contracts occur, such as the issuer of Shares spinning-off securities of another issuer to the holders of the Shares, the Trust may receive shares of more than one issuer at the termination of the Contracts.

[3] A formula is likely to limit the Holder's participation in any appreciation of the underlying Shares, and it may, in some cases, limit the Holder's exposure to any depreciation in the underlying Shares. It is anticipated that the Holders will receive a yield greater than the ordinary dividend yield on the Shares at the time of the issuance of the Securities, which is intended to compensate Holders for the limit on the Holders' participation in any appreciation of the underlying Shares. In some cases, there may be an upper limit on the value of the Shares that a Holder will ultimately receive.

[4] The Contracts may provide for an option on the part of a counterparty to deliver Shares, cash, or a combination of Shares and cash to the Trust at the termination of each Trust.

price quotation and trade reporting requirements. After the Securities are issued, the trading price of the Securities is expected to vary from time to time based primarily upon the price of the underlying Shares, interest rates, and other factors affecting conditions and prices in the debt and equity markets. Warburg currently intends, but will not be obligated, to make a market in the Securities of each Trust.

5. Each Trust will be internally managed by three trustees and will not have a separate investment adviser. The trustees will have limited or no power to vary the investments held by each Trust. A bank or banks qualified to serve as a trustee under the Trust Indenture Act of 1939, as amended, will act as custodian for each Trust's assets and as administrator, paying agent, registrar, and transfer agent with respect to the Securities of each Trust. Any such bank will have no other affiliation with, and will not be engaged in any other transaction with, any Trust. The day-to-day administration of each Trust will be carried out by Warburg or by the bank.

6. The Trusts will be structured so that the trustees are not authorized to sell the Contracts or Treasuries under any circumstances or only upon the occurrence of certain events under a Contract. The Trusts will hold the Contracts until maturity or any earlier acceleration, at which time they will be settled according to their terms. However, in the event of the bankruptcy or insolvency of any counterparty to a Contract with a Trust, or the occurrence of certain other events provided for the Contract, the obligations of the counterparty under the Contract may be accelerated and the available proceeds of the Contract will be distributed to the Holders.

7. The trustees of each Trust will be selected initially by Warburg, together with any other initial Holders, or by the grantors of the Trust. The Holders of each Trust will have the right, upon the declaration in writing or vote or more than two-thirds of the outstanding Securities of the Trust, to remove a trustee. Holders will be entitled to a full vote for each Security held on all matters to be voted on by Holders and will not be able to cumulate their votes in the election of trustees. The investment objectives and policies of each Trust may be changed only with the approval of a ''majority of the Trust's outstanding Securities'' [5] or any greater number required by the Trust's constituent documents. Unless Holders so request, it is not expected that the Trusts will hold any meetings of Holders, or that Holders will ever vote.

8. The Trusts will not be entitled to any rights with respect to the Shares until any Contracts requiring delivery of the Shares to the Trusts are settled, at which time the Shares will be promptly distributed to Holders. The Holders, therefore, will not be entitled to any rights with respect to the Shares (including voting rights or the right to receive any dividends or other distributions) until receipt by them of the Shares at the time the Trust is liquidated.

9. Each Trust will be structured so that its organizational and ongoing expenses will not be borne by the Holders, but rather, directly or indirectly, by Warburg, the counterparties, or another third party, as will be described in the prospectus for the relevant Trust. At the time of the original issuance of the Securities of any Trust, there will be paid to each of the administrator, the custodian, and the paying agent, and to each trustee, a one-time amount in respect of such agent's fee over its term. Any expenses of the Trust in excess of this anticipated amount will be paid as incurred by a party other then the Trust itself (which party may be Warburg).

Applicant's Legal Analysis

A. Section 12(d)(1)

1. Section 12(d)(1)(A)(i) of the Act prohibits (i) any registered investment company from owning in the aggregate more than 3% of the total outstanding voting stock of any other investment company, and (ii) any investment company from owning in the aggregate more than 3% of the total outstanding voting stock of any registered investment company. A company that is excepted from the definition of investment company under section 3(c)(1) or (c)(7) of the Act is deemed to be an investment company for purposes of section 12(d)(1)(A)(i) of the Act under sections 3(c)(1) and (c)(7)(D) of the Act. Section 12(d)(1)(C) of the Act similarly prohibits any investment company, other investment companies having the same investment adviser, and companies controlled by such investment companies from owning more than 10% of the total outstanding voting stock of any closed-end investment company.

2. Section 12(d)(1)(J) of the Act provides that the SEC may exempt persons or transactions from any provision of section 12(d)(1), if, and to the extent that, the exemption is consistent with the public interest and protection of investors.

3. Warburg states that, in order for the Trusts to be marketed most successfully, and to be traded at a price that most accurately reflects their value, it is necessary for the Securities of each Trust to be offered to large investment companies and investment company complexes. Warburg states that these investors seek to spread the fixed costs of analyzing specific investment opportunities by making sizable investments in those opportunities. Conversely, Warburg asserts that it may not be economically rational for the investors, or their advisers, to take the time to review an investment opportunity if the amount that the investors would ultimately be permitted to purchase is immaterial in light of the total assets of the investment company or investment company complex. Therefore, Warburg argues that these investors should be able to acquire Securities in each Trust in excess of the limitations imposed by section 12(d)(1)(A)(i) and 12(d)(1)(C). Warburg requests that the SEC issue an order under section 12(d)(1)(J) exempting the Trusts from the limitations.

4. Warburg states that section 12(d)(1) was designed to prevent one investment company from buying control of other investment companies and creating complicated pyramidal structures. Warburg also states that section 12(d)(1) was intended to address the layering of costs to investors.

5. Warburg asserts that the concerns about pyramiding and undue influence generally do not arise in the case of the Trusts because neither the trustees nor the Holders will have the power to vary the investments held by each Trust or to acquire or dispose of the assets of the Trusts. To the extent that Holders can change the composition of the board of trustees or the fundamental policies of each Trust by vote, Warburg argues that any concerns regarding undue influence will be eliminated by a provision in the charter documents of the Trusts that will require any investment companies owning voting stock of any Trust in excess of the limits imposed by sections 12(d)(1)(A)(i) and 12(d)(1)(C) to vote their Securities in proportion to the votes of all other Holders. Warburg also states that the concern about undue influence through a threat to redeem does not case in the case of the Trusts because the Securities will not be redeemable.

6. Section 12(d)(1) also was designed to address the excessive costs and fees that may result from multiple layers of investment companies. Warburg states

[5] A ''majority of the Trust's outstanding Securities'' means the lesser of (i) 67% of the Securities represented at a meeting at which more than 50% of the outstanding Securities are represented, and (ii) more than 50% of the outstanding Securities.

that these concerns do not arise in the case of the Trusts because of the limited ongoing fees and expenses incurred by the Trusts and because generally these fees and expenses will be borne, directly or indirectly, by Warburg or another third party, not by the Holders. In addition, the Holders will not, as a practical matter, bear the organizational expenses (including underwriting expenses) of the Trusts. Warburg asserts that the organizational expenses effectively will be borne by the counterparties in the form of a discount in the price paid to them for the Contracts, or will be borne directly by Warburg, the counterparties, or other third parties. Thus, a Holder will not pay duplicative charges to purchase securities in any Trust. Finally, there will be no duplication of advisory fees because the Trusts will be internally managed by their trustees.

7. Warburg asserts that the investment product offered by the Trusts serves a valid business people. The Trusts, unlike most registered investment companies, are not marketed to provide investors with either professional investment asset management or the benefits of investment in a diversified pool of assets. Rather, Warburg asserts that the Securities are intended to provide Holders with an investment having unique payment and risk characteristics, including an anticipated higher current yield than the ordinary dividend yield on the States at the time of the issuance of the Securities.

8. Warburg believes that the purposes and policies of section 12(d)(1) are not implicated by the Trusts and that the requested exemption from section 12(d)(1) is consistent with the public interest and the protection of investors.

B. Section 14(a)

1. Section 14(a) of the Act requires, in pertinent part, that an investment company have a net worth of at least $100,000 before making any public offering of its shares. The purpose of section 14(a) is to ensure that investment companies are adequately capitalized prior to or simultaneously with the sale of their securities to the public. Rule 14a–3 exempts from section 14(a) unit investment trusts that meet certain conditions in recognition of the fact that, once the units are sold, a unit investment trust requires much less commitment on the part of the sponsor than does a management investment company. Rule 14a–3 provides that a unit investment trust investing in eligible trust securities shall be exempt from the net worth requirement, provided that the trust holds at least $100,000 of eligible trust securities at the commencement of a public offering.

2. Warburg argues that, while the Trusts are classified as management companies, they have the characteristics of unit investment trusts. Investors in the Trusts, like investors in a unit investment trust, will not be purchasing interests in a managed pool of securities, but rather in a fixed and disclosed portfolio that is held until maturity. Warburg believes that the make-up of each Trust's assets, therefore, will be ''locked-in'' for the life of the portfolio, and there is no need for ongoing commitment on the part of the underwriter.

3. Warburg states that, in order to ensure that each Trust will become a going concern, the Securities of each Trust will be publicly offered in a firm commitment underwriting, registered under the Securities Act of 1933, resulting in net proceeds to each Trust of at least $10,000,000. Prior to the issuance and delivery of the Securities of each Trust to the underwriters, the underwriters will enter into an underwriting agreement pursuant to which they will agree to purchase the Securities subject to customary conditions to closing. The underwriters will not be entitled to purchase less than all of the Securities of each Trust. Accordingly, Warburg states that either the offering will not be completed at all or each Trust will have a net worth substantially in excess of $100,000 on the date of the issuance of the Securities. Warburg also does not anticipate that the net worth of the Trusts will fall below $100,000 before they are terminated.

4. Section 6(c) of the Act provides that the SEC may exempt persons or transactions if, and to the extent that, 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. Warburg requests that the SEC issue an order under section 6(c) exempting the Trusts from the requirements of section 14(a). Warburg believes that the exemption is appropriate in the public interest and consistent with the protection of investors and the policies and provisions of the Act.

C. Section 17(a)

1. Sections 17(a)(1) and (2) of the Act generally prohibit the principal underwriter, or any affiliated person of the principal underwriter, of a registered investment company from selling or purchasing any securities to or from that investment company. The result of these provisions is to preclude the Trusts from purchasing Treasuries from Warburg.

2. Section 17(b) of the Act provides that the SEC shall exempt a proposed transaction from section 17(a) if evidence establishes that the terms of the proposed transaction are reasonable and fair and do not involve overreaching, and the proposed transaction are reasonable and fair and do not involve overreaching, and the proposed transaction is consistent with the policies of the registered investment company involved and the purposes of the Act. Warburg requests an exemption from sections 17(a)(1) and (2) to permit the Trusts to purchase Treasuries from Warburg.

3. Warburg states that the policy rationale underlying section 17(a) is the concern that an affiliated person of an investment company, by virtue of this relationship, could cause the investment company to purchase securities of poor quality from the affiliated person or to overpay from securities. Warburg argues that it is unlikely that it would be able to exercise any adverse influence over the Trusts with respect to purchases of Treasuries because Treasuries do not vary in quality and are traded in one of the most liquid markets in the world. Treasuries are available through both primary and secondary dealers, making the Treasury market very competitive. In addition, market prices on Treasuries can be confirmed on a number of commercially available information screens. Warburg argues that because it is one of a limited number of primary dealers in Treasuries, it will be able to offer the Trusts prompt execution of their Treasury purchases at very competitive prices.

4. Warburg states that it only is seeking relief from section 17(a) with respect to the initial purchase of the Treasuries and not with respect to an ongoing course of business. Consequently, investors will know before they purchase a Trust's Securities the Treasuries that will be owned by the Trust and the amount of the cash payments that will be provided periodically by the Treasuries to the Trust and distributed to Holders. Warburg also asserts that whatever risk there is of overpricing the Treasuries will be borne by the counterparties and not by the Holders because the cost of the Treasuries will be calculated into the amount paid on the Contracts. Warburg argues that, for this reason, the counterparties will have a strong incentive to monitor the price paid for the Treasuries, because any overpayment could result in a reduction

in the amount that they would be paid on the Contracts.

5. Warburg believes that the terms of the proposed transaction are reasonable and fair and do not involve overreaching on the part of any person, that the proposed transaction is consistent with the policy of each of the Trusts, and that the requested exemption is appropriate in the public interest and consistent with the protection of investors and purposes fairly intended by the policies and provisions of the Act.

Applicant's Conditions

Warburg agrees that the order granting the requested relief will be subject to the following conditions:

1. Any investment company owning voting stock of any Trust in excess of the limits imposed by section 12(d)(1) of the Act will be required by the Trust's charter documents, or will undertake, to vote its Trust shares in proportion to the vote of all other Holders.

2. The trustees of each Trust, including a majority of the trustees who are not interested persons of the Trust, (i) will adopt procedures that are reasonably designed to provide that the conditions set forth below have been complied with; (ii) will make and approve such changes as are deemed necessary; and (iii) will determine that the transactions made pursuant to the order were effected in compliance with such procedures.

3. The Trusts (i) will maintain and preserve in an easily accessible place a written copy of the procedures (and any modifications to the procedures), and (ii) will maintain and preserve for the longer of (a) the life of the Trusts and (b) six years following the purchase of any Treasuries, the first two years in an easily accessible place, a written record of all Treasuries purchased, whether or not from Warburg, setting forth a description of the Treasuries purchased, the identity of the seller, the terms of the purchase, and the information or materials upon which the determinations described below were made.

4. The Treasuries to be purchased by each Trust will be sufficient to provide payments to Holders of Securities that are consistent with the investment objectives and policies of the Trust as recited in the Trust's registration statement and will be consistent with the interests of the Trust and the Holders of its Securities.

5. The terms of the transactions will be reasonable and fair to the Holders of the Securities issued by each Trust and will not involve overreaching of the Trust or the Holders of Securities of the Trust on the part of any person concerned.

6. The fee, spread, or other remuneration to be received by Warburg will be reasonable and fair compared to the fee, spread, or other remuneration received by dealers in connection with comparable transactions at such time, and will comply with section 17(e)(2)(C) of the Act.

7. Before any Treasuries are purchased by the Trust, the Trust must obtain such available market information as it deems necessary to determine that the price to be paid for, and the terms of, the transaction are at least as favorable as that available from other sources. This will include the Trust obtaining and documenting the competitive indications with respect to the specific proposed transaction from two other independent government securities dealers. Competitive quotation information must include price and settlement terms. These dealers must be those who, in the experience of the Trust's trustees, have demonstrated the consistent ability to provide professional execution of Treasury transactions at competitive market prices. They also must be those who are in a position to quote favorable prices.

For the Commission, by the Division of Investment Management, pursuant to delegated authority.

Margaret H. McFarland,

Deputy Secretary.

[FR Doc. 99–5294 Filed 3–3–99; 8:45 am]

BILLING CODE 8010–01–M

SECURITIES AND EXCHANGE COMMISSION

[Release 34–41104; File No. 600–23]

Self-Regulatory Organizations; Government Securities Clearing Corporation; Notice of Filing and Order Approving a Request for Extension of Temporary Registration as a Clearing Agency

February 24, 1999.

Notice is hereby given that on November 27, 1998, the Government Securities Clearing Corporation (''GSCC'') filed with the Securities and Exchange Commission (''Commission'') an application pursuant to Section 19(a) of the Securities Exchange Act of 1934 (''Act'')[1] requesting that the Commission grant GSCC full registration as a clearing agency or in the alternative extend GSCC's temporary registration as a clearing agency until such time as the Commission is able to grant GSCC permanent registration.[2] The Commission is publishing this notice and order to solicit comments from interested persons and to extend GSCC's temporary registration as a clearing agency until August 31, 1999.

On May 24, 1988, pursuant to Sections 17A(b) and 19(a) of the Act[3] and Rule 17Ab2–1 promulgated thereunder,[4] the Commission granted GSCC registration as a clearing agency on a temporary basis for a period of three years.[5] The Commission subsequently has extended GSCC's registration through February 28, 1999.[6]

GSCC provides clearance and settlement services for its members' transactions in government securities. GSCC offers its members services for next-day settling trades, forward settling trades, auction takedown activity, repurchase transactions, the multilateral netting of trades, the novation of netted trades, and the daily marking-to-the-market. In connection with GSCC's clearance and settlement services, GSCC provides a centralized loss allocation procedure and maintains margin to offset netting and settlement risks.

At the time of GSCC's initial registration, the Commission granted GSCC exemptions from the financial responsibility and operational capability standards of Sections 17A(b)(3)(B) and 17A(b)(4)(B) of the Act and from the fair representation requirements of Section 17A(b)(3)(C) of the Act.[7] The Commission has since determined that GSCC is in compliance with these sections and has eliminated the exemptions.[8] In the Order initially granting GSCC's temporary registration, the Commission also discussed the need for GSCC to amend its standard of care with respect to functions affecting the settlement of government securities. The Commission believes that the issues regarding the appropriate standard(s) of liability of a clearing agency to its members have been resolved. Accordingly, the Commission plans to issue a notice seeking comment on GSCC's permanent registration as a

[1] 15 U.S.C. 78s(a).

[2] Letter from Sal Ricca, President and Chief Operating Officer, GSCC (November 23, 1998).

[3] 15 U.S.C. 78q–1(b) and 78s(a).

[4] 17 CFR 240.17Ab2–1.

[5] Securities Exchange Act Release No. 25740 (May 24, 1988), 53 FR 19639.

[6] Securities Exchange Act Release Nos. 29067 (April 11, 1991), 56 FR 15652; 32385 (June 3, 1993), 58 FR 32405; 35787 (May 31, 1995); 60 FR 30324; 36508 (November 27, 1995), 60 FR 61719; and 37983 (November 25, 1996), 61 FR 64183.

[7] 15 U.S.C. 78q–1(b)(3)(B), 78q–1(b)(4)(B), and 78q–1(b)(3)(C).

[8] Securities Exchange Act Release Nos. 46508 (November 27, 1995), 60 FR 61719 and 39372 (November 28, 1997), 62 FR 64415.

clearing agency in the near future.[9] As a result of the foregoing, the Commission believes that it is appropriate to temporarily approve GSCC's registration as a clearing agency until August 31, 1999.

Interested persons are invited to submit written data, views, and arguments concerning the foregoing application. Such written data, views, and arguments will be considered by the Commission in granting registration or instituting proceedings to determine whether registration should be denied in accordance with Section 19(a)(1) of the Act.[10] 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 amended application for registration and all written comments will be available for inspection at the Commission's Public Reference Room, 450 Fifth Street, NW, Washington, DC 20549. All submissions should refer to File No. 600–23 and should be submitted by March 25, 1999.

It is therefore ordered pursuant to Section 19(a) of the Act, that GSCC's registration as a clearing agency (File No. 600–23) be and hereby is temporarily approved through August 31, 1999.

For the Commission, by the Division of Market Regulation, pursuant to delegated authority.[11]

Margaret H. McFarland,

Deputy Secretary.

[FR Doc. 99–5367 Filed 3–3–99; 8:45 am]

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[9] A detailed discussion of the appropriate standard(s) of liability of a clearing agency to its members will be set forth in that future notice.

[10] 15 U.S.C. 78s(a)(1).

[11] 17 CFR 200.30–3(a)(16).

SECURITIES AND EXCHANGE COMMISSION

[Release No. 34–41098; File No. SR–Amex–98–44]

Self-Regulatory Organizations; Notice of Filing and Order Granting Accelerated Approval of Proposed Rule Change, as Amended, by the American Stock Exchange LLC To Increase to Fifty, the Maximum Permissible Number of Equity and Index Option Contracts in an Order Executable Through AUTO–EX

February 24, 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 November 9, 1998, 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 and II below, which Items have been prepared by the Exchange. On December 31, 1998, the Exchange submitted Amendment No. 1 to the proposed rule change.[3] On February 2, 1999, the Exchange submitted Amendment No. 2 to the proposed rule change.[4] The Commission is publishing this notice to solicit comment on the proposed rule change from interested persons. For the reasons discussed below, the Commission is granting accelerated approval of the proposed rule change, as amended.

I. Self-Regulatory Organization's Statement of the Terms of Substance of the Proposed Rule Change

The Amex proposes to increase the maximum permissible number of equity and index option contracts in an order executable through the AUTO–EX system to 50. The text of the proposed rule change is available at the Office of the Secretary, Amex and at the Commission.

II. Self-Regulatory Organization's Statement of the Purpose of, and Statutory Basis for, the Proposed Rule Change

In its filing with the Commission, the Amex 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 the statements may be examined at the places specified in item III below. The Amex has prepared summaries, set forth in Sections A, B, and C below, of the most significant aspects of such statements.

[1] 15 U.S.C. 78s(b)(1).

[2] 17 CFR 240.19b–4.

[3] *See* Letter from Scott G. Van Hatten, Legal Counsel, Derivative Securities, Amex, to Richard Strasser, Assistant Director, Division of Market Regulation (''Division''), SEC, dated December 31, 1998 (''Amendment No. 1''). In Amendment No. 1, the Amex represents that its systems capacity is sufficient to accommodate the anticipated increased number of automatic executions.

[4] *See* Letter from Scott G. Van Hatten, Legal Counsel, Derivative Securities, Amex, to Richard Strasser, Assistant Director, Division, SEC, dated February 1, 1999 (Amendment No. 2). In Amendment No. 2, the Exchange requests that the Commission find good cause to grant accelerated approval of the proposal.

A. Self-Regulatory Organization's Statement of the Purpose of, and Statutory Basis for, the Proposed Rule Change

In 1985, the Exchange implemented the AUTO–EX system, through which public customer market and marketable limit orders are executed automatically in options at the best bid or offer displayed at the time the order is entered into the Amex Order File (''AOF''). There are, however, limitations on the number of options contracts that can be entered into or executed by these systems. AOF, which handles limit orders routed to the specialist's book as well as orders routed to AUTO–EX, currently allows for the entry of orders of up to 50 option contracts. AUTO–EX, however, is only permitted to execute automatically equity option orders of 20 contracts or less and index option orders of 30 contracts or less,[5] thus market and marketable limit orders of more than 20 or 30 contracts are routed by AOF to the specialist's book.

The Amex is now proposing to increase the maximum permissible number of equity and index option contracts in an order that can be executed through the AUTO–EX system to 50 contracts. Thus, the maximum permissible size of an option order—50 contracts—will be equivalent for both orders entered into the specialist's book and those executed through AUTO–EX. The Amex proposes that this increase in permissible order size to 50 contracts for AUTO–EX be done on a case by case basis for an individual option class, or for all option classes when two floor governors or senior floor officials deem such an increase appropriate. The Amex currently anticipates, however, that the ability to execute orders of up to 50 contracts in AUTO–EX will only occur during high volume, and/or high volatility emergency situations. At all other times, the order size for AUTO–EX will remain at 20 contracts for equity options, and 30 contracts for index options (or such larger size currently in effect for certain index options).

The Amex indicates that AUTO–EX has been extremely successful in enhancing execution and operational efficiencies during emergency situations and during other, non-emergency situations for certain option classes. Automatic executions of orders for up to

[5] While the maximum permissible number of contracts in an index option order executable through AUTO–EX is generally 30 contrcts, there are a few exceptions. (*i.e.*, in the Major Market Index, 50 contract orders may be automatically executed and in the Institutional, Japan and S&P MidCap 400 Indexes, 99 contract orders may be automatically executed.)

50 contracts during such high volume situations will help alleviate the backlogging of orders in the systems and allow for the quick, efficient execution of public customer orders. The Exchange represents that the existing system is sufficient to implement the increase in order size.

The Amex indicates that the proposed rule change is consistent with Section 6(b) of the Act in general and furthers the objectives of Section 6(b)(5) in particular in that it 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 improve 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 does not believe that the proposed rule change will impose 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

The Exchange has neither solicited nor received written comments on 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 proposal 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 to inspection and copying at the Commission's Public Reference Room, 450 Fifth Street, NW., Washington, DC 20549. Copies of such filing will also be available for inspection and copying at the principal office of the Exchange. All submissions should refer to File No. SR–Amex–98–44 and should be submitted by March 25, 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, the requirements of Section 6 of the Act. Section 6(b)(5)[6] of the Act states that the rules of an exchange must be designed to foster cooperation and coordination with persons engaged in regulating, clearing, settling, processing information with respect to, and facilitating securities transactions. These rules also must help to remove impediments to and perfect the mechanism of a free and open market. The Commission believes that increasing to 50 the number of option contracts executable through the Exchange's AUTO–EX order execution system will enable the Exchange to more effectively and efficiently manage increased order flow in actively traded option classes consistent with its obligations under the Act. The Commission also believes, based on representations by the Exchange, that the increase will not expose the Exchange's AUTO–EX system to risk of failure or operational break-down.

Pursuant to Section 19(b)(2),[7] the Commission finds good cause for approving the proposed rule change, as amended, prior to the 30th day after the date of publication of notice thereof in the **Federal Register.**[8] The Commission believes accelerated approval is appropriate to permit the Exchange to immediately increase the size of orders executable through AUTO–EX to respond to the types of emergency situations discussed above.

It is therefore ordered, pursuant to Section 19(b)(2) of the Act,[9] that the proposed change, as amended, (SR–Amex–98–44) is hereby approved on an accelerated basis.

For the Commission, by the Division of Market Regulation, pursuant to delegated authority.[10]

Margaret H. McFarland,

Deputy Secretary.

[FR Doc. 99–5373 Filed 3–3–99; 8:45 am]

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[6] 15 U.S.C. 78f(b)(5).

[7] 15 U.S.C. 78s(b)(2).

[8] In approving this proposal, the Commission has considered its impact on efficiency, competition, and capital formation. 15 U.S.C. 78c(f).

[9] 15 U.S.C. 78s(b)(2).

[10] 17 CFR 200 30–3(a)(12).

SECURITIES AND EXCHANGE COMMISSION

[Release No. 34–41100; File No. SR–Amex–98–31]

Self-Regulatory Organizations; Notice of Filing of Proposed Rule Change and Amendment Nos. 1 and 2 by the American Stock Exchange LLC Relating to Options on the Cure for Cancer Common Stock Index

February 24, 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 give that on August 14, 1998, the American Stock Exchange LLC (''Amex'' or ''Exchange'') filed with the Securities and Exchange Commission (''Commission '') the proposed rule change. The Exchange submitted Amendment No. 1 to its proposal on January 28, 1999,[3] and Amendment No. 2 on February 24, 1999.[4] The proposed rule change, as amended, is 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 Exchange proposes to trade options on the Cure for Cancer Common Stock Index (''Index''), a new index

[1] 15 U.S.C. 78s(b)(1).

[2] 17 CFR 240.19b–4.

[3] In Amendment No. 1, the Exchange amended its eligibility standard for component securities by adding an additional level of trading volume. Further, the Exchange amended its maintenance criteria by raising the percentage of the index that must satisfy Rule 915, clarifying that the Commission has agreed to a specific component of the index satisfying the standard set forth in Amex Rule 916 instead of Amex Rule 915, and specifying that 90% of the weight of the index must have a minimum monthly trading volume of 500,000 shares and 10% of the weight of the index must have a minimum trading volume of 350,000 shares for each of the last six months. *See* Amended Rule 19b–4 Filing (''Amendment No. 1'').

[4] In Amendment No. 2, the Exchange specified its procedure for rebalancing the index in the event of certain types of corporate events, raised its eligibility standard for component securities by raising the level of trading volume required for initial eligibility, clarified that Cell Pathways, Inc. currently satisfies the initial options eligibility criteria of Amex Rule 915, and clarified that the Exchange will maintain the index consistent with its original purpose. Further, the Exchange specified that stock replacements and the handling of non-routine corporate actions will be announced at least ten business days in advance whenever possible. *See* Letter from Scott Van Hatten, Legal Counsel, Amex, to Richard Strasser, Assistant Director, Division of Market Regulation (''Division''), Commission, dated February 23, 1999 (''Amendment No. 2'').

developed by Amex comprising of companies engaged in the research, creation, development and production of cancer fighting drugs, treatments and processes.

II. Self-Regulatory Organization's Statement of the Purpose of, and Statutory Basis for, the Proposed Rule Change

In its filing with the Commission, Amex 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. Amex 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 the Statutory Basis for, the Proposed Rule Change

1. Purpose

The purpose of the proposed rule change is to permit the Exchange to trade standardized options on the Index. The Index is composed of the stocks of twelve companies engaged in the research, creation, development and production of cancer fighting drugs, treatments and processes. Options on the Index will provide investors with a low-cost means to participate in the performance of the cancer research, treatment and cure industry and to hedge against the risk of investing in the industry.

Eligibility Standards for Index Components

Amex, as developer of the Index, is responsible for selecting and maintaining the companies to be included in the Index. The Index conforms with the criteria of Exchange Rule 901C for including stocks in an index on which standardized options trade. In addition, all of the component securities currently meet the following standard: (1) each component has a market capitalization of at least $75 million, except one that has a market value of at least $50 million and accounts for no more than 10% of the weight of the Index; (2) more than 80% of the weight of the Index is accounted for by securities each having a trading volume of not less than 1,000,000 shares over each of the six months and the remaining 20% of the weight of the Index is accounted for by one component having a trading volume of not less than 850,000 shares and the other, specifically agreed to by the Commission, trading not less than 350,000 shares over each of the six months,[5] (3) 75% of the Index's components and its numerical index value currently underlie standardized options; (4) foreign country securities or American Depositary Receipts (''ADR'') thereon are not currently represented in the Index; (5) all component stocks are either listed on the New York Stock Exchange (''NYSE''), Amex, or traded through the facilities of the National Association of Securities Dealers Automated Quotation System (''Nasdaq'') and are reported National Market System (''NMS'') securities; and (6) no component security represents more than 25% of the weight of the Index, and the five highest weighted component securities in the Index do not in the aggregate account for more than 60% of the weight of the Index.

The Exchange believes the potential for manipulation of the Index is minimized for the following reasons: (1) no single component dominates the Index, which is equal-dollar weighted, with each component constituting approximately 8.3% of the Index; (2) 75% of the value of the Index is accounted for by stocks which currently underlie standardized options; and (3) the component stocks are substantial and liquid, having an average market capitalization of $247.43 million, an average of 22.39 million shares outstanding, and a six-month average monthly trading volume of 4.9 million shares.

Index Maintenance

The Index will be maintained by the Exchange consistent with its original purpose (*i.e.*, to include components engaged in the research, creation, development and production of cancer fighting drugs, treatments and processes).[6] The number of shares of each component stock in the Index portfolio will remain fixed between quarterly rebalances except in the event of certain types of corporate actions.[7] If necessary in order to maintain continuity of the Index, its divisor may be adjusted to reflect certain events relating to the component stocks. These events include, but are not limited to, stock distributions, stock splits, reverse stock splits, spin-offs, certain rights issuance, recapitalizations, reorganizations, and mergers and acquisitions. All stock replacements and the handling of non-routine corporate actions will be announced at least ten business days in advance of such effective change, whenever possible. The Exchange will make this information available to the public through dissemination of an information circular.[8]

The Exchange will maintain the Index so that (1) the Index is comprised of no less than nine component securities; (2) the component securities constituting the top 90% of the Index by weight, will have a minimum market capitalization of $75 million and the component stocks constituting the bottom 10% of the Index, by weight, may have a minimum market capitalization of $50 million; (3) 75% of the Index's numerical index value will meet the then current criteria for standardized option trading set forth in Amex Rule 915, except that one component included in the 75% and specifically agreed to by the Commission may meet the then current criteria set forth in Amex Rule 916,[9] (4) foreign country securities or ADRs thereon that are not subject to comprehensive surveillance agreements will not in the aggregate represent more than 20% of the weight of the Index; (5) all component stocks will either be listed on Amex, NYSE, or Nasdaq/NMS; and (6) each of the component stocks shall have a minimum monthly trading volume of at least 500,000 shares for each of the last six months, except that for each of the lowest weighted components in the Index that in the aggregate account for no more than 10% of the weight of the Index, trading volume must be at least 350,000 shares for each of the last six months.[10]

The Exchange shall not open for trading any additional option series should the Index fail to satisfy any of the maintenance criteria set forth above unless such failure is determined by the Exchange not to be significant and the Commission concurs in that determination.

Index Calculation

The Index will be calculated by the Amex using an ''equal-dollar weighted'' methodology. The following is a description of the methodology. As of the market close on December 31, 1992, a portfolio of stocks was established representing an investment of approximately $100,000 in the stock (rounded to the nearest whole share) of

[5] *See* Amendment No. 1, *supra* note 3 and Amendment No.2, *supra* note 4. The Amex represents that it will verify that the individual component securities satisfy this requirement as of February 26, 1999. Telephone conversation between Scott Van Hatten, Legal Counsel, Amex, and Terri Evans, Attorney, Division, Commission, on February 23, 1999.

[6] *See* Amendment No. 2, *supra* note 4.

[7] *Id.*

[8] *Id.*

[9] *See* Amendment No. 1, *supra* note 3.

[10] *Id.*

each of the companies in the index. The value of the Index equals the current market value (*i.e.,* based on U.S. primary market prices) of the sum of the assigned number of shares of each of the stocks in the Index portfolio divided by the Index divisor. The Index divisor was initially determined to yield the benchmark value of 100.00 as of the close of trading on December 31, 1992. Quarterly, following the close of trading on the third Friday of February, May, August and November, the Index portfolio will be adjusted by changing the number of whole shares of each component stock so that each company is again represented in ''equal'' dollar amounts. If necessary, a divisor adjustment is made during the rebalancing to ensure continuity of the Index's value. The newly adjusted portfolio becomes the basis for the Index's value on the first trading day following the quarterly adjustment.

As noted above, the number of shares of each component stock in the Index portfolio remain fixed between quarterly reviews except in the event of certain types of corporate actions such as the payment of a dividend other than an ordinary cash dividend, stock distribution, reorganization, recapitalization, or similar event with respect to the component stocks. In a merger or consolidation of an issuer of a component stock, if the stock remains in the Index, the number of shares of that security of the portfolio may be adjusted, to the nearest whole share, to maintain the component's relative weight in the Index at the level immediately prior to the corporate action. In the event of a stock addition to a replacement, the average dollar value of the remaining components will be calculated and that amount invested in the stock of the new component to the nearest whole share. In all cases, the divisor will be adjusted, if necessary, to ensure Index continuity.

Similar to other stock index values published by the Exchange, the value of the Index will be calculated continuously and disseminated every 15 seconds over the Consolidated Tape Association's Network B.

Expiration and Settlement

The proposed options on the Index will be European style (*i.e.,* exercises permitted at expiration only) and cash settled. Standard option trading hours (9:30 a.m. to 4:02 p.m. (ET)) will apply. The options on the Index will expire on the Saturday following the third Friday of the expiration month. The last trading day in an expiring option series will normally be the second to last business day preceding the Saturday following the third Friday of the expiration month (normally a Thursday). Trading in expiring options will cease at the close of trading on the last trading day.

The Exchange plans to list option series with expirations in the three near-term calendar months and in the two additional calendar months in the March cycle. In addition, longer-term option series having up to thirty-six months to expiration and FLEX Index options may be traded on the Index. Instead of such long-term options on a full value Index level, the Exchange may list long-term, reduced value put and call options based on one-tenth (1/10th) of the Index's full value. The interval between expirations months for either a full value or reduced value long-term option will not be less than six months. The trading of any long-term options, either full or reduced value, would be subject to the same rules that govern the trading of all the Exchange's index options, including sales practice rules, margin requirements and floor trading procedures, and all options will have Europeans style exercise.

The exercise settlement value for all of the Index's expiring options will be calculated based upon the primary exchange regular way opening sale prices for the component stocks. In the case of securities traded through the Nasdaq system, the first reported regular way sale price will be used. If any component stock does not open for trading on its primary market on the last trading day before expiration, then the prior day's last sale price will be used in the calculation.[11]

Exchange Rules Applicable to Stock Index Options

Amex Rules 900C through 980C will apply to the trading of option contracts based on the Index. These Exchange Rules cover issues such as surveillance, exercise prices and position limits. The Index is deemed to be a Stock Index Option under Amex Rule 901C(a) and a Stock Index Industry Group under Amex Rule 900C(b)(1). With respect to Amex Rule 903C(b), the Exchange proposes a list near-the-money (*i.e.,* within ten points above or below the current Index value) option series on the Index at 2½ point strike (exercise) price intervals when the value of the Index is below 200 points. In addition, the Exchange expects that the review required by Amex Rule 904C(c) will result in a position limit of 15,000 contracts with respect to options on this Index. Surveillance procedures currently used to monitor trading in each of the Exchange's other index options will also be used to monitor trading options on the Index.

2. Statutory Basis

The proposed rule change is consistent with Section 6(b) of the Act[12] in general and furthers the objectives of Section 6(b)(5)[13] in particular in that it is designed to prevent fraudulent and manipulative acts and practices, to promote just and equitable principles of trade, and is not designed to permit unfair discrimination between customers, issuers, brokers or dealers.

B. Self-Regulatory Organization's Statement on Burden on Competition

The 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

The Exchange has neither solicited nor received written comments 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 Amex consents, the Commission will:

(A) By order approve such proposed rule change, or

(B) Institute proceedings to determine whether the proposed rule change should be disapproved.

IV. Solicitation of Comments

Interested persons are invited to submit written data, views and arguments concerning the foregoing, including whether the proposed rule change is consistent with the Act. Persons making written submissions should file six copies thereof with the Secretary, Securities and Exchange

[11] The Commission notes that pursuant to Article XVII, Section 4 of the Options Clearing Corporation's (''OCC'') by-laws, 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 (order approving SR–OCC–95–19).

[12] 15 U.S.C. 78f(b).

[13] 15 U.S.C. 78f(b)(5).

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 in Washington, DC. 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–98–31 and should be submitted by March 25, 1999.

For the Commission, by the Division of Market Regulation, pursuant to delegated authority.[14]

Margaret H. McFarland,

Deputy Secretary.

[FR Doc. 99–5374 Filed 3–3–99; 8:45 am]

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SECURITIES AND EXCHANGE COMMISSION

[Release No. 34–41091; File No. SR–Amex-99–07]

Self-Regulatory Organizations; Notice of Filing of Immediate Effectiveness of Proposed Rule Change by the American Stock Exchange LLC Relating to an Amendment to Amex Rule 901C Regarding the Listing and Trading of Generic Narrow-Based Index Options

February 23, 1999.

Pursuant to Section 19(b)(1) of the Securities Exchange Act of 1934, as amended [1] (the ''ACT'') and Rule 19b–4 thereunder,[2] notice is hereby given that on February 9, 1999, the American Stock Exchange LLC (''Amex'' Or ''Exchange'') filed with the Securities and Exchange Commission the proposed rule change as described in Items I, II, and III below, which Items have been prepared by the self-regulatory organization. The Commission is publishing this notice to solicit comments on the proposed rule change from interested persons.

I. Self-Regulatory Organization's Statement of the Terms of Substance of the Proposed Rule Change

The Amex proposes to amend Rule 901C to provide for the trading of narrow-based stock index options pursuant to new Rule 19b–4(e) [3] under the Act.

II. Self-Regulatory Organization's Statement of the Purpose of, and Statutory Basis for, the Proposed Rule Change

In its filing with the Commission, the self-regulatory organization included statements concerning the purpose of and basis for the proposed rule change and discussed any comments it received on the proposed rule change. The text of these statements may be examined at the places specified in Item IV below. The Amex 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 the Statutory Basis for, the Proposed Rule Change

(1) Purpose

The Exchange proposes to amend Amex Rule 901C to provide for the trading of narrow-based stock index options pursuant to new Rule 19b–4(e) under the Act. Amex Rule 901C currently provides that the Exchange may trade options on a new narrow-based index pursuant to Section 19(b)(3)(A) [4] of the Act provided the index meets the generic criteria set forth in Amex Rule 901C. As discussed in the Commission release adopting new Rule 19b–4(e), however, the Exchange would no longer be required to submit, pursuant to new Rule 19b–4(e) under the Act, a proposed rule change to trade options on a new narrow-based index provided the index meets the generic criteria set forth in Exchange Rule 901C.

In its release adopting new Rule 19b–4(e), the Commission noted that in order to rely on the amendment and not submit filings pursuant to Section 19(b)(3)(A)for options that satisfy the criteria of the Generic Narrow-Based Index Option Approval Order,[5] an SRO could submit a proposed rule change for Commission approval to eliminate the Section 19(b)(3)(A) rule filing requirement from its existing rules.[6] Accordingly, to enable the Exchange to use new Rule 19b–4(e), the Exchange proposes to eliminate the Section 19(b)(3)(A) rule filing requirement from Rule 901C. The Exchange represents that use of new Rule 19b–4(e) will be in accordance with the terms and conditions set forth in the order approving the Rule.

The Exchange also proposes to amend Rule 901C to change the term ''Chinese wall'' to ''fire wall.'' The Exchange believes that the use of the term fire wall is appropriate and more accurately describes the informational barriers commonly used in the securities industry.

Finally, the Exchange notes that the release adopting new Rule 19b–4(e) does not become effective until February 22, 1999. Accordingly, the Exchange will not provide for the trading of options on any narrow-based index pursuant to new Rule 19b–4(e) until after February 22, 1999, because, pursuant to Section 19(b)(3)(A) and Rule 19b–4(f)(6) [7] of the Act, this proposal to amend Rule 901C will become operative until thirty days after the date of its filing with the Commission. Therefore, this proposal will not become operative until March 11, 1999.

The Exchange proposes that the following provisions of the Amex Rules be amended as set forth below. [Bracketing] indicates text to be deleted and italicizing indicates text to be added.

Designation of Stock Index Options

Rule 901C. (a)–(c) No change.

Commentary

.01 No change.

.02 The Exchange has received approval, pursuant to [Section 19(b) of] the Securities Exchange Act of 1934 (''Act''), to list options on stock industry index groups pursuant to *Rule 19b–4(e)* [Section 19(b)(3)(A)] of the Act *provided* [The Securities and Exchange Commission stated in its Approval Order that a proposal to list options on stock industry index groups can be effective upon its filing with the Commission provided the Exchange (i) sends a draft of its filing to the Commission at least one week before formally filing the document pursuant to Rule 19b–4 of the Act; (ii) proposes to commence trading in options on the stock industry index group not earlier than 30 days after the date of the filing;

[14] 17 CFR 200.30–3(a)(12).

[1] 15 U.S.C. 78s(b)(1).

[2] 17 CFR 240.19b–4.

[3] Securities Exchange Act Release No. 40761 (December 8, 1998), 63 FR 70952 (December 22, 1998) (''New Products Release'').

[4] 15 U.S.C. 78s(b)(3)(A).

[5] Securities Exchange Act Release No. 34157 (June 3, 1994) 59 FR 30062 (June 10, 1994).

[6] See New Products Release at note 89.

[7] 17 CFR 240.19b–4(f)(6). Former paragraph (e) under Rule 19b–4 was redesignated paragraph (f) when the New Products Release promulgating new paragraph (e) became effective on February 22, 1999.

and (iii)] each of the following criteria are satisfied:

(a) No change.

(b) *Index Calculation*—The index will be calculated based on either the capitalization weighting, price weighting or equal-dollar weighting methodology. Indexes based upon the equal-dollar weighting method will be rebalanced at least quarterly. If the index is maintained by a broker-dealer, the broker-dealer shall erect a ''*fire* [Chinese] wall'' around the personnel who have access to information concerning changes and adjustments to the index and the index shall be calculated by a third party who is not a broker-dealer. The current index value will be disseminated every 15 seconds over the Consolidated Tape Association's Network B.

(c) No change.

(d) *Maintenance of the Index*—Once approved for options trading pursuant to *Rule 19b–4(e)* [Section 19b(3)(A)], the index must continuously maintain the standards set forth above, except that:

(1) No change.

(2) No change.

(3) No change.

(4) No change.

(2) Statutory Basis

The proposed rule change is consistent with Section 6(b) of the Act in general and furthers the objectives of Section 6(b)(5) in particular in that it is designated 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 does not believe that the proposed rule change will impose any burden on competition.

C. Self-Regulatory Organization's Statement on Comments on the Proposed Rule Change Received From Members, Participants or Others

No written comments were solicited or received with respect to the proposed rule change.

III. Date of Effectiveness of the Proposed Rule Change and Timing for Commission Action

The foregoing rule change has become effective pursuant to Section 19(b)(3)(A) and Rule 19b–4(f)(6) of the Act. The proposed rule change does not significantly affect the protection of investors or the public interest; does not impose any significant burden on competition; and does not become operative prior to 30 days after the date the proposed rule change was filed with the Commission. In addition, the Amex provided the Commission with written notice of its intent to file the proposed rule change, along with a brief description and text of the proposed rule change, at least five business days prior to the date of filing the proposed rule change as required by Rule 19b–4(f)(6).

At any time within 60 days of the filing of such proposed rule change, the Commission may summarily abrogate such rule change if it appears to the Commission that such action is necessary or appropriate in the public interest, for the protection of investors, or otherwise in the furtherance of the purposes of the Act.

IV. Solicitation of Comments

Interested persons are invited to submit written data, views and arguments concerning the foregoing, including whether the proposed rule change 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 4 U.S.C. 552, will be available for inspection and copying in the Commission's Public Reference Room in Washington, DC. Copies of such filing will also be available for inspection and copying at the principal office of the Amex. All submissions should refer to file number SR–Amex–99–07 in the caption above and should be submitted by March 25, 1999.

For the Commission by the Division of Market Regulation, pursuant to delegated authority.

Margaret H. McFarland,

Deputy Secretary.

[FR Doc. 99–5375 Filed 3–3–99; 8:45 am]

BILLING CODE 8010–01–M

SECURITIES AND EXCHANGE COMMISSION

[Release No. 34–41108; File No. SR–BSE–99–2]

Self-Regulatory Organizations; Notice of Filing and Immediate Effectiveness of Proposed Rule Change by the Boston Stock Exchange, Inc. Relating to Its Trade Reporting and Comparison Fee Schedule

February 25, 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 29, 1999, the Boston Stock Exchange, Inc. (''BSE'' or ''Exchange'') filed with the Securities and Exchange Commission (''Commission'') the proposed rule change as described in Item I, II, and III below, which Items have been prepared by BSE. The BSE has designated this proposed rule change as establishing or changing a due, fee or other charge under Section 19(b)(3)(A) of the Act, which renders the proposed rule change effective upon receipt of this filing by the Commission.[3] The Commission is publishing this notice to solicit comments on the proposed rule change from interested persons.

I. Self-Regulatory Organization's Statement of the Terms of Substance of the Proposed Rule Change

The BSE proposes to amend its Trade Recording and Comparison Fee Schedule to reduce the rate charged for non-specialist trades executed by a floor broker on another exchange and then transferred into an account at the Exchange for clearing purposes. The text of the proposed rule change is available at the Office of the Secretary, BSE, and at the Commission.

II. Self-Regulatory Organization's Statement of the Purpose of, and Statutory Basis for, the Proposed Rule Change

In its filing with the Commission, BSE included statements concerning the purpose of and basis for the proposed rule change and discussed any comments it received on the proposed rule change. The text of these statements may be examined at the places specified in Item IV below. The BSE has prepared summaries, set forth in Sections A, B, and C below, of the most significant aspects of such statements.

[1] 15 U.S.C. 78s(b)(1).

[2] 17 CFR 240.19b–4.

[3] 15 U.S.C. 78s(b)(3)(A).

A. Self-Regulatory Organization's Statement of the Purpose of, and Statutory Basis for, the Proposed Rule Change

1. Purpose

The purpose of the proposed rule change is to amend the Trade Recording and Comparison Fee Schedule to reduce the rate charged for non-specialist trades executed by a floor broker on another exchange and then transferred into an account at the Exchange for clearing purposes. Because the floor broker is simply facilitating the clearance of the trade at the Exchange, his side of the trade will be reduced to a flat $0.05 per 100 shares from the current volume based rates he currently incurs. This change will more accurately reflect the cost of executing different types of business through the Exchange facilities and systems.

2. Statutory Basis

The Exchange believes the proposed rule change is consistent with Section 6(b)(5)[4] of the Act, in that the proposed rule change is 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; and is not designed to permit unfair discrimination between customers, issuers, brokers, or dealers.

B. Self-Regulatory Organization's Statement on Burden on Competition

The Exchange does not believe that the proposed rule change will impose any 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 on the proposed rule change were neither solicited nor received.

III. Date of Effectiveness of the Proposed Rule Change and Timing for Commission Action

The foregoing rule change establishes or changes a due, fee, or other charge imposed by the Exchange and, therefore, has become effective pursuant to Section 19(b)(3)(A)[5] and subparagraph (f)(2) of Rule 19b–4 thereunder.[6] At any time within 60 days of the filing of the proposed rule change, the Commission may summarily abrogate such rule change if it appears to the Commission that such action is necessary or appropriate in the public interest, for the protection of investors, or otherwise in furtherance of the purposes of the Act.[7]

IV. Solicitation of Comments

Interested persons are invited to submit written data, views, and arguments, concerning the foregoing, including whether the proposed rule change is consistent with the Act. Persons making written submissions should file six copies thereof with the Secretary, Securities and Exchange Commission, 450 Fifth Street, NW, Washington, DC 20549. Copies of the submission, all subsequent amendments, all written statements with respect to the proposed rule change that are filed with the Commission, and all written communications relating to the proposed rule change between the Commission and any person, other than those that may be withheld from the public in accordance with the provisions of 5 U.S.C. 552, will be available for inspection and copying at the Commission's Public Reference Room. Copies of such filing also will be available for inspection and copying at the principal office of BSE. All submissions should refer to File No. SR–BSE–99–2 and should be submitted by March 25, 1999.

For the Commission, by the Division of Market Regulation, pursuant to delegated authority.[8]

Margaret H. McFarland,

Deputy Secretary.

[FR Doc. 99–5372 Filed 3–3–99; 8:45 am]

BILLING CODE 8010–01–M

[4] 15 U.S.C. 78f(b)(5).

[5] 15 U.S.C. 78s(b)(3)(A)(ii).

[6] 17 CFR 240.19b–4(f)(2).

[7] In reviewing this proposal, the Commission has considered the proposal's impact on efficiency, competition, and capital formation. 15 U.S.C. 78c(f).

[8] 17 CFR 200.30–3(a)(12).

SECURITIES AND EXCHANGE COMMISSION

[Release No. 34–41112; File No. SR–CBOE–99–05]

Self-Regulatory Organizations; Order Granting Accelerated Approval of Proposed Rule Change and Notice of Filing and Order Granting Accelerated Approval of Amendment No. 1 to Proposed Rule Change by the Chicago Board Options Exchange, Incorporated Relating to Listing of Options on the Dow Jones E* Commerce Index

February 25, 1999.

I. Introduction

On January 28, 1999, the Chicago Board Options Exchange, Incorporated (''CBOE'' or ''Exchange''), submitted to the Securities Exchange Commission (''SEC'' or ''Commission''), pursuant to Section 19(b)(1) of the Securities Exchange Act of 1934 (''Exchange 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 E*Commerce Index, (''E*Commerce Index'' or ''Index'') a narrow-based index designed by Dow Jones & Company, Inc. (''Dow Jones ™'').[3] The Commission published the proposed rule change for comment in the **Federal Register** on February 4, 1999.[4] No comments were received. On February 17, 1999, the CBOE submitted Amendment No. 1 to the proposed rule.[5] This order approves the proposed rule change on an accelerated basis and also Amendment No. 1 on an accelerated basis.

II. Description of the Proposal

A. Index Design

The E*Commerce Index has been designed to measure the performance of certain Internet commerce stocks. All of the stocks in the Index are U.S.

[1] 15 U.S.C. 78s(b)(1).

[2] 17 CFR 240.19b–4.

[3] Dow Jones & Company, Inc. (''Dow Jones'') has licensed ''Dow Jones™,'' and ''Dow Jones E*Commerce Index'' for use for certain purposes to the Chicago Board Options Exchange, Incorporated. CBOE's options based on the Dow Jones E*Commerce Index are not sponsored, endorsed, sold or promoted by Dow Jones, and Dow Jones makes no representation regarding the advisability of investing in such products.

[4] Securities Exchange Act Release No. 40995 (January 28, 1999) 64 FR 5693 (February 4, 1999).

[5] Amendment No. 1 clarifies that the base date for the Dow Jones E*Commerce Index has been changed to June 30, 1998. The index level on that date was set to 100.00. Based on this adjustment, the index level on January 21, 1999 was 233.75. *See* letter from William M. Speth, Research and Planning, CBOE to Marianne H. Duffy, Special Counsel, Division of Market Regulation, SEC, dated February 17, 1999.

securities and currently trade through the facilities of the National Association of Securities Dealers Automated Quotation System (''Nasdaq'') and are reported national market system securities. In addition, all of the stocks are ''reported securities'' as defined in Rule 11Aa3–1 under the Exchange Act. The Exchange seeks to list and trade cash-settled, European-style stock index options on the Dow Jones E*Commerce Index. The Index is a modified capitalization-weighted index of 15 of the largest, most liquid U.S. Internet commerce stocks. Internet commerce companies are involved in providing a good or service through an open network such as the Internet.

The Exchange represents that in all but one respect, options on the E*Commerce Index meet the generic listing criteria for options on narrow-based indexes which may be filed with the Commission under Exchange Rule 24.2(b) as a stated policy, practice, or interpretation within the meaning of paragraph (3)(A) of section 19(b) of the Exchange Act. The only variation is that the Index is calculated using a modified capitalization-weighting methodology.

Each of the stocks in the E*Commerce Index has a market capitalization in excess of $75 million. Specifically, the stocks comprising the Index range in capitalization from $378.9 million to $26.15 billion as of January 21, 1999. The total capitalization as of that date was $76.50 billion. The mean capitalization was $5.10 billion. The median capitalization was $1.94 billion.

The CBOE indicated in its filing that all but two of the component stocks met the trading volume criteria set forth in paragraph (b)(3) of CBOE Rule 24.2. E–Bay, Inc. did not meet the criteria of CBOE Rule 24.2(b)(e) because it was the subject of an initial public offering on September 24, 1998. Since that time, however, E–Bay, Inc. has exceeded the trading volume criteria.[6] Ticketmaster On-line CitySearch does not meet the volume criteria because it was the subject of a spin-off on December 3, 1998. However, the Exchange represents that the company currently satisfies the requirements of CBOE Rule 5.3 applicable to individual underlying securities and is the subject of options trading. Furthermore, since the company was spun off, it has averaged 1.51 million shares per day. The Exchange represents that each of the component stocks in the E*Commerce Index has had monthly trading volume in excess of one million shares over the six month period through January 1999. The average monthly volume over the six-month period for the stocks in the Index ranged from a low of 8.3 million shares to a high of 292.5 million shares. Consequently, all of the fifteen stocks in the Index are eligible for individual options trading pursuant to CBOE Rule 5.3.

As of the initial re-balancing on January 4, 1999, the largest stock accounted for 10.00% of the total weight of the Index, while the smallest accounted for 1.43%. The top five stocks in the Index accounted for 50.00% of the total weight of the Index. Accordingly, the Exchange's generic listing standards for narrow based indexes are more than met with respect to the criteria of market capitalization, weighting constraints and trading volume.

B. Calculation and Dissemination of Index Value

The E*Commerce Index is calculated on a ''modified capitalization-weighted'' method. This method is a hybrid between equal weighting (which may pose liquidity concerns for smaller-cap stocks) and normal-cap weighting (which may result in two or three stocks dominating the index's performance). Under this method, the maximum weight for any stock in the Index will be set to 10%, or ''capped,'' on the quarterly rebalancing date. The weight of all the remaining stocks shall be market capitalization weighted. Thus, the weights of these remaining stocks are not ''capped.''

For stocks which are not ''capped,'' index shares will equal the company's outstanding common shares. For stocks that are ''capped,'' index shares will equal their maximum weight, multiplied by the adjusted total market capitalization of the Index, divided by the stock's closing price on the rebalancing date. The index's adjusted total market capitalization is the total outstanding market capitalization adjusted to reflect the combined weight of all of the ''capped'' stocks.

The level of the Index reflects the adjusted total capitalization of the component stocks divided by the Index Divisor. The Index divisor was initially calculated to yield a benchmark level of 100 at the close of trading on June 30, 1998. Based on this adjustment, the index level on January 21, 1999 was 233.75[7] The Index divisor will be adjusted as needed to ensure continuity whenever there are additions or deletions from an index, share changes, or adjustments to a component's price to reflect rights offerings, spin-offs and special cash dividends.

The values of the Index will be calculated by Dow Jones or its designee and will be disseminated to market information vendors at 15-second intervals during regular CBOE trading hours via the Options Price Reporting Authority or the Consolidated Tape Association. If a component stock is not currently being traded, the most recent price at which the stock traded will be used in the Index calculation.

C. Index Maintenance

The CBOE represents that Dow Jones is responsible for maintenance of the E*Commerce Index. Index maintenance generally includes monitoring and completing the adjustments for company additions and deletions, stock splits, stock dividends (other than an ordinary cash dividend), and stock price adjustments due to company restructuring or spin-offs. If required, the Index Divisor will be adjusted to account for any of the above changes.

The Exchange represents that the Index will satisfy the maintenance criteria set forth in CBOE Rule 24.2(c). The Index will be re-balanced at the close of business on expiration Friday on the March quarterly cycle. In addition, the number of Index components will not increase to more than 20 nor decrease to fewer than 10. Component changes will be made such that 90% of the Index by weight and 80% of the total number of stocks in the index are eligible for options trading under CBOE Rule 5.3.

If the Index fails at any time to satisfy the maintenance criteria, the CBOE will immediately notify the Commission and will not open for trading any additional series of options on the Index, unless the continued listing of options has been approved by the Commission under Section 19(b)(2) of the Exchange Act.

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. Exhibit C to File No. SR–CBOE–99–05 presents proposed contract specifications for the E*Commerce Index options.

[6] Telephone call between Eileen Smith, Research and Planning, CBOE and Katherine A. England, Assistant Director, Division of Market Regulation, SEC on February 25, 1999.

[7] *See* Amendment No. 1, supra note 1.

Strike prices will be set to bracket the index in a minimum of 2½ point increments for strikes below 200 and 5 point increments above 200. The minimum tick size for series trading below $3 will be 1/16 and for series trading above $3 the minimum tick will be ⅛. 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 CBOE proposes that 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 stock fails to open for trading, the last available price on the stock will be used in the calculation of the index, as is done for currently listed indexes. When the last trading day is moved because of Exchange holidays (such as when 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 Exchange's other index options to monitor trading in Index options and Index LEAPS. Options on the E*Commerce Index would be subject to the position limits for industry index options set forth in CBOE Rule 24.4A.

G. Exchange Rules Applicable

The Rules in Chapter XXIV will be applicable to options on the E*Commerce Index. Narrow-based margin rules will apply to the Index as set forth in CBOE Rule 24.11.

H. Capacity

CBOE believes it has the necessary systems capacity to support new series that would result from the introduction of options on the E*Commerce Index. CBOE has also been informed that the Options Price Reporting Authority (''OPRA'') also has the capacity to support the new series.

III. Discussion

The Commission finds that proposed rule change is consistent with Section 6(b)[8] of the Act in general and furthers the objectives of Section 6(b)(5)[9] in particular. Specifically, the Commission finds that the trading of options based on the E*Commerce 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 E*Commerce Index will serve to protect investors and contribute to the maintenance of fair and orderly markets.[11]

Nevertheless, the trading of options on the E*Commerce Index raises several issues related to the design and structure of the Index, customer protection, surveillance, and market impact. The Commission, believes, however, that the CBOE has adequately addressed these issues.

A. Index Design and Structure

The Commission believes that it is appropriate for the CBOE to designate the Index as narrow-based for purposes of index option trading. First, the E*Commerce Index has been designed to measure the performance of certain Internet commerce stocks. The Index is a modified capitalization-weighted index of 15 of the largest, most liquid U.S. Internet commerce stocks. Internet commerce companies are involved in providing a good or service through an open network such as the Internet.

Second, all of the stocks in the Index are U.S. securities and currently trade through the facilities of the Nasdaq and are reported national market system securities. In addition, all of the stocks are ''reported securities'' as defined in Rule 11Aa3–1 under the Exchange Act. The CBOE indicated in its filing that all but two of the component stocks met the trading volume criteria set forth in paragraph (b)(3) of CBOE Rule 24.2. E-Bay, Inc. did not meet the criteria of CBOE Rule 24.2(b)(e) because it was the subject of an initial public offering on September 24, 1998. E-Bay, Inc., however, met the criteria of CBOE Rule 24.2(b)(e) in February 1999. Ticketmaster On-line CitySearch does not meet the volume criteria because it was the subject of a spin-off on December 3, 1998. However, the Exchange represents that the company currently satisfies the requirements of CBOE Rule 5.3 applicable to individual underlying securities and is the subject of options trading. Furthermore, since the company was spun off, it has averaged 1.51 million shares per day. The Exchange represents that each of the component stocks in the E*Commerce Index has had monthly trading volume in excess of one million shares over the six month period through January 1999. The average monthly volume over the six-month period for the stocks in the Index ranged from a low of 8.3 million shares to a high of 292.5 million shares. Consequently, all of the fifteen stocks in the Index are eligible for options trading.

The Exchange also represents that the Index will satisfy the maintenance criteria set forth in CBOE Rule 24.2(c). The Index will be re-balanced at the close of business on expiration Friday on the March quarterly cycle. In addition, the number of Index components will not increase to more than 20 nor decrease to fewer than 10. Component changes will be made such that 90% of the Index by weight and 80% of the total number of stocks in the index are eligible for options trading under CBOE Rule 5.3.[12]

[8] 15 U.S.C. 78f(b).

[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 Internet commerce stocks.

[11] In approving this proposed rule change, the Commission notes that that it has considered the proposed rule's impact on efficiency, competition and capital formation. 15 U.S.C. 78c(f).

[12] The Exchange's option listing standards, contained in CBOE Rule 5.3, which are uniform among the options exchanges, provide that a security underlying an option must, among other things, meet the following requirements: the public float must be at least 7 million shares; there must be a minimum of 2,000 stockholders; trading volume must have been at least 2.4 million shares over the preceding twelve months; and the market price per share must have been at least $7.50 for a majority of business days during the preceding three calendar months.

Third, the Exchange represents that in all but one respect, options on the E*Commerce Index meet the generic listing criteria for options on narrow-based indexes which may be filed with the Commission under Exchange Rule 24.2(b) as a stated policy, practice, or interpretation within the meaning of paragraph (3)(A) of subsection 19(b) of the Exchange Act. The only variation is that the Index is calculated using a modified capitalization-weighting methodology.

B. Potential for Manipulation

The Commission also believes that 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 Index is a modified capitalization-weighted index whose value is more difficult to affect than that of a price-weighted index. Second, the CBOE has represented that the Index will satisfy the maintenance criteria set forth in CBOE Rule 24.2(c). The Index will be re-balanced at the close of business on expiration Friday on the March quarterly cycle. In addition, the number of Index components will not increase to more than 20 nor decrease to fewer than 10. Component changes will be made such that 90% of the Index by eight and 80% of the total number of stocks in the index are eligible for options trading under CBOE Rule 5.3.

If the Index fails at any time to satisfy the maintenance criteria, the CBOE will immediately notify the Commission and will not open for trading any additional series of options on the Index, unless the continued listing of options has been approved by the Commission under Section 19(b)(2) of the Exchange Act.[13]

Third, the Exchange has proposed reasonable position and exercise limits for the index options that will serve to minimize potential manipulation and other market 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 occur in an environment that is designed to ensure, among other things, that: the special risks of options are disclosed to public customers; only investors capable of evaluating the bearing the risks of options trading are engaged in such trading; and special compliance procedures are applicable to options accounts. Accordingly, because the Index options, including LEAPS and reduced-value LEAPS, will be subject to the same regulatory regime as other standardized options currently traded on the CBOE, the Commission believes that adequate safeguards are in place to ensure 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 deter potential manipulations and other trading abuses, thereby making the stock index product less readily susceptible to manipulation.[14] In this regard, the CBOE and the market upon which all of the Index component stocks trade, Nasdaq, through the National Association of Securities Dealers, Inc., are members of the Intermarket Surveillance Group. In addition, the Exchange will apply the same surveillance procedures as those used for existing narrow-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 Wall Street Journal managerial and editorial staff in connection with maintenance of the Index.

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.[15] First, as described above, the Index is narrow-based and comprised of 15 stocks, with no one stock dominating the Index. Second, the Exchange has proposed reasonable position and exercise limits for the index options that will serve to minimize potential manipulation and other market concerns. Third, currently, all Index components are eligible for options trading under CBOE rule 5.3 and the CBOE has represented that the Index will satisfy the maintenance criteria set forth in CBOE Rule 24.2(c). The Index will be re-balanced at the close of business on expiration Friday on the March quarterly cycle. In addition, the number of Index components will not increase to more than 20 nor decrease to fewer than 10. Component changes will be made such that 90% of the Index by weight and 80% of the total number of stocks in the index are eligible for options trading under CBOE Rule 5.3. If the Index fails at any time to satisfy the maintenance criteria, the CBOE will immediately notify the Commission and will not open for trading any additional series of options on the Index, unless the continued listing of options has been approved by the Commission under Section 19(b)(2) of the Exchange Act.[16]

Fourth, the risk to investors of contra-party one-performance will be minimized because the Index options, LEAPS, and reduced-value LEAPS will be issued and guaranteed by the Options Clearing Corporation, similar to all other standardized options traded in the United States. Lastly, the Commission believes that settling expiring options based on the opening prices of component securities is reasonable and consistent with the Exchange 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 the adverse effects on markets for stock underlying options on the Index.[17]

[13] 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 Exchange Act is necessary to continue to trade the Index options.

[14] *See e.g.,* Securities Exchange Act Release No. 31243 (September 28, 1992), 57 FR 45849 (October 5, 1992) (order approving the listing and trading of options on the CBOE Biotech Index).

[15] 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.

[16] *See* note 13, supra.

[17] *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

F. Accelerated Approval of Proposed Rule Change and Amendment No. 1

The Commission finds good cause to approve the proposed rule change prior to the thirtieth day after the date of publication of notice of filing thereof in the **Federal Register**. First, the Commission notes that no comments were received on the original proposal, which was subject to the full 21-day notice and comment period. Second, the Commission 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. The Commission also believes that the Index options will provide investors with an important trading and hedging mechanism.[18] Finally, the Commission believes that the trading of options on the E*Commerce Index will serve to broaden the hedging and investment opportunities of investors.

With respect to Amendment No. 1, 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.[19] Specifically, Amendment No. 1 clarifies that the base date for the E*Commerce Index has been changed to June 30, 1998. The index level on that date was set to 100.00. Based on this adjustment, the index level on January 21, 1999 was 233.75.[20]

Accordingly, the Commission believes that it is consistent with Sections 6(b)(5) and 19(b)(2)[21] of the Act to approve the proposed rule change, and Amendment No. thereto, on an accelerated basis.

IV. Solicitation of Comments

Interested person are invited to submit written data, views and arguments concerning the foregoing, including whether the proposal 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 Section, 450 Fifth Street, NW, Washington, DC 20549. Copies of such filing will also be available for inspection and copying at the principal office of CBOE. All submissions should refer to file number SR–CBOE–99–05 in the caption above and should be submitted by March 25, 1999.

V. Conclusion

It is therefore ordered, pursuant to Section 19(b)(2) of the Act, that the proposed rule change (SR–CBOE–99–05), including Amendment No. 1, is approved.

For the Commission, by the Division of Market Regulation, pursuant to delegated authority.[22]

Margaret H. McFarland,

Deputy Secretary.

[FR Doc. 99–5371 Filed 3–3–99; 8:45 am]

BILLING CODE 8010–01–M

based on the opening prices of component securities).

[18] *See* note 10, supra.

[19] *See* note 5, supra.

[20] In the original proposal the Index divisor was initially calculated to yield a benchmark level of 200.00 at the close of trading on January 4, 1999 with the Index having a closing level of 259.43 on January 21, 1999.

[21] 15 U.S.C. 78s(b)(2).

[22] 17 CFR 200.30–3(a)(12).

SECURITIES AND EXCHANGE COMMISSION

[Release 34–41103; International Series Release No. 1185; File No. 600–20]

Self-Regulatory Organizations; International Securities Clearing Corporation; Notice of Filing and Order Approving a Request for Extension of Temporary Registration as a Clearing Agency

February 24, 1999.

Notice is hereby given that on February 1, 1999, the International Securities Clearing Corporation (''ISCC'') filed with the Securities and Exchange Commission (''Commission'') an application pursuant to Section 19(a) of the Securities Exchange Act of 1934 (''Act'')[1] requesting that the Commission extend ISCC's temporary registration as a clearing agency for one year.[2] The Commission is publishing this notice and order to solicit comments from interested persons and to extend ISCC's temporary registration as a clearing agency until February 29, 2000.

On May 12, 1989, pursuant to Sections 17A(b) and 19(a) of the Act[3] and rule 17Ab2–1 promulgated thereunder,[4] the Commission granted ISCC's application for registration as a clearing agency for a period of eighteen months.[5] Since that time, the Commission has extended ISCC's temporary registration through February 28, 1999.[6]

ISCC was created to provide safe and efficient clearance and settlement of securities transactions between United States broker-dealers and foreign financial institutions. ISCC serves this function through its Global Clearance Network service and through its settlement links with foreign clearing entities such as the Euroclear system, which is operated by the Brussels Office of Morgan Guaranty Trust Company of New York.[7]

As part of ISCC's temporary registration, the Commission granted ISCC a temporary exemption from compliance with Section 17A(b)(3)(C) of the Act,[8] which requires that the rules of a clearing agency assure the fair representation of its shareholders or members and participants in the selection of its directors and administration of its affairs. The Commission granted this temporary exemption due to ISCC's limited participant base. In July 1997, the Commission approved ISCC's new structure for matters relating to its corporate governance.[9] The Commission concluded that these changes were consistent with ISCC's obligation to provide fair representation to its participants and eliminated its exemption from Section 17A(b)(3)(C) of the Act. However, due to internal reorganization considerations, the changes were not implemented. Accordingly, ISCC has requested that the Commission reinstate its exemption from the fair representation requirements.

Because ISCC has not yet implemented its new structure, the Commission is reinstating ISCC's temporary exemption from the fair representation requirements of Section

[1] 15 U.S.C. 78s(a).

[2] Letter from Julie Beyers, Vice President and Associate Counsel, ISCC (January 28, 1999).

[3] 15 U.S.C. 78q–1(b) and 78s(a).

[4] 17 CFR 240.17Ab2–1.

[5] Securities Exchange Act Release No. 26812 (May 12, 1989), 54 FR 21691.

[6] Securities Exchange Act Release Nos. 28606 (November 16, 1990), 55 FR 47976; 30005 (November 27, 1991), 56 FR 63747; 33233 (November 22, 1993), 58 FR 63195; 36529 (November 29, 1995), 60 FR 62511; 37986 (November 25, 1996), 61 FR 64184; 38703 (May 30, 1997), 62 FR 31183; and 39700 (February 26, 1998) 63 FR 10669.

[7] Securities Exchange Act Release Nos. 29841 (October 18, 1991), 56 FR 55960 (order approving ISCC's Global Clearance Network service) and 32564 (June 30, 1993), 58 FR 36722 (order approving linkage with Euroclear).

[8] 15 U.S.C. 78q–1(b)(3)(C).

[9] Securities Exchange Act Release No. 38846 (July 17, 1997), 62 FR 39562.

17A(b)(3)(C) and is extending ISCC's temporary registration as a clearing agency through February 29, 2000.

Interested persons are invited to submit written data, views, and arguments concerning the foregoing application. Such written data, views, and arguments will be considered by the Commission in granting registration or instituting proceedings to determine whether registration should be denied in accordance with Section 19(a)(1) of the Act.[10] 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 amended application for registration and all written comments will be available for inspection at the Commission's Public Reference Room, 450 Fifth Street, NW., Washington, DC 20549. All submissions should refer to File No. 600–20 and should be submitted by March 25, 1999.

It is therefore ordered pursuant to Section 19(a) of the Act, that ISCC's registration as a clearing agency (File No. 600–20) be and hereby is temporarily approved through February 29, 2000.

For the Commission, by the Division of Market Regulation, pursuant to delebated authority.[11]

Margaret H. McFarland,

Deputy Secretary.

[FR Doc. 99–5368 Filed 3–3–99; 8:45 am]

BILLING CODE 8012–01–M

SECURITIES AND EXCHANGE COMMISSION

[Release No. 34–41106; File No. SR–DTC–98–25]

Self-Regulatory Organizations; The Depository Trust Company; Notice of Filing and Immediate Effectiveness of Proposed Rule Change Relating to Fees for Domestic Tax Information

February 25, 1999.

Pursuant to Section 19(b)(1) of the Securities Exchange Act of 1934 (''Act''),[1] notice is hereby given that on December 11, 1998, The Depository Trust Company (''DTC'') 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 primarily by DTC. The Commission is publishing this notice to solicit comments from interested persons on the proposed rule change.

I. Self-Regulatory Organization's Statement of the Terms of Substance of the Proposed Rule Change

The proposed rule change establishes the fees charged by DTC for various services provided.

II. Self-Regulatory Organization's Statement of the Purpose of, and Statutory Basis for, the Proposed Rule Change

In its filing with the Commission, DTC 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. DTC has prepared summaries, set forth in sections (A), (B), and (C) below, of the most significant aspects of such statements.[2]

(A) Self-Regulatory Organization's Statement of the Purpose of, and Statutory Basis for, the Proposed Rule Change

The purpose of the proposed rule change is to establish fees for providing domestic tax information. For domestic tax information transmitted through DTC's Computer-to-Computer Facility (CCF), effective December 15, 1998, DTC will charge the following fees.

Service	Present fee	Proposed fee
XIX. Participant Output Services:		
• Computer-to-Computer Facility:		
(CCF) Output Transmissions:		
—Domestic Tax Reporting Service Master File (DTAXMF)	None	$200 per request.
—Domestic Tax Reporting Service Update (DTAXUP)	None	$150 per month.

For domestic tax information transmitted through DTC's Participant Terminal System (PTS), effective December 15, 1998, DTC will apply its current PTS inquiry fee of $.09 per inquiry.

DTC believes the proposed rule change is consistent with the requirements of section 17A of the Act[3] and the rules and regulations thereunder applicable to DTC since the proposed fees will be equitably allocated among participants obtaining tax information.

(B) Self-Regulatory Organization's Statement on Burden on Competition

DTC does not believe that the proposed rule change will impose 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

No comments on the proposed rule change were solicited or received.

III. Date of Effectiveness of the Proposed Rule Change and Timing for Commission Action

The foregoing rule change has become effective pursuant to Section 19(b)(3)(A)(ii)[4] of the Act and pursuant to rule 19b–4(f)(2)[5] promulgated thereunder because the proposal establishes or changes a due, fee, or other charge imposed by DTC. At any time within sixty days of the filing of such proposed rule change, the Commission may summarily abrogate such rule change if it appears to the Commission that such action is necessary or appropriate in the public interest, for the protection of investors, or otherwise in furtherance of the purposes of the Act.

IV. Solicitation of Comments

Interested persons are invited to submit written data, views, and arguments concerning the foregoing, including whether the proposed rule change 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

[10] 15 U.S.C. 78s(a)(1).

[11] 17 CFR 200.30–3(a)(16).

[1] 15 U.S.C. 78s(b)(1).

[2] The Commission has modified the text of the summaries prepared by DTC.

[3] 15 U.S.C. 78q–1.

[4] 15 U.S.C. 78s(b)(3)(A)(ii).

[5] 17 CFR 240.19b–4(f)(2).

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 Section, 450 Fifth Street, NW, Washington, DC 20549. Copies of such filing also will be available for inspection and copying at the principal office of DTC. All submissions should refer to File No. SR–DTC–98–25 and should be submitted by March 25, 1999.

For the Commission by the Division of Market Regulation, pursuant to delegated authority.[6]

Margaret H. McFarland,

Deputy Secretary.

[FR Doc 99–5369 Filed 3–3–99; 8:45 am]

BILLING CODE 8010–01–M

SECURITIES AND EXCHANGE COMMISSION

[Release No. 34–41105; File No. SR–DTC–99–02]

Self-Regulatory Organizations; The Depository Trust Company; Notice of Filing and Immediate Effectiveness of Proposed Rule Change Concerning DTC's Automated Domestic Tax Reporting Service

February 25, 1999.

Pursuant to Section 19(b)(1) of the Securities Exchange Act of 1934 (''Act''),[1] notice is hereby given that on February 5, 1999, The Depository Trust Company (''DTC '') filed with the Securities Exchange Commission (''Commission''), the proposed rule change as described in Items I, II, and III below, which items have been prepared primarily by DTC. The Commission is publishing this notice to solicit comments from interested persons on the proposed rule change.

I. Self-Regulatory Organization's Statement of the Terms of Substance of the Proposed Rule Change

The proposed rule change will provide an automated domestic tax reporting service (''DTAX'') accessible through DTC's Participant Terminal System (''PTS'') and computer-to-computer facility (''CCF'').

[6] 17 CFR 200.30–3(a)(12).

[1] 15 U.S.C. 78s(b)(1).

II. Self-Regulatory Organization's Statement of the Purpose of, and Statutory Basis, the Rule Change

In its filing with the Commission, DTC 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. DTC has prepared summaries, set forth in sections (A), (B), and (C) below, of the most significant aspects of such statements.[2]

(A) Self-Regulatory Organization's Statement of the Purpose of, and Statutory Basis for the Proposed Rule Change

The purpose of the proposed rule change is to provide participants with automated access to centralized tax information on securities distributions through DTC's PTS DPT and CCF facilities. Many issuers of securities announce regular income distributions throughout the year, reclassifying their tax status at year-end to indicate long term and short term capital gains, return of capital, as well as other taxable events. DTC believes that participants require timely access to this information to comply with their record keeping and reporting requirements and procedures.

Previously, DTC distributed tax information through its website and the PTS Legal Notice System, LENS, as well as in hardcopy notices distributed by DTC's Dividend Department. Expansion of this service to an automated and centralized data bank, with inquiry capabilities on PTS, will provide participants with more efficient and timely access to the information.[3]

The proposed rule change is consistent with the requirements of Section 17A of the Act[4] and the rules and regulations thereunder applicable to DTC since the proposed rule change will give participants easier access to necessary tax information on securities distributions. The proposed rule change will be implemented consistently with the safeguarding of securities and funds in DTC's custody or control or for which it is responsible since the information shall be available to DTC's participants through DTC's PTS and CCF facilities.

[2] The Commission has modified the text of the summaries prepared by DTC.

[3] The fees charged in connection with the automated domestic tax reporting service were filed with the Commission on December 10, 1998 [File No. SR–DTC–98–25].

[4] 15 U.S.C. 78q–1.

(B) Self-regulatory Organization's Statement on Burden on Competition

DTC perceives no impact on competition by reason of the proposed rule change.

(C) Self-Regulatory Organization's Statement of Comments on the Proposed Rule Change Received from Members, Participants or Others

The proposed rule change was developed through discussions with several participants. Written comments from DTC participants or others have not been solicited or received on the proposed rule change.

III. Date of Effectiveness of the Proposed Rule Change and Timing for Commission Action

The foregoing rule change has become effective pursuant to Section 19(b)(3)(A)(iii) of the Act[5] and Rule 19b–4(f)(4) thereunder[6] because the proposal effects a change in an existing service of DTC that (i) does not adversely affect the safeguarding of securities or funds in the custody or control of DTC or for which it is responsible and (ii) does not significantly affect the respective rights or obligations of DTC or persons using the service. At any time within sixty days of the filing of such rule change, the Commission may summarily abrogate such rule change if it appears to the Commission that such action is necessary or appropriate in the public interest, for the protection of investors, or otherwise in furtherance of the purposes of the Act.

IV. Solicitation of Comments

Interested persons are invited to submit written data, views, and arguments concerning the foregoing, including whether the proposed rule change is consistent with the Act. Persons making written submissions should filed 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

[5] 15 U.S.C. 78s(b)(3)(A)(iii).

[6] 17 CFR 240.19b–4(e)(4).

Section, 450 Fifth Street, NW,. Washington, DC 20549. Copies of such filing also will be available for inspection and copying at the principal office of DTC. All submissions should refer to File No. SR–DTC–99–02 and should be submitted by March 25, 1999.

For the Commission by the Division of Market Regulation, pursuant to delegated authority.[7]

Margaret H. McFarland,

Deputy Secretary.

[FR Doc. 99–5370 Filed 3–3–99; 8:45 am]

BILLING CODE 8010–01–M

DEPARTMENT OF STATE

[Public Notice No. 2985]

The Interagency Ballast Water Working Group; Notice of Public Meeting

The Federal Interagency Ballast Water Working Group will conduct an open meeting on Tuesday, March 16, 1999, at 4:00 pm, in Room 3328, Department of Transportation, 407 7th Street, S.W., Washington, D.C. 20590.

The purpose of this meeting will be to discuss and prepare the U.S. position for treaty negotiations relating to International regulations for Ballast Water Management. These negotiations will be conducted at the 43rd session of the Marine Environment Protection Committee (MEPC 43) of the International Maritime Organization. MEPC 43 will be held from June 28, to July 2, 1999.

Members of the public may attend this meeting up to the seating capacity of the room. Information requests and comments may be submitted electronically to *cboes@comdt.uscg.mil.* For further information pertaining to this meeting, contact Lieutenant Junior Grade Christopher Boes, U.S. Coast Guard Headquarters (G–MSO–4), 2100 Second Street, SW, Washington, DC 20593–0001; Telephone: (202) 267–0713.

Dated: February 26, 1999.

Stephen M. Miller,

Executive Secretary, Shipping Coordinating Committee.

[FR Doc. 99–5376 Filed 3–3–99; 8:45 am]

BILLING CODE 4710–07–U

[7] 17 CFR 200.30–3(a)(12).

DEPARTMENT OF STATE

[Public Notice No. 2986]

Shipping Coordinating Committee; Subcommittee on Safety of Life at Sea; Working Group on Bulk Liquids and Gases; Notice of Meetings

The Working Group on Bulk Liquids and Gases (BLG) of the Subcommittee on Safety of Life at Sea (SOLAS) will conduct an open meeting at 9:30 AM on Thursday, April 1, 1999 in Room 6103, U.S. Coast Guard Headquarters, 2100 Second Street, S.W., Washington, DC 20593–0001. The purpose of the meeting is to finalize preparations for the Fourth Session of the Subcommittee on Bulk Liquids and Gases of the International Maritime Organization (IMO) which will be held on April 12–16, 1999, at the IMO Headquarters in London.

The agenda items of particular interest:

—Additional safety measures for tankers.
—Tanker pump-room safety.
—Matters related to the probabilistic methodology for oil outflow analysis.
—Review of Annexes I and II of the International Convention for the Prevention of Pollution from Ships, 1973 as modified by the Protocol of 1978 (MARPOL 73/78).
—Review of specifications for crude oil washing systems.
—Revision of carriage requirements for carbon disulfide in the International Code for the Construction and Equipment of Ships Carrying Dangerous Chemicals in Bulk (IBC Code).
—Requirements for personal protection involved in transportation of cargoes containing toxic substances in oil tankers.
—Evaluation of safety and pollution hazards of chemicals and preparation of consequential amendments.
—Alignment of the cargo hose requirements in the chemical codes.
—Development of a code on polar navigation.

Members of the public may attend this meeting up to the seating capacity of the room. Interested persons may seek information by writing: Commander R. F. Corbin, U.S. Coast Guard (G–MSO–3), 2100 Second Street, S.W., Washington, DC 20593–0001 or by calling (202) 267–1577.

Dated: February 26, 1999.

Stephen M. Miller,

Executive Secretary, Shipping Coordinating Committee.

[FR Doc. 99–5377 Filed 3–3–99; 8:45 am]

BILLING CODE 4710–07–U

DEPARTMENT OF STATE

[Public Notice No. 2987]

Shipping Coordinating Committee, Subcommittee on Safety of Life at Sea, Working Group on Safety of Navigation; Notice of Meeting

The Working Group on Safety of Navigation of the Subcommittee on Safety of Life at Sea (SOLAS) will conduct an open meeting at 9:30 AM on Wednesday, April 7, 1999, in room 6319 U.S. Coast Guard Headquarters, 2100 Second Street, S.W., Washington, DC.

The purpose of the meeting is to prepare for the 45th session of the Subcommittee on Safety of Navigation (NAV) of the International Maritime Organization (IMO) which is scheduled for September 20–24, 1999, at the IMO Headquarters in London.

Items of principal interest on the agenda are:

—Routing of ships, ship reporting, and related matters
—Amendments to the International Regulations for Prevention of Collisions at Sea, 1972 (72 COLREGS)
—Revision of SOLAS chapter V
—Ergonomic criteria for bridge equipment and layout
—Navigational aids and related matters
—International Telecommunication Union (ITU) matters including Radiocommunication ITU–R Study Group 8
—Training and certification of maritime pilots and revision of resolution A.485(XII)
—Safety of passenger submersible craft

Members of the public may attend these meetings up to the seating capacity of the room. Interested persons may seek information by writing: Mr. Edward J. LaRue, Jr., U.S. Coast Guard (G–MOV–3), Room 1407, 2100 Second Street SW, Washington, DC 20593–0001 or by calling: (202) 267–0416.

Dated: February 26, 1999.

Stephen M. Miller,

Executive Secretary, Shipping Coordinating Committee.

[FR Doc. 99–5378 Filed 3–3–99; 8:45 am]

BILLING CODE 4710–07–U

DEPARTMENT OF STATE

[Public Notice No. 2988]

Shipping Coordinating Committee, Subcommittee on Safety of Life at Sea, Working Group on Fire Protection; Notice of Meeting

The U.S. Safety of Life at Sea (SOLAS) Working Group on Fire Protection will

conduct an open meeting on Wednesday, March 24, 1999, at 9:30 AM, in room 6103 at U.S. Coast Guard Headquarters, 2100 Second Street, S.W., Washington, DC 20593. The purpose of the meeting will be to discuss the outcome of the Forty-third Session of the International Maritime Organization's Subcommittee on Fire Protection, held January 11–15, 1999. In addition, preparations for the next session will also be discussed at the meeting.

The meeting will focus on proposed amendments to the 1974 SOLAS Convention for the fire safety of commercial vessels. Specific discussion areas include: Comprehensive review of SOLAS Chapter II–2, ro-ro ferry safety, passenger vessel evacuation analysis, revision of the fire safety aspects of the IMO High Speed Craft Code, fire fighting systems in machinery and other spaces, role of the human element, prohibition of PFCs in shipboard fire-extinguishing systems, smoke control and ventilation and fire test procedures.

Although the meeting will focus primarily on the outcome of the previous session, preparations and plans for the next session will also be discussed. This offers the opportunity for members of the public to be involved early in the standards development process. Members of the public wishing to make a statement on new issues or proposals at the meeting are requested to submit a brief summary to the U. S. Coast Guard five days prior to the meeting.

Members of the public may attend this meeting up to the seating capacity of the room. Interested persons may obtain more information regarding the meeting of the SOLAS Working Group on Fire Protection by writing: Office of Design and Engineering Standards, Commandant (G–MSE–4), U.S. Coast Guard, 2100 Second St., S.W., Washington, DC 20593, by calling: LT Kevin Kiefer at (202) 267–1444, or by visiting the following World Wide Website: http://www.uscg.mil/hq/g-m/mse4/stdimofp.htm.

Dated: February 26, 1999.

Stephen M. Miller,

Executive Secretary, Shipping Coordinating Committee.

[FR Doc. 99–5379 Filed 3–3–99; 8:45 am]

BILLING CODE 4710–07–U

DEPARTMENT OF TRANSPORTATION

Federal Aviation Administration

RTCA Special Committee 159; Minimum Operational Performance Standards for Airborne Navigation Equipment Using Global Positioning System (GPS)

Pursuant to section 10(a)(2) of the Federal Advisory Committee Act (Pub. L. 92–463, 5 U.S.C., Appendix 2), notice is hereby given for a Special Committee 159 meeting to be held March 15–19, 1999, starting at 9:00 a.m. The meeting will be held at RTCA, 1140 Connecticut Avenue, NW., Washington, DC 20036.

The agenda will be as follows:

Specific Working Group Sessions: March 15: 1:30–5:00 p.m., Working Group (WG)–1, Third Civil Frequency; all day, WG–2C, GPS/Inertial. March 16: 9:00 a.m.–12:00 noon, Joint WG–2, WAAS, and WG–4A, Precision Landing Guidance (LAAS CAT I/II/III), Signal Quality Monitoring; 1:30–4:30 p.m., WG–2, WAAS; WG–4A, Precision Landing Guidance (LAAS CAT I/II/III). March 17: WG2, WAAS; WG–4A, Precision Landing Guidance (LAAS CAT I/II/III); WG–6, Interference. March 18: 9:00 a.m.–12:00 noon, Joint WG–2, WAAS, and WG–4A, Precision Landing Guidance (LAAS CAT I/II/III), Test Procedures; 1:30–4:30 p.m., Plenary Session: (1) Chairman's Introductory Remarks; (2) Review/Approval of Minutes of Previous Meeting; (3) Review WG Progress and Identify Issues for Resolution: (a) GPS/Second Civil Frequency (WG–1); (b) GPS/WAAS (WG–2); (c) GPS/GLONASS (WG–2A); (d) GPS/Inertial (WG–2C); (e) GPS/Precision Landing Guidance and Airport Surface Surveillance (WG–4A & WG–4B); (f) GPS/Interference (WG–6); (4) Review of EUROCAE Activities; (5) Assignment/Review of Future Work; (6) Other Business; (7) Date and Location of Next Meeting. March 19: 9:00 a.m.–12:00 noon, WG–4A, Precision Landing Guidance (LAAS CAT I/II/III).

Attendance is open to the interested public but limited to space availability. With the approval of the chairman, members of the public may present oral statements at the meeting. Persons wishing to present statements or obtain information should contact Mr. Harold Moses, RTCA Program Director, at (202) 833–9339 (phone), (202) 833–8434 (fax), or hmoses@rtca.org (electronic mail). Members of the public may present a written statement to the committee at any time.

Issued in Washington, DC, on March 1, 1999.

Janice L. Peters,

Designated Official.

[FR Doc. 99–5384 Filed 3–3–99; 8:45 am]

BILLING CODE 4910–13–M

DEPARTMENT OF TRANSPORTATION

Federal Highway Administration

Environmental Impact Statement: Rock, Jefferson and Dodge Counties, Wisconsin

AGENCY: Federal Highway Administration (FHWA), DOT.

ACTION: Notice of intent.

SUMMARY: The FHWA is issuing this notice to advise the public that an Environmental Impact Statement (EIS) will be prepared for the proposed highway improvement of State Trunk Highway (STH) 26 from the vicinity to Janesville to STH 60 (East) north of Watertown in Rock, Jefferson and Dodge Counties, Wisconsin.

FOR FURTHER INFORMATION CONTACT: Mr. Richard C. Madrzak, Field Operations Engineer, Federal Highway Administration, 567 D'Onfrio Drive, Madison, Wisconsin 53719–2814. Telephone (608) 829–7510.

SUPPLEMENTARY INFORMATION: The FHWA, in cooperation with the Wisconsin Department of Transportation, will prepare an Environmental Impact Statement to improve highway 26 as an ultimate four lane roadway from Interstate 90 near Janesville to highway 60 (East) north of Watertown a distance of about 77.2 km (48 mi).

Improvements to the corridor are considered necessary to provide for the existing and projected traffic demand. Highway 26 in Rock, Jefferson and Dodge Counties is classified as a principle arterial. Truck volume on the route is high. All the highway 26 traffic passes through the communities of Milton, Jefferson, Johnson Creek and Watertown, which contributes to congestion and traffic related impacts within those communities.

Planning, environmental and engineering studies are underway to develop transportation alternatives. The EIS will assess the environmental impacts of alternatives including (1) no-build, (2) improvements along the existing rural corridor, with possible relocated alignments along portions of the route, and (3) bypass corridors around Milton, Jefferson, and Watertown. The City of Fort Atkinson is presently bypassed with a two-lane

rural roadway on four-lane right-of-way. Highway 26 is scheduled to be expanded to four lanes between Interstate 90 and the Village of Milton in year 1999 and also through the Village of Johnson Creek area in year 2000.

Information describing the proposed action and soliciting comments will be sent to appropriate Federal, State and local agencies and to private organizations and citizens who have previously expressed, or are known to have interest in this proposal. A series of public meetings will be held in the project corridor throughout the date gathering and development of alternatives. In addition, a public hearing will be held. Public notice will be given of the time and place of the meetings and hearing. The Draft EIS will be available for public and agency review and comment prior to the hearing. As part of the scoping process, coordination activities have begun. Scoping meetings will continue to be held on an individual or group meeting basis. Agency coordination will be accomplished during these meetings.

To ensure that the full range of issues related to this proposed action are addressed and all significant issues are identified, comments and suggestions are invited from all interested parties. Comments or questions concerning this proposed action and the EIS should be directed to FHWA at the address provided above.

(Catalog of Federal Domestic Assistance Program Number 20.205, Highway Planning and Construction. The regulations implementing Executive Order 112372 regarding intergovernmental consultation on Federal programs and activities apply to this program)

Issued February 23, 1999.

Richard C. Madrzak,

Field Operations Engineer, Madison, Wisconsin.

[FR Doc. 99–5352 Filed 3–3–99; 8:45 am]

BILLING CODE 4910–22–M

DEPARTMENT OF TRANSPORTATION

Surface Transportation Board

[STB Finance Docket No. 33719]

Yakima Interurban Lines Association—Acquisition Exemption—BNSF Acquisition, Inc.

Yakima Interurban Lines Association (Yakima), a noncarrier, has filed a verified notice of exemption under 49 CFR 1150.31 to acquire from BNSF Acquisition, Inc., successor in interest to Washington Central Railroad Company, approximately 11.29 miles of rail line between milepost 2.97, at Fruitvale, WA, and milepost 14.26, at Naches, WA.[1]

The transaction is expected to be consummated on or after February 25, 1999.

If the verified notice contains false or misleading information, the exemption is void *ab initio.* Petitions to reopen the proceeding to revoke the exemption under 49 U.S.C. 10502(d) may be filed at any time. The filing of a petition to revoke will not automatically stay the transaction.

An original and 10 copies of all pleadings, referring to STB Finance Docket No. 33719, must be filed with the Surface Transportation Board, Office of the Secretary, Case Control Unit, 1925 K Street, NW, Washington, DC 20423–0001. In addition, a copy of each pleading must be served on Karl Morell, Esq., Ball Janik LLP, 1455 F Street, NW, Suite 225, Washington, DC 20005.

Board decisions and notices are available on our website at ''WWW.STB.DOT.GOV.''

Decided: February 24, 1999.

By the Board, David M. Konschnik, Director, Office of Proceedings.

Vernon A. Williams,

Secretary.

[FR Doc. 99–5248 Filed 3–3–99; 8:45 am]

BILLING CODE 4915–00–P

[1] Yakima will be the exclusive operator of the rail line.

DEPARTMENT OF TRANSPORTATION

Surface Transportation Board

[STB Docket No. AB–391 (Sub–No. 6X)]

Red River Valley & Western Railroad Company—Abandonment Exemption—in Cass County, ND

Red River Valley & Western Railroad Company (RRVW) has filed a notice of exemption under 49 CFR 1152 Subpart F—*Exempt Abandonments* to abandon approximately 18.4 miles of rail line from milepost 18.7 near Alice to milepost 0.3 near Casselton, ND. The line traverses United States Postal Service Zip Codes 58003 and 58079.

RRVW has certified that: (1) No local traffic has moved over the line for at least 2 years; (2) there is no overhead traffic on the line; (3) no formal complaint filed by a user of rail service on the line (or by a state or local government entity acting on behalf of such user) regarding cessation of service over the line either is pending with the Surface Transportation Board (Board) or with any U.S. District Court or has been decided in favor of complainant within the 2-year period; and (4) the requirements at 49 CFR 1105.7 (environmental reports), 49 CFR 1105.8 (historic reports), 49 CFR 1105.11 (transmittal letter), 49 CFR 1105.12 (newspaper publication), and 49 CFR 1152.50(d)(1) (notice to governmental agencies) have been met.

As a condition to this exemption, any employee adversely affected by the abandonment shall be protected under *Oregon Short Line R. Co.—Abandonment— Goshen*, 360 I.C.C. 91 (1979). To address whether this condition adequately protects affected employees, a petition for partial revocation under 49 U.S.C. 10502(d) must be filed. Provided no formal expression of intent to file an offer of financial assistance (OFA) has been received, this exemption will be effective on April 3, 1999, unless stayed pending reconsideration. Petitions to stay that do not involve environmental issues,[1] formal expressions of intent to file an OFA under 49 CFR 1152.27(c)(2),[2] and trail use/rail banking requests under 49 CFR 1152.29 must be filed by March 15, 1999. Petitions to reopen or requests for public use conditions under 49 CFR 1152.28 must be filed by March 24, 1999, with: Surface Transportation Board, Office of the Secretary, Case Control Unit, 1925 K Street, N.W., Washington, DC 20423.

A copy of any petition filed with the Board should be sent to applicant's representative: Rose-Michele Weinryb, Esq., Weiner, Brodsky, Sidman & Kider, P.C., 1350 New York Avenue, N.W., Suite 800, Washington, DC 20005–4797.

If the verified notice contains false or misleading information, the exemption is void *ab initio.*

RRVW has filed an environmental report which addresses the abandonment's effects, if any, on the environment and historic resources. The Section of Environmental Analysis (SEA) will issue an environmental assessment (EA) by March 9, 1999. Interested persons may obtain a copy of the EA by writing to SEA (Room 500, Surface Transportation Board, Washington, DC 20423) or by calling SEA, at (202) 565–1545. Comments on environmental and historic preservation

[1] The Board will grant a stay if an informed decision on environmental issues (whether raised by a party or by the Board's Section of Environmental Analysis in its independent investigation) cannot be made before the exemption's effective date. *See Exemption of Out-of-Service Rail Lines,* 5 I.C.C.2d 377 (1989). Any request for a stay should be filed as soon as possible so that the Board may take appropriate action before the exemption's effective date.

[2] Each offer of financial assistance must be accompanied by the filing fee, which currently is set at $1000. *See* 49 CFR 1002.2(f)(25).

matters must be filed within 15 days after the EA becomes available to the public.

Environmental, historic preservation, public use, or trail use/rail banking conditions will be imposed, where appropriate, in a subsequent decision.

Pursuant to the provisions of 49 CFR 1152.29(e)(2), RRVW shall file a notice of consummation with the Board to signify that it has exercised the authority granted and fully abandoned the line. If consummation has not been effected by RRVW's filing of a notice of consummation by March 4, 2000, and there are no legal or regulatory barriers to consummation, the authority to abandon will automatically expire.

Board decisions and notices are available on our website at ''WWW.STB.DOT.GOV.''

Decided: February 26, 1999.

By the Board, David M. Konschnik, Director, Office of Proceedings.

Vernon A. Williams,

Secretary.

[FR Doc. 99–5306 Filed 3–3–99; 8:45 am]

BILLING CODE 4915–00–P

UNITED STATES INSTITUTE OF PEACE

Sunshine Act Meeting

AGENCY: United States Institute of Peace.

DATE/TIME: Thursday, March 18, 1999; 9:00 a.m.–5:00 p.m.

LOCATION: 1200 17th Street, NW., 2nd Floor Conference Room, Washington, DC 20036.

STATUS: Open Session—Portions may be closed pursuant to Subsection (c) of Section 552(b) of Title 5, United States Code, as provided in subsection 1706(h)(3) of the United States Institute of Peace Act, Public Law 98–525.

AGENDA: March 1999 Board Meeting; Approval of Minutes of the Eighty-Eighth Meeting (January 21, 1999) of the Board of Directors; Chairman's Report; President's Report; Committee Reports; Consideration of fellowship applications and individual Grants; Other General Issues.

CONTACT: Dr. Sheryl Brown, Director, Office of Communications, Telephone: (202) 457–1700.

Dated: March 2, 1999.

Charles E. Nelson,

Vice President for Management and Finance, United States Institute of Peace.

[FR Doc. 99–5487 Filed 3–2–99; 2:33 pm]

BILLING CODE 3155–01–M

DEPARTMENT OF VETERANS AFFAIRS

Medical Research Service Merit Review Committee; Notice of Meetings

The Department of Veterans Affairs gives notice under the Federal Advisory Committee Act, 5 U.S.C. App., of the following meetings to be held from 8 a.m. to 5 p.m. as indicated below:

Subcommittee for	Date	Location
Immunology	March 15–16, 1999	Holiday Inn Central.
Gastroenterology	March 18–19, 1999	Holiday Inn Central.
Alcoholism & Drug Dependence	March 19, 1999	Holiday Inn Central.
Oncology	March 22–23, 1999	Holiday Inn Central.
Nephrology	March 24, 1999	Holiday Inn Central.
Epidemiology	March 26, 1999	Holiday Inn Central.
Aging & Clinical Geriatrics	March 29, 1999	Holiday Inn Central.
Neurobiology-D	March 29–30, 1999	Holiday Inn Central.
Cardiovascular Studies	April 5, 1999	The River Inn.
Hematology	April 8, 1999	Omni Shoreham.
Mental Hlth & Behavioral Sciences	April 8–9, 1999	Omni Shoreham.
Infectious Diseases	April 8–9, 1999	The River Inn.
Endocrinology	April 12–13, 1999	The River Inn.
Neurobiology-C	April 16, 1999	The River Inn.
Respiration	April 16, 1999	The River Inn.
Surgery	April 17, 1999	The River Inn.
General Medical Science	April 22–23, 1999	The River Inn.
Medical Research Service Merit Review Committee	June 3, 1999	Holiday Inn Central.

The addresses of the hotels are:

Holiday Inn Central, 1501 Rhode Island Avenue, NW., Washington, DC 20005

Omni Shoreham, 2500 Calvert Street, NW., Washington, DC 20008

The River Inn, 924–25th Street, NW., Washington, DC 20037

These subcommittee meetings will be for the purpose of evaluating the scientific merit of research conducted in each specialty by Department of Veterans Affairs (VA) investigators working in VA Medical Centers and Clinics.

The subcommittee meetings will be open to the public for approximately one hour at the start of each meeting to discuss the general status of the program. The remaining portion of each subcommittee meeting will be closed to the public for the review, discussion, and evaluation of initial and renewal projects.

The closed portion of the meetings involves discussion, examination, reference to, and oral review of site visits, staff and consultant critiques of research protocols and similar documents. During this portion of the subcommittee meetings, discussion and recommendations will deal with qualifications of personnel conducting the studies (the disclosure of which would constitute a clearly unwarranted invasion of personal privacy), as well as research information (the premature disclosure of which could significantly frustrate implementation of proposed

agency action regarding such research projects.) As provided by subsection 10(d) of Pub. L. 92–463, as amended by Pub. L. 94–409, closing portions of these subcommittee meetings is in accordance with 5 U.S.C., 552b(c)(6) and (9)(B). Those who plan to attend or would like to obtain a copy of minutes of the subcommittee meetings and rosters of the members of the subcommittees should contact Dr. LeRoy Frey, Chief, Program Review Division, Medical Research Service, Department of Veterans Affairs, Washington, DC, (202) 275–6634.

Dated: February 24, 1999.

By direction of the Secretary.

Heyward Bannister,

Committee Management Officer.

[FR Doc. 99–5324 Filed 3–3–99; 8:45 am]

BILLING CODE 8320–01–M

federal register

Thursday
March 4, 1999

Part II

Department of Defense

General Services Administration

National Aeronautics and Space Administration

48 CFR Chapter 1 et al.

Federal Acquisition Regulations; Final Rules

DEPARTMENT OF DEFENSE

GENERAL SERVICES ADMINISTRATION

NATIONAL AERONAUTICS AND SPACE ADMINISTRATION

48 CFR Chapter 1

Federal Acquisition Circular 97–11; Introduction

AGENCIES: Department of Defense (DoD), General Services Administration (GSA), and National Aeronautics and Space Administration (NASA).

ACTION: Summary presentation of final and interim rules, and technical amendments and corrections.

SUMMARY: This document summarizes the Federal Acquisition Regulation (FAR) rules issued by the Civilian Agency Acquisition Council and the Defense Acquisition Regulations Council in this Federal Acquisition Circular (FAC) 97–11. A companion document, the Small Entity Compliance Guide (SECG), follows this FAC. The FAC, including the SECG, may be located on the Internet at http://www.arnet.gov/far.

DATES: For effective dates and comment dates, see separate documents which follow.

FOR FURTHER INFORMATION CONTACT: The FAR Secretariat, Room 4035, GS Building, Washington, DC 20405, (202) 501–4755, for information pertaining to status or publication schedules. For clarification of content, contact the analyst whose name appears in the table below in relation to each FAR case or subject area. Please cite FAC 97–11 and specific FAR case number(s). Interested parties may also visit our website at http://www.arnet.gov/far.

Item	Subject	FAR case	Analyst
I	Review of FAR Representations	96–013	Linfield.
II	Very Small Business Concerns (Interim)	98–013	Moss.
III	Variation in Quantity	98–612	Moss.
IV	Electronic Funds Transfer	91–118	Olson.
V	Waiver of Cost or Pricing Data for Subcontracts	98–302	De Stefano.
VI	Executive Order 12933, Nondisplacement of Qualified Workers Under Certain Contracts.	94–610	O'Neill.
VII	Recruitment Costs Principle	98–001	Nelson.
VIII	Compensation for Senior Executives (Interim)	98–301	Nelson.
IX	Technical Amendments.		

SUPPLEMENTARY INFORMATION: Summaries for each FAR rule follow. For the actual revisions and/or amendments to these FAR cases, refer to the specific item number and subject set forth in the documents following these item summaries.

Federal Acquisition Circular 97–11 amends the Federal Acquisition Regulation (FAR) as specified below:

Item I—Review of FAR Representations (FAR Case 96–013)

This final rule amends FAR parts 1, 4, 12, 14, 26, 27, 32, 41, and 52 to reduce certain contractual requirements for representations or other affirmations that place an unnecessary burden on offerors or contractors.

Item II—Very Small Business Concerns (FAR Case 98–013)

This interim rule amends Federal Acquisition Regulation (FAR) Parts 5, 8, 12, 19, and 52 to implement the Small Business Administration's Very Small Business Pilot Program (13 CFR parts 121 and 125). The rule provides for the set-aside of certain acquisitions between $2,500 and $50,000 for very small business (VSB) concerns. The pilot VSB program is limited to buying activities and VSBs located in 10 geographic regions specified by the Small Business Administration and will run through September 30, 2000.

Item III—Variation in Quantity (FAR Case 98–612)

This final rule revises the prescription in 11.703(a) for the clause at 52.211–16, Variation in Quantity, to require use of the clause only in solicitations and contracts where a variation in quantity is authorized. This change makes the clause prescription consistent with language in FAR 11.701(a).

Item IV—Electronic Funds Transfer (FAR Case 91–118)

This final rule amends FAR Parts 13, 16, 32, and 52 to address the use of electronic funds transfer (EFT) for Federal contract payments, and to facilitate implementation of Public Law 104–134 which mandates payment by EFT in most situations. The final rule mainly differs from the interim rule by removing references to the ''phase one'' time period, which ended on January 1, 1999; by implementing applicable provisions of the Department of the Treasury's final rule at 31 CFR part 208 which addresses the ''phase two'' time period beginning January 2, 1999; by addressing the situation where contractors furnish EFT information by registering in the Central Contractor Registration database; and by permitting agencies to collect EFT banking information at various time periods ranging from prior to award (as a condition of award) to after award (concurrent with the initial invoice).

Item V—Waiver of Cost or Pricing Data for Subcontracts (FAR Case 98–302)

Section 805 of Public Law 105–261 clarifies that waivers of requirements for submittal of prime contractor cost or pricing data do not automatically waive requirements for subcontractors to submit cost or pricing data. Although this is consistent with the current requirements of FAR 15.403–1(c)(4), the final rule clarifies the requirement to provide rationale supporting any waiver of subcontracts.

Item VI—Executive Order 12933, Nondisplacement of Qualified Workers Under Certain Contracts (FAR Case 94–610)

The interim rule published as Item III in FAC 97–01 is converted to a final rule with minor changes. The final rule makes changes to the definition of ''building service contract'' at FAR 22.1202, and paragraphs (c) and (j) of the clause at 52.222–50, Nondisplacement of Qualified Workers.

Item VII—Recruitment Costs Principle (FAR Case 98–001)

This final rule amends FAR 31.205–1, Public relations and advertising costs, and FAR 31.205–34, Recruitment costs, to remove excessive wording and details for streamlining purposes.

Item VIII—Compensation for Senior Executives (FAR Case 98–301)

This interim rule revises FAR section 31.205–6(p) to implement Section 804 of the Strom Thurmond National Defense Authorization Act for Fiscal Year 1999 (Pub. L. 105–261). Section 804 revises the definition of ''senior executive'' at 10 U.S.C. 2324(1)(5) and at 41 U.S.C. 256(m)(2) to be ''the five most highly compensated employees in management positions at each home office and each segment of the contractor.'' This change applies to costs of compensation incurred after January 1, 1999, regardless of the date of contract award.

Item IX—Technical Amendments

Amendments are being made at FAR 1.106, 25.402, 52.219–8, 53.228, and 53.301–1418 in order to update references and make editorial changes.

Dated: February 25, 1999.

Edward C. Loeb,

Director, Federal Acquisition Policy Division.

Federal Acquisition Circular

Federal Acquisition Circular (FAC) 97–11 is issued under the authority of the Secretary of Defense, the Administrator of General Services, and the Administrator for the National Aeronautics and Space Administration.

Unless otherwise specified, all Federal Acquisition Regulation (FAR) and other directive material contained in FAC 97–11 are effective May 3, 1999, except for Items II, VIII, and IX, which are effective March 4, 1999.

Eleanor R. Spector,

Director, Defense Procurement.

Edward C. Loeb,

Acting Deputy Associate Administrator, Office of Acquisition Policy, General Services Administration.

Tom Luedtke,

Acting Associate Administrator for Procurement, National Aeronautics and Space Administration.

[FR Doc. 99–5202 Filed 3–3–99; 8:45 am]

BILLING CODE 6820–EP–P

DEPARTMENT OF DEFENSE

GENERAL SERVICES ADMINISTRATION

NATIONAL AERONAUTICS AND SPACE ADMINISTRATION

48 CFR Parts 1, 4, 12, 14, 26, 27, 32, 41, and 52

[FAC 97–11; FAR Case 96–013; Item I]

RIN 9000–AH97

Federal Acquisition Regulation; Review of FAR Representations

AGENCIES: Department of Defense (DoD), General Services Administration (GSA), and National Aeronautics and Space Administration (NASA).

ACTION: Final rule.

SUMMARY: The Civilian Agency Acquisition Council and the Defense Acquisition Regulations Council have agreed on a final rule amending the Federal Acquisition Regulation (FAR) to remove or reduce certain requirements for representations and other statements from offerors and contractors.

EFFECTIVE DATE: May 3, 1999.

FOR FURTHER INFORMATION CONTACT: The FAR Secretariat, Room 4035, GS Building, Washington, DC, 20405, (202) 501–4755, for information pertaining to status or publication schedules. For clarification of content, contact Mr. Paul Linfield, Procurement Analyst, at (202) 501–1757. Please cite FAC 97–11, FAR case 96–013.

SUPPLEMENTARY INFORMATION:

A. Background

This case was initiated in response to requests from industry to eliminate representations required by the FAR that place an unnecessary burden on offerors or contractors. A proposed rule was published in the **Federal Register** on May 7, 1998 (63 FR 25382), with comments requested by July 6, 1998. Comments were received from 4 respondents and were considered in formulation of the final rule. The final rule is not substantively different from the proposed rule. This rule—

1. Deletes the clause at 52.214–17, Affiliated Bidders;

2. Reduces the information collection requirements associated with the clauses at 52.204–5, Women-Owned Business; 52.212–3, Offeror Representations and Certifications—Commercial Items; 52.214–21, Descriptive Literature; 52.228–9, Cargo Insurance; and 52.241–1, Electric Service Territory Compliance Representation; and

3. Makes editorial changes to the clauses at 52.226–1, Utilization of Indian Organizations and Indian-Owned Economic Enterprises; 52.227–15, Representation of Limited Rights Data and Restricted Computer Software; 52.228–8, Liability and Insurance—Leased Motor Vehicles; and 52.232–12, Advance Payments.

The FAR uses many different terms to express affirmation by the contractor, such as ''state,'' ''represent,'' ''affirm,'' ''declare,'' ''warrant,'' and ''certify.''

41 U.S.C. 425, as amended by Section 4301(b)(1) of Public Law 104–106, restricts the inclusion of nonstatutory certification requirements in the FAR. This law was apparently enacted in response to industry perception that a certification requires a high level of attention within the company, may entail personal accountability of the signing official, and is more likely to be subject to criminal prosecution. Changes were made to the FAR under FAR case 96–312 to comply with this statute.

As has already been established in FAR case 96–312, all other forms of contractual affirmation (*e.g.*, statements, representations, affirmations, declarations, or warranties) are not certifications subject to the statutory restrictions of 41 U.S.C. 425 (see GAO Decision B–278404.2). The other terms of affirmation, despite subjective shades of meaning, are essentially synonymous and are not intended to imply gradations in the level of contractual requirement.

Moreover, the implied difference in level of review for certifications as opposed to other forms of affirmation does not indicate a difference in the Government expectation of truthfulness or accuracy. The Government relies on information provided by the contractor, whether the contractor says ''I certify,'' ''I represent,'' ''I state,'' or simply checks a block. If the information turns out to be false, then the Government may take action under the False Statements Act and may assert its right to other remedies.

Because the use of multiple terms of affirmation other than ''certification'' may convey unintended differences of meaning, it is our goal in the future to use more simple and consistent terminology. However, some of the terminology changes in the proposed rule were interpreted as a substantive change to the requirements of the clause, implying a reduction in the effectiveness of the commitment by the contractor. Therefore, in the final rule, we do not make any changes to the FAR clauses at 52.216–2, 52.216–3, 52.222–43, 52.222–44, and 52.229–3 because the only proposed change was

substitution of an essentially similar term, just to standardize terminology.

Changes to the clause at 52.225–10, Duty-Free Entry, are deferred to FAR case 97–024, Part 25 Rewrite.

This regulatory action was not subject to Office of Management and Budget review under Executive Order 12866, dated September 30, 1993, and is not a major rule under 5 U.S.C. 804.

B. Regulatory Flexibility Act

The Department of Defense, the General Services Administration, and the National Aeronautics and Space Administration certify that this final rule will 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.*, because it does not significantly alter the type of information to be provided to the Government under the amended provisions and clauses.

C. Paperwork Reduction Act

The Paperwork Reduction Act (Pub. L. 96–511) is deemed to apply. This rule will result in a reduction of 119,150 hours in the information collection requirements approved under the following Office of Management and Budget (OMB) Control Numbers:

9000–0018, Certification of Independent Price Determination and Parent Company and Identifying Data (Deletion of 52.214–17, Affiliated Bidders, reduction from 25,700 hours to approximately 12,850 hours);

9000–0039, Descriptive Literature (Revision of 52.214–21, Descriptive Literature, reduction from 1,334 hours to approximately 1,254 hours);

9000–0136, Solicitation/Contract/Order for Commercial Items (Revision of 52.212–3, Offeror Representations and Certifications—Commercial Items, reduction from 7,500,000 to approximately 7,394,050 hours); and

9000–0126, Electric Service Territory Compliance Representation (Revision of 52.241–1, Electric Service Territory Representations, reduction from 500 hours to approximately 230 hours).

Although OMB Clearance Number 9000–0145, Use of Data Universal Numbering System (DUNS) as Primary Contractor Identification—FAR case 95–307, ostensibly covers FAR clause 52.204–5, Women-Owned Business, the estimated burdens for that clearance appear to be based on the information collection requirements associated with use of the DUNS number. Therefore, although revisions to 52.204–5 will significantly reduce the number of responses required, we do not estimate any impact on the hours approved under 9000–0145.

List of Subjects in 48 CFR Parts 1, 4, 12, 14, 26, 27, 32, 41, and 52

Government procurement.

Dated: February 25, 1999.

Edward C. Loeb,

Director, Federal Acquisition Policy Division.

Therefore, 48 CFR Parts 1, 4, 12, 14, 26, 27, 32, 41, and 52 are amended as set forth below:

1. The authority citation for 48 CFR Parts 1, 4, 12, 14, 26, 27, 32, 41, and 52 continues to read as follows:

Authority: 40 U.S.C. 486(c); 10 U.S.C. chapter 137; and 42 U.S.C. 2473(c).

PART 1—FEDERAL ACQUISITION REGULATIONS SYSTEM

2. Section 1.106 is amended in the table following the introductory paragraph by removing the FAR segment ''52.214–17'' and its corresponding OMB Control Number ''9000–0018''; and by adding, in numerical order, the following entry:

1.106 OMB approval under the Paperwork Reduction Act.

* * * * *

FAR segment	OMB control number
* * * * *	
52.212–3	9000–0136
* * * * *	

PART 4—ADMINISTRATIVE MATTERS

3. Section 4.603 is amended by revising paragraph (b) to read as follows:

4.603 Solicitation provisions.

* * * * *

(b) The contracting officer shall insert the provision at 52.204–5, Women-Owned Business (Other Than Small Business), in all solicitations that are not set aside for small business concerns and that exceed the simplified acquisition threshold, if the contract is to be performed inside the United States, its territories or possessions, Puerto Rico, the Trust Territory of the Pacific Islands, or the District of Columbia.

PART 12—ACQUISITION OF COMMERCIAL ITEMS

4. Section 12.503 is amended by revising paragraph (b)(5) to read as follows:

12.503 Applicability of certain laws to Executive agency contracts for the acquisition of commercial items.

* * * * *

(b) * * *

(5) 49 U.S.C. 40118, Requirement for a clause under the Fly American provisions (see 47.405).

* * * * *

PART 14—SEALED BIDDING

14.201–6 [Amended]

5. Section 14.201–6 is amended by removing and reserving paragraph (k).

14.405 [Amended]

6. Section 14.405 is amended in paragraph (d)(2) by adding ''and'' at the end of the sentence; by removing paragraph (e) and redesignating paragraph (f) as (e).

PART 26—OTHER SOCIOECONOMIC PROGRAMS

26.103 [Amended]

7. Section 26.103 is amended in paragraphs (a), (b), and (e) by removing ''self-certification'' and adding ''representation'' in its place.

PART 27—PATENTS, DATA, AND COPYRIGHTS

27.404 [Amended]

8. Section 27.404 is amended in the second sentence of paragraphs (d)(2) and (e)(3) by removing the word ''representation'' and adding ''provision'' in its place.

9. Section 27.409 is amended by revising the first sentence of paragraph (g) to read as follows:

27.409 Solicitation provisions and contract clauses.

* * * * *

(g) In accordance with 27.404(d)(2), if the contracting officer desires to have an offeror state in response to a solicitation, to the extent feasible, whether limited rights data or restricted computer software are likely to be used in meeting the data delivery requirements set forth in the solicitation, the contracting officer shall insert the provision at 52.227–15, Representation of Limited Rights Data and Restricted Computer Software, in any solicitation containing the clause at 52.227–14, Rights in Data—General. * * *

* * * * *

PART 32—CONTRACT FINANCING

10. Section 32.805 is amended by revising paragraph (a) to read as follows:

32.805 Procedure.

(a) *Assignments.* (1) Assignments by corporations shall be—

(i) Executed by an authorized representative;

(ii) Attested by the secretary or the assistant secretary of the corporation; and

(iii) Impressed with the corporate seal or accompanied by a true copy of the resolution of the corporation's board of directors authorizing the signing representative to execute the assignment.

(2) Assignments by a partnership may be signed by one partner, if the assignment is accompanied by adequate evidence that the signer is a general partner of the partnership and is authorized to execute assignments on behalf of the partnership.

(3) Assignments by an individual shall be signed by that individual and the signature acknowledged before a notary public or other person authorized to administer oaths.

* * * * *

PART 41—ACQUISITION OF UTILITY SERVICES

11. Section 41.201 is amended by removing the last two sentences of paragraph (e) and adding a sentence at the end to read as follows:

41.201 Policy.

* * * * *

(e) * * * Proposals from alternative electric suppliers shall provide a representation that service can be provided in a manner consistent with section 8093 of Public Law 100–202 (see 41.201(d)).

PART 52—SOLICITATION PROVISIONS AND CONTRACT CLAUSES

12. Section 52.204–5 is revised to read as follows:

52.204–5 Women-Owned Business (Other Than Small Business).

As prescribed in 4.603(b), insert the following provision:

Women-Owned Business (Other Than Small Business) (May 1999)

(a) *Definition. Women-owned business concern,* as used in this provision, means a concern that is at least 51 percent owned by one or more women; or in the case of any publicly owned business, at least 51 percent of its stock is owned by one or more women; and whose management and daily business operations are controlled by one or more women.

(b) *Representation. [Complete only if the offeror is a women-owned business concern and has not represented itself as a small business concern in paragraph (b)(1) of FAR 52.219–1, Small Business Program Representations, of this solicitation.]* The offeror represents that it ☐ is, ☐ is not a women-owned business concern.

(End of provision)

13. Section 52.212–3 is amended by revising the date of the provision; in paragraph (a) of the provision in the definition ''Women-owned business concern,'' by removing the words ''the stock of which'' and adding ''its stock''; by revising paragraphs (c)(2), (c)(3), and (c)(4); and in the introductory text of paragraph (d) by removing ''Certifications and representations'' and adding ''Representations'' to read as follows:

52.212–3 Offeror Representations and Certifications—Commercial Items.

* * * * *

Offeror Representations and Certifications—Commercial Items (May 1999)

* * * * *

(c) * * *

(2) *Small disadvantaged business concern. [Complete only if the offeror represented itself as a small business concern in paragraph (c)(1) of this provision.]* The offeror represents, for general statistical purposes, that it ☐ is, ☐ is not a small disadvantaged business concern as defined in 13 CFR 124.1002.

(3) *Women-owned small business concern. [Complete only if the offeror represented itself as a small business concern in paragraph (c)(1) of this provision.]* The offeror represents that it ☐ is, ☐ is not a women-owned small business concern.

Note: Complete paragraphs (c)(4) and (c)(5) only if this solicitation is expected to exceed the simplified acquisition threshold.

(4) *Women-owned business concern (other than small business concern). [Complete only if the offeror is a women-owned business concern and did not represent itself as a small business concern in paragraph (c)(1) of this provision.]* The offeror represents that it ☐ is, ☐ is not a women-owned business concern.

* * * * *

52.214–17 [Reserved]

14. Section 52.214–17 is removed and reserved.

15. Section 52.214–21 is amended by revising the introductory text of the provision; and by revising the date, introductory text, and paragraph (d) of Alternate I to read as follows:

52.214–21 Descriptive literature.

As prescribed in 14.201–6(p)(1), insert the following provision:

* * * * *

Alternate I (May 1999). As prescribed in 14.201–6(p)(2), add the following paragraphs (d) and (e) to the basic provision.

(d) The Contracting Officer may waive the requirement for furnishing descriptive literature if the bidder has supplied a product the same as that required by this solicitation under a prior contract. A bidder that requests a waiver of this requirement shall provide the following information:

Prior contract number _____

Date of prior contract _____

Contract line item number of product supplied _____

Name and address of Government activity to which delivery was made _____

Date of final delivery of product supplied _____

* * * * *

16. Section 52.219–1 is amended by revising the provision date; in the parenthetical of paragraphs (b)(2) and (b)(3) of the provision by adding ''the'' after the word ''if''; in paragraph (c) by revising ''Woman-owned'' to read ''Women-owned''; and by revising the introductory text of paragraph (d)(2) to read as follows:

52.219–1 Small Business Program Representations.

* * * * *

Small Business Program Representations (May 1999)

* * * * *

(d) * * *

(2) Under 15 U.S.C. 645(d), any person who misrepresents a firm's status as a small, small disadvantaged, or women-owned small business concern in order to obtain a contract to be awarded under the preference programs established pursuant to section 8(a), 8(d), 9, or 15 of the Small Business Act or any other provision of Federal law that specifically references section 8(d) for a definition of program eligibility, shall—

* * * * *

52.219–21 [Amended]

17. Section 52.219–21 is amended by revising the provision date to read ''(May 1999)''; and by removing the statement ''Offeror represents as follows:'' which follows the first parenthetical.

52.226–1 [Amended]

18. Section 52.226–1 is amended by revising the clause date to read ''(May 1999)''; and in the first sentence of paragraph (c)(1) of the clause by removing ''self-certification'' each time it is used (twice) and adding ''representation'' in its place.

19. Section 52.227–15 is revised to read as follows:

52.227–15 Representation of Limited Rights Data and Restricted Computer Software.

As prescribed in 27.409(g), insert the following provision:

Statement of Limited Rights Data and Restricted Computer Software (May 1999)

(a) This solicitation sets forth the work to be performed if a contract award results, and the Government's known delivery

requirements for data (as defined in FAR 27.401). Any resulting contract may also provide the Government the option to order additional data under the Additional Data Requirements clause at 52.227–16 of the FAR, if included in the contract. Any data delivered under the resulting contract will be subject to the Rights in Data—General clause at 52.227–14 that is to be included in this contract. Under the latter clause, a Contractor may withhold from delivery data that qualify as limited rights data or restricted computer software, and deliver form, fit, and function data in lieu thereof. The latter clause also may be used with its Alternates II and/or III to obtain delivery of limited rights data or restricted computer software, marked with limited rights or restricted rights notices, as appropriate. In addition, use of Alternate V with this latter clause provides the Government the right to inspect such data at the Contractor's facility.

(b) As an aid in determining the Government's need to include Alternate II or Alternate III in the clause at 52.227–14, Rights in Data—General, the offeror shall complete paragraph (c) of this provision to either state that none of the data qualify as limited rights data or restricted computer software, or identify, to the extent feasible, which of the data qualifies as limited rights data or restricted computer software. Any identification of limited rights data or restricted computer software in the offeror's response is not determinative of the status of such data should a contract be awarded to the offeror.

(c) The offeror has reviewed the requirements for the delivery of data or software and states [*offeror check appropriate block*]—

☐ None of the data proposed for fulfilling such requirements qualifies as limited rights data or restricted computer software.

☐ Data proposed for fulfilling such requirements qualify as limited rights data or restricted computer software and are identified as follows:

_____

_____

_____

Note: ''Limited rights data'' and ''Restricted computer software'' are defined in the contract clause entitled ''Rights in Data—General.''

(End of provision)

20. Section 52.228–8 is amended by revising the introductory paragraph, the clause date, and paragraph (e) of the clause to read as follows:

52.228–8 Liability and Insurance—Leased Motor Vehicles.

As prescribed in 28.312, insert the following clause:

Liability and Insurance—Leased Motor Vehicles (May 1999)

* * * * *

(e) The contract price shall not include any costs for insurance or contingency to cover losses, damage, injury, or death for which the Government is responsible under paragraph (a) of this clause.

(End of clause)

21. Section 52.228–9 is revised to read as follows:

52.228–9 Cargo Insurance.

As prescribed in 28.313(a), insert the following clause:

Cargo Insurance (May 1999)

(a) The Contractor, at the Contractor's expense, shall provide and maintain, during the continuance of this contract, cargo insurance of $_____ per vehicle to cover the value of property on each vehicle and of $_____ to cover the total value of the property in the shipment.

(b) All insurance shall be written on companies acceptable to _____ [*insert name of contracting agency*], and policies shall include such terms and conditions as required by _____ [*insert name of contracting agency*]. The Contractor shall provide evidence of acceptable cargo insurance to _____ [*insert name of contracting agency*] before commencing operations under this contract.

(c) Each cargo insurance policy shall include the following statement:

''It is a condition of this policy that the Company shall furnish—

(1) Written notice to _____ [*insert name and address of contracting agency*], 30 days in advance of the effective date of any reduction in, or cancellation of, this policy; and

(2) Evidence of any renewal policy to the address specified in paragraph (1) of this statement, not less than 15 days prior to the expiration of any current policy on file with _____ [*insert name of contracting agency*].''

(End of clause)

22. Section 52.232–12 is amended—

a. By revising the introductory text, the date, paragraph (j), and the introductory text of paragraph (o) of the clause;

b. In paragraph (o)(8) by removing ''and warranties'';

c. By revising the date of Alternate V; and

d. By revising the date, paragraph (g), the introductory text of paragraph (l), and paragraph (l)(8) of the clause following Alternate V.

The revised text reads as follows:

52.232–12 Advance Payments.

As prescribed in 32.412(a), insert the following clause:

Advance Payments (May 1999)

* * * * *

(j) *Insurance.* (1) The Contractor shall maintain with responsible insurance carriers—

(i) Insurance on plant and equipment against fire and other hazards, to the extent that similar properties are usually insured by others operating plants and properties of similar character in the same general locality;

(ii) Adequate insurance against liability on account of damage to persons or property; and

(iii) Adequate insurance under all applicable workers' compensation laws.

(2) Until work under this contract has been completed and all advance payments made under the contract have been liquidated, the Contractor shall—

(i) Maintain this insurance;

(ii) Maintain adequate insurance on any materials, parts, assemblies, subassemblies, supplies, equipment, and other property acquired for or allocable to this contract and subject to the Government lien under paragraph (i) of this clause; and

(iii) Furnish any evidence with respect to its insurance that the administering office may require.

* * * * *

(o) *Representations.* The Contractor represents the following:

* * * * *

Alternate V (May 1999). * * *

* * * * *

Advance Payments Without Special Bank Account (May 1999)

* * * * *

(g) *Insurance.* (1) The Contractor shall maintain with responsible insurance carriers—

(i) Insurance on plant and equipment against fire and other hazards, to the extent that similar properties are usually insured by others operating plants and properties of similar character in the same general locality;

(ii) Adequate insurance against liability on account of damage to persons or property; and

(iii) Adequate insurance under all applicable workers' compensation laws.

(2) Until work under this contract has been completed and all advance payments made under the contract have been liquidated, the Contractor shall—

(i) Maintain this insurance;

(ii) Maintain adequate insurance on any materials, parts, assemblies, subassemblies, supplies, equipment, and other property acquired for or allocable to this contract and subject to the Government lien under paragraph (f) of this clause; and

(iii) Furnish any evidence with respect to its insurance that the administering office may require.

* * * * *

(l) *Representations.* The Contractor represents the following:

* * * * *

(8) These representations shall be continuing and shall be considered to have been repeated by the submission of each invoice for advance payments.

* * * * *

23. Section 52.241–1 is revised to read as follows:

52.241–1 Electric Service Territory Compliance Representation.

As prescribed in 41.501(b), insert a provision substantially the same as the following:

Electric Service Territory Compliance Representation (May 1999)

(a) Section 8093 of Public Law 100–202 generally requires purchases of electricity by any department, agency, or instrumentality of

the United States to be consistent with State law governing the provision of electric utility service, including State utility commission rulings and electric utility franchises or service territories established pursuant to State statute, State regulation, or State-approved territorial agreements.

(b) By signing this offer, the offeror represents that this offer to sell electricity is consistent with Section 8093 of Public Law 100–202.

(c) Upon request of the Contracting Officer, the offeror shall submit supporting legal and factual rationale for this representation.

(End of provision)

[FR Doc. 99–5203 Filed 3–3–99; 8:45 am]

BILLING CODE 6820–EP–P

DEPARTMENT OF DEFENSE

GENERAL SERVICES ADMINISTRATION

NATIONAL AERONAUTICS AND SPACE ADMINISTRATION

48 CFR Parts 5, 8, 12, 19, and 52

[FAC 97–11; FAR Case 98–013; Item II]

RIN 9000–AI29

Federal Acquisition Regulation; Very Small Business Concerns

AGENCIES: Department of Defense (DoD), General Services Administration (GSA), and National Aeronautics and Space Administration (NASA).

ACTION: Interim rule with request for comments.

SUMMARY: The Civilian Agency Acquisition Council and the Defense Acquisition Regulations Council have agreed on an interim rule amending the Federal Acquisition Regulation (FAR) to implement the Small Business Administration's Very Small Business Pilot Program (13 CFR parts 121 and 125).

DATES: *Effective Date:* March 4, 1999.

Applicability Date: This rule applies to solicitations issued on or after March 4, 1999.

Comment Date: Comments should be submitted to the FAR Secretariat at the address shown below on or before May 3, 1999, to be considered in the formulation of a final rule.

ADDRESSES: Interested parties should submit written comments to: General Services Administration, FAR Secretariat (MVR), 1800 F Street, NW, Room 4035, Attn: Ms. Laurie Duarte, Washington, DC 20405.

E-Mail comments submitted over the Internet should be addressed to: farcase.98–013@gsa.gov

Please cite FAC 97–11, FAR case 98–013 in all correspondence related to this case.

FOR FURTHER INFORMATION CONTACT: The FAR Secretariat, Room 4035, GS Building, Washington, DC 20405, (202) 501–4755, for information pertaining to status or publication schedules. For clarification of content, contact Ms. Victoria Moss, Procurement Analyst, at (202) 501–4764. Please cite FAC 97–11, FAR case 98–013.

SUPPLEMENTARY INFORMATION:

A. Background

Section 304 of the Small Business Administration Reauthorization and Amendments Act of 1994 (Pub. L. 103–403) authorized the SBA Administrator to establish and carry out a pilot program for very small business (VSB) concerns. The Small Business Administration (SBA) published a final rule in the **Federal Register** on September 2, 1998 (63 FR 46640), amending 13 CFR parts 121 and 125 to establish a pilot program for VSB business concerns. The purpose of the program is to improve access to Government contract opportunities for concerns that are substantially below SBA's size standards by reserving certain acquisitions for competition among such VSB concerns. Implementation of the program is limited to geographic areas served by 10 SBA district offices. A VSB concern is defined as a small business that has 15 or fewer employees together with average annual receipts that do not exceed $1 million. Any procurement that has an anticipated dollar value exceeding $2,500 but not greater than $50,000 may be set aside for VSB concerns. A contracting officer must set aside for VSB concerns any such service or construction requirement that will be performed within the geographical boundaries served by a designated SBA district office if there is a reasonable expectation of obtaining fair and reasonable offers from two or more responsible VSB concerns headquartered within the geographical area served by that designated SBA district. In the case of a procurement for supplies, a contracting officer must set aside any such requirement for VSBs if the contracting office is located within the geographical area served by a designated SBA district, and there is a reasonable expectation of obtaining fair and reasonable offers from two or more responsible VSB concerns headquartered within the geographical area served by that designated SBA district office. A decision chart to assist contracting personnel in making the decision to set aside an acquisition for VSB concerns is located at http://www.arnet.gov/References/VerySmall.html. The program will expire on September 30, 2000, unless further extended through legislation.

This regulatory action was not subject to Office of Management and Budget review under Executive Order 12866, dated September 30, 1993, and is not a major rule under 5 U.S.C. 804.

B. Regulatory Flexibility Act

The changes may have a significant economic impact on a substantial number of small entities within the meaning of the Regulatory Flexibility Act, 5 U.S.C. 601 *et seq.*, because Section 304 of the Small Business Administration Reauthorization and Amendments Act of 1994 (Pub. L. 103–403) called for the Small Business Administration (SBA) to conduct a pilot program to improve access to Federal Government contract opportunities for concerns that are substantially below SBA's size standards by reserving certain procurements for competition among such very small business (VSB) concerns. SBA's final rule implementing the pilot program was published in the **Federal Register** on September 2, 1998 (63 FR 46640).

The SBA provides, in its final rule, that the rule should have no effect on the amount of dollar value of any contract requirement or the number of requirements reserved for the small business set-aside program, since it is administered within and is a component of the small business set-aside program. Estimates of the number of entities to which the rule will apply were submitted by SBA in its regulatory flexibility analysis prepared for the final SBA rule. An Initial Regulatory Flexibility Analysis (IRFA) has been prepared and will be provided to the Chief Counsel for Advocacy for the Small Business Administration. A copy of the IRFA may be obtained from the FAR Secretariat. Comments are invited. Comments from small entities concerning the affected FAR subpart will be considered in accordance with 5 U.S.C. 610. Such comments must be submitted separately and should cite 5 U.S.C 601, *et seq.* (FAC 97–11, FAR Case 98–013), in correspondence.

C. Paperwork Reduction Act

The Paperwork Reduction Act does not apply because the changes to the FAR do not impose information collection requirements that require the approval of the Office of Management and Budget under 44 U.S.C. 3501, *et seq.*

D. Determination To Issue an Interim Rule

A determination has been made under the authority of the Secretary of Defense (DoD), the Administrator of General Services (GSA), and the Administrator of the National Aeronautics and Space Administration (NASA) that urgent and compelling reasons exist to promulgate this interim rule without prior opportunity for public comment. This action is necessary to conform the Federal Acquisition Regulation to revisions made to the Small Business Administration's small business size and Government contracting assistance regulations to incorporate the Very Small Business Set-Aside Pilot Program. The Small Business Administration's rule is effective on January 4, 1999. However, pursuant to Public Law 98–577 and FAR 1.501, public comments received in response to this interim rule will be considered in the formation of the final rule.

List of Subjects in 48 CFR Parts 5, 8, 12, 19, and 52

Government procurement.

Dated: February 25, 1999.

Edward C. Loeb,

Director, Federal Acquisition Policy Division.

Therefore, 48 CFR Parts 5, 8, 12, 19, and 52 are amended as set forth below:

1. The authority citation for 48 CFR Parts 5, 8, 12, 19, and 52 continues to read as follows:

Authority: 40 U.S.C. 486(c); 10 U.S.C. chapter 137; and 42 U.S.C. 2473(c).

PART 5—PUBLICIZING CONTRACT ACTIONS

2. Section 5.207 is amended by adding paragraph (c)(2)(xviii); and by revising paragraph (d) to read as follows:

5.207 Preparation and transmittal of synopses.

* * * * *

(c)(2) * * *

(xviii) In the case of a very small business set-aside, identify the Designated Region (see subpart 19.9).

(d) *Set-asides.* When the proposed acquisition provides for a total, partial, or very small business set-aside, or a HUBZone small business set-aside, the appropriate CBD Numbered Note will be cited.

* * * * *

PART 8—REQUIRED SOURCES OF SUPPLIES AND SERVICES

3. Section 8.404 is amended by revising paragraph (a) to read as follows:

8.404 Using schedules.

(a) *General.* When agency requirements are to be satisfied through the use of Federal Supply Schedules as set forth in this subpart, the simplified acquisition procedures of Part 13 and the small business provisions of Part 19 do not apply, except for the provision at 13.303–2(c)(3). Orders placed pursuant to a Multiple Award Schedule (MAS), using the procedures in this subpart, are considered to be issued pursuant to full and open competition (see 6.102(d)(3)). Therefore, when placing orders under Federal Supply Schedules, ordering offices need not seek further competition, synopsize the requirement, make a separate determination of fair and reasonable pricing, or consider small business programs. GSA has already determined the prices of items under schedule contracts to be fair and reasonable. By placing an order against a schedule using the procedures in this section, the ordering office has concluded that the order represents the best value and results in the lowest overall cost alternative (considering price, special features, administrative costs, etc.) to meet the Government's needs.

* * * * *

PART 12—ACQUISITION OF COMMERCIAL ITEMS

12.303 [Amended]

4. Section 12.303 is amended at the end of paragraph (b)(1) by removing the semicolon and adding ‘‘, or set-aside for very small business concerns;’’.

PART 19—SMALL BUSINESS PROGRAMS

5. Section 19.000 is amended at the end of paragraph (a)(8) by removing ‘‘and’’; in paragraph (a)(9) by removing the period and adding ‘‘; and’’; and by adding paragraph (a)(10) to read as follows:

19.000 Scope of part.

(a) * * *

(10) The Very Small Business Pilot Program.

* * * * *

6. Section 19.001 is amended by adding, in alphabetical order, the definition ‘‘Very small business concern’’ to read as follows:

19.001 Definitions.

* * * * *

Very small business concern means a small business concern—

(1) Whose headquarters is located within the geographic area served by a designated SBA district; and

(2) Which, together with its affiliates, has no more than 15 employees and has average annual receipts that do not exceed $1 million.

* * * * *

7. Section 19.102 is amended by redesignating paragraph ‘‘(g)’’ as ‘‘(h)’’; and by adding a new paragraph (g) to read as follows:

19.102 Size standards.

* * * * *

(g) In the case of acquisitions set aside for very small business in accordance with 19.904, offerors may not have more than 15 employees and may not have average annual receipts that exceed $1 million.

* * * * *

19.502–2 [Amended]

8. Section 19.502–2 is amended in the first sentence of paragraph (a) by removing ‘‘Each’’ and adding ‘‘Except for those acquisitions set aside for very small business concerns (see subpart 19.9), each’’.

9. Subpart 19.9, consisting of sections 19.901 through 19.905, is added to read as follows:

Subpart 19.9—Very Small Business Pilot Program

Sec.

19.901 General.
19.902 Definition.
19.903 Applicability.
19.904 Procedures.
19.905 Solicitation provision and contract clause.

Authority: 41 U.S.C. 486(c); 10 U.S.C. chapter 137; and 42 U.S.C. 2473(c).

Subpart 19.9—Very Small Business Pilot Program

19.901 General.

(a) The Very Small Business Pilot Program was established under Section 304 of the Small Business Administration Reauthorization and Amendments Act of 1994 (Public Law 103–403).

(b) The purpose of the program is to improve access to Government contract opportunities for concerns that are substantially below SBA's size standards by reserving certain acquisitions for competition among such concerns.

(c) This pilot program terminates on September 30, 2000. Therefore, any award under this program must be made on or before this date.

19.902 Definition.

Designated SBA district means the geographic area served by any of the following SBA district offices:

(1) Albuquerque, NM, serving New Mexico.

(2) Los Angeles, CA, serving the following counties in California: Los Angeles, Santa Barbara, and Ventura.

(3) Boston, MA, serving Massachusetts.

(4) Louisville, KY, serving Kentucky.

(5) Columbus, OH, serving the following counties in Ohio: Adams, Allen, Ashland, Athens, Auglaize, Belmont, Brown, Butler, Champaign, Clark, Clermont, Clinton, Coshocton, Crawford, Darke, Delaware, Fairfield, Fayette, Franklin, Gallia, Greene, Guernsey, Hamilton, Hancock, Hardin, Highland, Hocking, Holmes, Jackson, Knox, Lawrence, Licking, Logan, Madison, Marion, Meigs, Mercer, Miami, Monroe, Montgomery, Morgan, Morrow, Muskingum, Noble, Paulding, Perry, Pickaway, Pike, Preble, Putnam, Richland, Ross, Scioto, Shelby, Union, Van Wert, Vinton, Warren, Washington, and Wyandot.

(6) New Orleans, LA, serving Louisiana.

(7) Detroit, MI, serving Michigan.

(8) Philadelphia, PA, serving the State of Delaware and the following counties in Pennsylvania: Adams, Berks, Bradford, Bucks, Carbon, Chester, Clinton, Columbia, Cumberland, Dauphin, Delaware, Franklin, Fulton, Huntington, Juniata, Lackawanna, Lancaster, Lebanon, Lehigh, Luzerne, Lycoming, Mifflin, Monroe, Montgomery, Montour, Northampton, Northumberland, Philadelphia, Perry, Pike, Potter, Schuylkill, Snyder, Sullivan, Susquehanna, Tioga, Union, Wayne, Wyoming, and York.

(9) El Paso, TX, serving the following counties in Texas: Brewster, Culberson, El Paso, Hudspeth, Jeff Davis, Pecos, Presidio, Reeves, and Terrell.

(10) Santa Ana, CA, serving the following counties in California: Orange, Riverside, and San Bernadino.

19.903 Applicability.

(a) The Very Small Business Pilot Program applies to acquisitions, including construction acquisitions, with an estimated value exceeding $2,500 but not greater than $50,000, when—

(1) In the case of an acquisition for supplies, the contracting office is located within the geographical area served by a designated SBA district; or

(2) In the case of an acquisition for other than supplies, the contract will be performed within the geographical area served by a designated SBA district.

(b) The Very Small Business Pilot Program does not apply to—

(1) Acquisitions that will be awarded pursuant to the 8(a) Program; or

(2) Any requirement that is subject to the Small Business Competitiveness Demonstration Program (see Subpart 19.10).

19.904 Procedures.

(a) A contracting officer shall set-aside for very small business concerns each acquisition that has an anticipated dollar value exceeding $2,500 but not greater than $50,000 if—

(1) In the case of an acquisition for supplies—

(i) The contracting office is located within the geographical area served by a designated SBA district; and

(ii) There is a reasonable expectation of obtaining offers from two or more responsible very small business concerns headquartered within the geographical area served by the designated SBA district that are competitive in terms of market prices, quality, and delivery; or

(2) In the case of an acquisition for services—

(i) The contract will be performed within the geographical area served by a designated SBA district; and

(ii) There is a reasonable expectation of obtaining offers from two or more responsible very small business concerns headquartered within the geographical area served by the designated SBA district that are competitive in terms of market prices, quality, and delivery.

(b) Contracting officers shall determine the applicable designated SBA district office as defined at 19.902. The geographic areas served by the SBA Los Angeles and Santa Ana District offices will be treated as one designated SBA district for the purposes of this subpart.

(c) If no reasonable expectation exists under paragraphs (a)(1)(ii) and (a)(2)(ii) of this section, the contracting officer shall document the file and proceed with the acquisition in accordance with Subpart 19.5.

(d) If the contracting officer receives only one acceptable offer from a responsible very small business concern in response to a very small business set-aside, the contracting officer should make an award to that firm. If there is no offer received from a very small business concern, the contracting officer shall cancel the very small business set-aside and proceed with the acquisition in accordance with Subpart 19.5.

19.905 Solicitation provision and contract clause.

The contracting officer shall use the clause at 52.219–5, Very Small Business Set-Aside, in solicitations and contracts if the acquisition is set aside for very small business concerns.

(a) The contracting officer shall use the clause at 52.219–5 with its Alternate I—

(1) In construction or service contracts; or

(2) When the acquisition is for a product in a class for which the Small Business Administration has waived the nonmanufacturer rule (see 19.102(f)(4) and (5)).

(b) The contracting officer shall use the clause at 52.219–5 with its Alternate II when Alternate I does not apply, the acquisition is processed under simplified acquisition procedures, and the total amount of the contract does not exceed $25,000.

PART 52—SOLICITATION PROVISIONS AND CONTRACT CLAUSES

10. Section 52.212–5 is amended by revising the clause date; and by redesignating paragraphs (b)(2) through (b)(8) as (b)(4) through (b)(10), and (b)(9) and (b)(10) as (b)(2) and (b)(3), respectively; and by revising newly designated paragraph (b)(4) of the clause to read as follows:

52.212–5 Contract Terms and Conditions Required To Implement Statutes or Executive Orders—Commercial Items.

* * * * *

Contract Terms and Conditions Required To Implement Statutes or Executive Orders—Commercial Items (Mar 1999)

* * * * *

(b) * * *

____(4)(i) 52.219–5, Very Small Business Set-Aside (Pub. L. 103–403, section 304, Small Business Reauthorization and Amendments Act of 1994).

____(ii) Alternate I to 52.219–5.

____(iii) Alternate II to 52.219–5.

* * * * *

11. Section 52.219–5 is added to read as follows:

52.219–5 Very Small Business Set-Aside.

As prescribed in 19.905, insert the following clause:

Very Small Business Set-Aside (Mar 1999)

(a) *Definition. Very Small Business Concern,* as used in this clause, means a concern whose headquarters is located within the geographical area served by a designated SBA district (see 13 CFR 125.7(b)); which, together with its affiliates, has no more than 15 employees and has average annual receipts that do not exceed $1 million.

(b) *Eligibility.* (1) Only those firms headquartered in the _____ Small Business Administration (SBA) district [*Contracting Officer shall insert the applicable SBA designated district. If the geographic area is served by the SBA Los Angeles or Santa Ana District offices, list both*] are eligible for this acquisition.

(2) Offers or quotations under this acquisition are solicited from very small business concerns only. Offers that are from other than an eligible very small business concern shall not be considered and shall be rejected. The offeror represents that it is an eligible very small business concern by submission of an offer or quotation.

(c) *Agreement.* A very small business concern submitting an offer in its own name agrees to furnish, in performing the contract, only end items manufactured or produced by small business concerns in the United States. As used in this clause, the term *United States* includes its territories and possessions, the Commonwealth of Puerto Rico, the trust territory of the Pacific Islands, and the District of Columbia.

(End of clause)

Alternate I (Mar 1999). As prescribed in 19.905(a), delete paragraph (c) of the basic clause.

Alternate II (Mar 1999). As prescribed in 19.905(b), substitute the following paragraph (c) for paragraph (c) of the basic clause:

(c) *Agreement.* A very small business concern submitting an offer in its own name agrees to furnish, in performing the contract, only end items manufactured or produced by domestic firms in the United States. As used in this clause, the term *United States* includes its territories and possessions, the Commonwealth of Puerto Rico, the trust territory of the Pacific Islands, and the District of Columbia.

[FR Doc. 99–5204 Filed 3–3–99; 8:45 am]

BILLING CODE 6820–EP–P

DEPARTMENT OF DEFENSE

GENERAL SERVICES ADMINISTRATION

NATIONAL AERONAUTICS AND SPACE ADMINISTRATION

48 CFR Parts 11 and 52

[FAC 97–11; FAR Case 98–612; Item III]

RIN 9000–AI30

Federal Acquisition Regulation; Variation in Quantity

AGENCIES: Department of Defense (DoD), General Services Administration (GSA), and National Aeronautics and Space Administration (NASA).

ACTION: Final rule.

SUMMARY: The Civilian Agency Acquisition Council and the Defense Acquisition Regulations Council have agreed on a final rule amending the Federal Acquisition Regulation (FAR) to remove the requirement to include the clause at FAR 52.211–16, Variation in Quantity, in fixed-price solicitations and contracts that do not permit a variation in the quantity of supplies furnished under the contract.

EFFECTIVE DATE: May 3, 1999.

FOR FURTHER INFORMATION CONTACT: The FAR Secretariat, Room 4035, GS Building, Washington, DC, 20405, (202) 501–4755, for information pertaining to status or publication schedules. For clarification of content, contact Ms. Victoria Moss, Procurement Analyst, at (202) 501–4764. Please cite FAC 97–11, FAR case 98–612.

SUPPLEMENTARY INFORMATION:

A. Background

This final rule amends FAR 11.703(a) to change the prescription for the clause at 52.211–16, Variation in Quantity. The revised prescription requires that the clause only be used if the contracting officer is authorizing a variation in the quantity of supplies to be furnished under fixed-price supply contracts or fixed-price service contracts that involve the furnishing of supplies. Currently the clause is required in all fixed-price supply contracts for supplies or for services that involve the furnishing of supplies. Where variations are not permitted, the clause is used with a ''0%'' permissible variation.

This regulatory action was not subject to Office of Management and Budget review under Executive Order 12866, dated September 30, 1993, and is not a major rule under 5 U.S.C. 804.

B. Regulatory Flexibility Act

The final rule does not constitute a significant FAR revision within the meaning of FAR 1.501 and Public Law 98–577, and publication for public comments is not required. However, comments from small entities concerning the affected FAR subpart will be considered in accordance with 5 U.S.C. 610. Such comments must be submitted separately and should cite 5 U.S.C. 601, *et seq.* (FAC 97–11, FAR case 98–612), in correspondence.

C. Paperwork Reduction Act

The Paperwork Reduction Act does not apply because the changes to the FAR do not impose information collection requirements that require the approval of the Office of Management and Budget under 44 U.S.C. 3501, *et seq.*

List of Subjects in 48 CFR Parts 11 and 52

Government procurement.

Dated: February 25, 1999.

Edward C. Loeb,

Director, Federal Acquisition Policy Division.

Therefore, 48 CFR Parts 11 and 52 are amended as set forth below:

1. The authority citation for 48 CFR Parts 11 and 52 continues to read as follows:

Authority: 40 U.S.C. 486(c); 10 U.S.C. chapter 137; and 42 U.S.C. 2473(c).

PART 11—DESCRIBING AGENCY NEEDS

2. Section 11.703 is amended by revising paragraph (a) to read as follows:

11.703 Contract clauses.

(a) The contracting officer shall insert the clause at 52.211–16, Variation in Quantity, in solicitations and contracts, if authorizing a variation in quantity in fixed-price contracts for supplies or for services that involve the furnishing of supplies.

* * * * *

PART 52—SOLICITATION PROVISIONS AND CONTRACT CLAUSES

3. Section 52.211–16 is amended by revising the introductory paragraph to read as follows:

52.211–16 Variation in quantity.

As prescribed in 11.703(a), insert the following clause:

* * * * *

[FR Doc. 99–5205 Filed 3–3–99; 8:45 am]

BILLING CODE 6820–EP–P

DEPARTMENT OF DEFENSE

GENERAL SERVICES ADMINISTRATION

NATIONAL AERONAUTICS AND SPACE ADMINISTRATION

48 CFR Parts 13, 16, 32, and 52

[FAC 97–11; FAR Case 91–118; Item IV]

RIN 9000–AG49

Federal Acquisition Regulation; Electronic Funds Transfer

AGENCIES: Department of Defense (DoD), General Services Administration (GSA), and National Aeronautics and Space Administration (NASA).

ACTION: Final rule.

SUMMARY: The Civilian Agency Acquisition Council and the Defense Acquisition Regulations Council have agreed to adopt as final, with changes, the interim rule published in Federal Acquisition Circular 90–42 on August 29, 1996. The rule amends the Federal Acquisition Regulation (FAR) to address the use of electronic funds transfers (EFT) for Federal contract payments made after January 1, 1999, and to

facilitate implementation of Public Law 104–134 which mandates payment by EFT in most situations.

EFFECTIVE DATE: May 3, 1999.

FOR FURTHER INFORMATION CONTACT: The FAR Secretariat, Room 4035, GS Building, Washington, DC, 20405, (202) 501–4755, for information pertaining to status or publication schedules. For clarification of content, contact Mr. Jeremy Olson, at (202) 501–0692. Please cite FAC 97–11, FAR case 91–118.

SUPPLEMENTARY INFORMATION:

A. Background

Subsection 31001(x)(1) of the Debt Collection Improvement Act of 1996 (Pub. L. 104–134) amends 31 U.S.C. 3332 to require, subject to the authority of the Secretary of the Treasury to grant waivers, that—

1. Beginning July 26, 1996, payments to newly eligible recipients must be made by EFT unless the recipient of those payments certifies that the recipient does not have an account with a financial institution or an authorized payment agent; and

2. Beginning January 2, 1999, all Federal payments (other than payments under the Internal Revenue Code of 1986) shall be made by electronic funds transfer (EFT).

Under this statute, the Department of the Treasury is responsible for issuing implementing regulations. Treasury issued an interim rule which was published at 61 FR 39254, July 26, 1996. The interim rule added Part 208 to Title 31, Code of Federal Regulations, and addressed the time period from July 26, 1996, through January 1, 1999 (''phase one''). Treasury published a final rule at 63 FR 51490, September 25, 1998 that provides guidance at 31 CFR 208 regarding compliance with Pub. L. 104–134's EFT requirement and establishes the circumstances under which waivers are available for the time period beginning January 2, 1999 (''phase two'').

An interim FAR rule was published at 61 FR 45770, August 29, 1996. A proposed FAR rule, which differed significantly from the interim rule, was published at 63 FR 36522, July 6, 1998. Public comments on the proposed rule were received from 17 sources. All comments were considered in developing the final rule.

This final rule differs from the proposed rule to—

(1) Reflect the analysis and disposition of public comments;

(2) Implement applicable provisions of Treasury's final rule;

(3) Remove references to the ''phase one'' time period, which ended January 1, 1999;

(4) Add a new contract clause at 52.232–38, Submission of Electronic Funds Transfer Information with Offer;

(5) Address the situation when an offeror is required to submit EFT information prior to award; and

(6) Make editorial changes.

This regulatory action was not subject to Office of Management and Budget review under Executive Order 12866, dated September 30, 1993, and is not a major rule under 5 U.S.C. 804.

B. Regulatory Flexibility Act

The changes may have a significant economic impact on a substantial number of small entities within the meaning of the Regulatory Flexibility Act, 5 U.S.C. 601 *et seq.*, because the majority of small entities will have payment made by EFT under their contracts. An Initial Regulatory Flexibility Analysis (IRFA) was performed in conjunction with the interim rule published at 61 FR 45770, August 29, 1996, and a revised IRFA was performed in conjunction with the proposed rule published at 63 FR 36522, July 6, 1998.

A Final Regulatory Flexibility Analysis (FRFA) has been performed and submitted to the Chief Counsel for Advocacy of the Small Business Administration. A copy of the FRFA may be obtained from the FAR Secretariat. The FRFA is summarized as follows:

The objective of the rule is to revise current procedures for the use of electronic funds transfers for Federal contract payments to comply with Subsection 31001(x)(1) of the Debt Collection Improvement Act of 1996 (Pub. L. 104–134). Subsection 31001(x)(1) of the Act amends 31 U.S.C. 3332 to require, subject to the authority of the Secretary of the Treasury to grant waivers, that all Federal payment shall be made by EFT beginning January 2, 1999.

Several respondents commented on the impact of this rule on small businesses. One respondent remarked on the ''financial burden now being inflicted by the changing payment policies.'' This method of payment, rather than a financial burden, should be economically beneficial to small and large entities. Administratively, EFT information is noncomplex and easy to provide to the Government with an offer, after award, or through the Central Contractor Registration process. Once the information has been furnished, the payment process will be faster and less burdensome than the payment process by check since small businesses will not have to worry about mail delays, depositing checks, lost mail, etc. A second respondent raised the concern about protecting small businesses from financial harm by safeguarding banking information from unauthorized use. The final rule addresses this concern at FAR 32.1104 by requiring agencies to safeguard EFT information provided to the Government.

The final rule will apply, beginning January 2, 1999, to all small and large businesses who enter into contracts with the Federal Government unless one of the conditions enumerated at FAR 32.1103 applies. The rule requires contractors to submit identification and account number information which will enable the Government to make contract payments by EFT. Administrative or financial personnel who have general knowledge of the contractor's bank account or a financial agent, are able to prepare the information required by the clauses.

The goal of the alternative selected and reflected in the final rule is to provide flexibility with regard to the needs of small entities within the constraints and objectives of Pub. L. 104–134 and implementing Treasury Regulations.

C. Paperwork Reduction Act

The Paperwork Reduction Act (Pub. L. 96–511) is deemed to apply because the final rule contains information collection requirements. The collection of this information has been approved by the Office of Management and Budget (OMB) under OMB Control Number 9000–0144. Public comments concerning this request were invited through a **Federal Register** notice.

List of Subjects in 48 CFR Parts 13, 16, 32, and 52

Government procurement.

Dated: February 25, 1999.

Edward C. Loeb,

Director, Federal Acquisition Policy Division.

Therefore, 48 CFR Parts 13, 16, 32, and 52 are amended as set forth below:

1. The authority citation for 48 CFR Parts 13, 16, 32, and 52 continues to read as follows:

Authority: 40 U.S.C. 486(c); 10 U.S.C. chapter 137; and 42 U.S.C. 2473(c).

PART 13—SIMPLIFIED ACQUISITION PROCEDURES

2. Section 13.201 is amended in paragraph (d) by removing ''32.1103'' and inserting ''32.1110''.

3. Section 13.301 is amended at the end of paragraph (b) by adding a new sentence to read as follows:

13.301 Governmentwide commercial purchase card.

* * * * *

(b) * * * See 32.1110(d) for instructions for use of the appropriate clause when payment under a written contract will be made through use of the card.

* * * * *

4. Section 13.302–1 is amended by revising paragraph (e) to read as follows:

13.302–1 General.

* * * * *

(e) In accordance with 31 U.S.C. 3332, electronic funds transfer (EFT) is required for payments except as provided in 32.1110. See Subpart 32.11 for instructions for use of the appropriate clause in purchase orders. When obtaining oral quotes, the contracting officer shall inform the quoter of the EFT clause that will be in any resulting purchase order.

PART 16—TYPES OF CONTRACTS

5. Section 16.505 is amended by redesignating paragraph (a)(6)(viii) as (a)(6)(ix); and adding a new paragraph (a)(6)(viii) to read as follows:

16.505 Ordering.

(a) * * *

(6) * * *

(viii) Method of payment and payment office, if not specified in the contract (see 32.1110(e)).

* * * * *

PART 32—CONTRACT FINANCING

6–7. Subpart 32.11 is revised to read as follows:

Subpart 32.11—Electronic Funds Transfer

32.1100 Scope of subpart.
32.1101 Statutory requirements.
32.1102 Definitions.
32.1103 Applicability.
32.1104 Protection of EFT information.
32.1105 Assignment of claims.
32.1106 EFT mechanisms.
32.1107 Payment information.
32.1108 Payment by Governmentwide commercial purchase card.
32.1109 EFT information submitted by offerors.
32.1110 Solicitation provision and contract clauses.

Subpart 32.11—Electronic Funds Transfer

32.1100 Scope of subpart.

This subpart provides policy and procedures for contract financing and delivery payments to contractors by electronic funds transfer (EFT).

32.1101 Statutory requirements.

31 U.S.C. 3332 requires, subject to implementing regulations of the Secretary of the Treasury at 31 CFR part 208, that EFT be used to make all contract payments.

32.1102 Definitions.

Electronic Funds Transfer (EFT) means any transfer of funds, other than a transaction originated by cash, check, or similar paper instrument, that is initiated through an electronic terminal, telephone, computer, or magnetic tape, for the purpose of ordering, instructing, or authorizing a financial institution to debit or credit an account. The term includes Automated Clearing House transfers, Fedwire transfers, and transfers made at automatic teller machines and point-of-sale terminals. For purposes of compliance with 31 U.S.C. 3332 and implementing regulations at 31 CFR part 208, the term ''electronic funds transfer'' includes a Governmentwide commercial purchase card transaction.

EFT information means information necessary for making a payment by EFT through specified EFT mechanisms.

Governmentwide commercial purchase card, as used in this part, means a card that is similar in nature to a commercial credit card that is used to make financing and delivery payments for supplies and services. The purchase card is an EFT method and it may be used as a means to meet the requirement to pay by EFT, to the extent that purchase card limits do not preclude such payments.

Payment information means the payment advice provided by the Government to the contractor that identifies what the payment is for, any computations or adjustments made by the Government, and any information required by the Prompt Payment Act.

32.1103 Applicability.

The Government shall provide all contract payments through EFT except if—

(a) The office making payment under a contract that requires payment by EFT, loses the ability to release payment by EFT. To the extent authorized by 31 CFR part 208, the payment office shall make necessary payments pursuant to paragraph (a)(2) of the clause at either 52.232–33 or 52.232–34 until such time as it can make EFT payments;

(b) The payment is to be received by or on behalf of the contractor outside the United States and Puerto Rico (but see 32.1106(b));

(c) A contract is paid in other than United States currency (but see 32.1106(b));

(d) Payment by EFT under a classified contract (see 4.401) could compromise the safeguarding of classified information or national security, or where arrangements for appropriate EFT payments would be impractical due to security considerations;

(e) A contract is awarded by a deployed contracting officer in the course of military operations, including, but not limited to, contingency operations as defined in 10 U.S.C. 101(a)(13), or a contract is awarded by any contracting officer in the conduct of emergency operations, such as responses to natural disasters or national or civil emergencies, if—

(1) EFT is not known to be possible; or

(2) EFT payment would not support the objectives of the operation;

(f) The agency does not expect to make more than one payment to the same recipient within a one-year period;

(g) An agency's need for supplies and services is of such unusual and compelling urgency that the Government would be seriously injured unless payment is made by a method other than EFT;

(h) There is only one source for supplies and services and the Government would be seriously injured unless payment is made by a method other than EFT; or

(i) Otherwise authorized by Department of the Treasury Regulations at 31 CFR part 208.

32.1104 Protection of EFT information.

The Government shall protect against improper disclosure of contractors' EFT information.

32.1105 Assignment of claims.

The use of EFT payment methods is not a substitute for a properly executed assignment of claims in accordance with Subpart 32.8. EFT information that shows the ultimate recipient of the transfer to be other than the contractor, in the absence of a proper assignment of claims, is considered to be incorrect EFT information within the meaning of the ''Suspension of Payment'' paragraphs of the EFT clauses at 52.232–33 and 52.232–34.

32.1106 EFT mechanisms.

(a) *Domestic EFT mechanisms.* The EFT clauses at 52.232-33 and 52.232–34 are designed for use with the domestic United States banking system, using United States currency, and only the specified mechanisms (U.S. Automated Clearing House, and Fedwire Transfer System) of EFT. However, the head of an agency may authorize the use of any other EFT mechanism for domestic EFT with the concurrence of the office or agency responsible for making payments.

(b) *Nondomestic EFT mechanisms and other than United States currency.* The Government shall provide payment by other than EFT for payments received by or on behalf of the contractor outside the United States and Puerto Rico or for contracts paid in other than United States currency. However, the head of an agency may authorize appropriate use of EFT with the concurrence of the office or agency responsible for making payments if—

(1) The political, financial, and communications infrastructure in a foreign country supports payment by EFT; or

(2) Payments of other than United States currency may be made safely.

32.1107 Payment information.

The payment or disbursing office shall forward to the contractor available payment information that is suitable for transmission as of the date of release of the EFT instruction to the Federal Reserve System.

32.1108 Payment by Governmentwide commercial purchase card.

A Governmentwide commercial purchase card charge authorizes the third party (*e.g.*, financial institution) that issued the purchase card to make immediate payment to the contractor. The Government reimburses the third party at a later date for the third party's payment to the contractor.

(a) The clause at 52.232–36, Payment by Third Party, governs when a contractor submits a charge against the purchase card for contract payment. The clause provides that the contractor shall make such payment requests by a charge to a Government account with the third party at the time the payment clause(s) of the contract authorizes the contractor to submit a request for payment, and for the amount due in accordance with the terms of the contract. To the extent that such a payment would otherwise be approved, the charge against the purchase card should not be disputed when the charge is reported to the Government by the third party. To the extent that such payment would otherwise not have been approved, an authorized individual (see 1.603–3) shall take action to remove the charge, such as by disputing the charge with the third party or by requesting that the contractor credit the charge back to the Government under the contract.

(b) Written contracts to be paid by purchase card should include the clause at 52.232–36, Payment by Third Party, as prescribed by 32.1110(d). However, payment by a purchase card also may be made under a contract that does not contain the clause to the extent the contractor agrees to accept that method of payment.

(c) The clause at 52.232–36, Payment by Third Party, requires that the contract—

(1) Identify the third party and the particular purchase card to be used; and

(2) Not include the purchase card account number. The purchase card account number should be provided separately to the contractor.

32.1109 EFT information submitted by offerors.

If offerors are required to submit EFT information prior to award, the successful offeror is not responsible for resubmitting this information after award of the contract except to make changes, or to place the information on invoices if required by agency procedures. Therefore, contracting officers shall forward EFT information provided by the successful offeror to the appropriate office.

32.1110 Solicitation provision and contract clauses.

(a) Unless payment will be made exclusively through use of the Governmentwide commercial purchase card or other third party payment arrangement (see 13.301 and paragraph (d) of this section) or an exception listed in 32.1103(a) through (i) applies—

(1) The contracting officer shall insert the clause at 52.232–33, Payment by Electronic Funds Transfer—Central Contractor Registration, in all solicitations and contracts if the payment office uses the Central Contractor Registration (CCR) database as its source of EFT information. The contracting officer also shall insert this clause if the payment office does not currently have the ability to make payment by EFT, but will use the CCR database as its source of EFT information when it begins making payments by EFT;

(2)(i) The contracting officer shall insert the clause at 52.232–34, Payment by Electronic Funds Transfer—Other than Central Contractor Registration, in all other solicitations and contracts. The contracting officer also shall insert this clause if the payment office currently does not have the ability to make payment by EFT, but will use a source other than the CCR database for EFT information when it begins making payments by EFT.

(ii)(A) If permitted by agency procedures, the contracting officer may insert in paragraph (b)(1) of the clause, a particular time after award, such as a fixed number of days, or event such as the submission of the first request for payment.

(B) If no agency procedures are prescribed, the time period inserted in paragraph (b)(1) of the clause shall be ''no later than 15 days prior to submission of the first request for payment.''

(b) If the head of the agency has authorized, in accordance with 32.1106, to use a nondomestic EFT mechanism, the contracting officer shall insert in solicitations and contracts a clause substantially the same as 52.232–33 or 52.232–34 that clearly addresses the nondomestic EFT mechanism.

(c) If EFT information is to be submitted to other than the payment office in accordance with agency procedures, the contracting officer shall insert in solicitations and contracts the clause at 52.232–35, Designation of Office for Government Receipt of Electronic Funds Transfer Information, or a clause substantially the same as 52.232–35 that clearly informs the contractor where to send the EFT information.

(d) If payment under a written contract will be made by a charge to a Government account with a third party such as a Governmentwide commercial purchase card, then the contracting officer shall insert the clause at 52.232–36, Payment by Third Party, in solicitations and contracts. Payment by a purchase card may also be made under a contract that does not contain the clause at 52.232–36, to the extent the contractor agrees to accept that method of payment.

(e) If the contract or agreement provides for the use of delivery orders, and provides that the ordering office designate the method of payment for individual orders, the contracting officer shall insert, in the solicitation and contract or agreement, the clause at 52.232–37, Multiple Payment Arrangements, and, to the extent they are applicable, the clauses at—

(1) 52.232–33, Payment by Electronic Funds Transfer—Central Contractor Registration;

(2) 52.232–34, Payment by Electronic Funds Transfer—Other than Central Contractor Registration; and

(3) 52.232–36, Payment by Third Party.

(f) If more than one disbursing office will make payment under a contract or agreement, the contracting officer, or ordering office (if the contract provides for choices between EFT clauses on individual orders or classes of orders), shall include or identify the EFT clause appropriate for each office and shall identify the applicability by disbursing office and contract line item.

(g) If the solicitation contains the clause at 52.232–34, Payment by Electronic Funds Transfer—Other than Central Contractor Registration, and an offeror is required to submit EFT information prior to award—

(1) The contracting officer shall insert in the solicitation the provision at 52.232–38, Submission of Electronic Funds Transfer Information with Offer, or a provision substantially the same; and

(2) For sealed bid solicitations, the contracting officer shall amend 52.232–

38 to ensure that a bidder's EFT information—

(i) Is not a part of the bid to be opened at the public opening; and

(ii) May not be released to members of the general public who request a copy of the bid.

PART 52—SOLICITATION PROVISIONS AND CONTRACT CLAUSES

8. Section 52.212–4 is amended by revising the date and the third sentence in paragraph (i) of the clause to read as follows:

52.212–4 Contract Terms and Conditions—Commercial Items.

* * * * *

Contract Terms and Conditions—Commercial Items (May 1999)

* * * * *

(i) * * * If the Government makes payment by Electronic Funds Transfer (EFT), see 52.212–5(b) for the appropriate EFT clause. * * *

* * * * *

9. Section 52.212–5 is amended by revising the date of the clause; in the parenthetical in paragraph (b)(21) by inserting a period after the ''C'' in ''U.S.C''; by redesignating (b)(22) and (b)(23) as (b)(25) and (b)(26); and by adding new paragraphs (b)(22) through (b)(24) to read as follows:

52.212–5 Contract Terms and Conditions Required To Implement Statutes or Executive Orders—Commercial Items.

* * * * *

Contract Terms and Conditions Required To Implement Statutes or Executive Orders—Commercial Items (May 1999)

* * * * *

(b) * * *

_____(22) 52.232–33, Payment by Electronic Funds Transfer—Central Contractor Registration (31 U.S.C. 3332).

_____(23) 52.232–34, Payment by Electronic Funds Transfer—Other than Central Contractor Registration (31 U.S.C. 3332).

_____(24) 52.232–36, Payment by Third Party (31 U.S.C. 3332).

* * * * *

10. Section 52.213–4 is amended by revising the date of the clause; by removing paragraph (a)(2)(vi); and redesignating paragraphs (a)(2)(vii) through (a)(2)(ix) as (a)(2)(vi) through (a)(2)(viii), respectively; and by adding new paragraphs (b)(1)(ix) and (b)(1)(x) to read as follows:

52.213–4 Terms and Conditions—Simplified Acquisitions (Other Than Commercial Items).

* * * * *

Terms and Conditions—Simplified Acquisitions (Other Than Commercial Items) (May 1999)

* * * * *

(b) * * *

(1) * * *

(ix) 52.232–33, Payment by Electronic Funds Transfer—Central Contractor Registration (May 1999). (Applies when the payment will be made by electronic funds transfer (EFT) and the payment office uses the Central Contractor Registration (CCR) database as its source of EFT information.)

(x) 52.232–34, Payment by Electronic Funds Transfer—Other than Central Contractor Registration (May 1999). (Applies when the payment will be made by EFT and the payment office does not use the CCR database as its source of EFT information.)

* * * * *

11. Sections 52.232–33 and 52.232–34, headings and text, are revised to read as follows:

52.232–33 Payment by Electronic Funds Transfer—Central Contractor Registration.

As prescribed in 32.1110(a)(1), insert the following clause:

Payment by Electronic Funds Transfer—Central Contractor Registration (May 1999)

(a) *Method of payment.* (1) All payments by the Government under this contract shall be made by electronic funds transfer (EFT), except as provided in paragraph (a)(2) of this clause. As used in this clause, the term ''EFT'' refers to the funds transfer and may also include the payment information transfer.

(2) In the event the Government is unable to release one or more payments by EFT, the Contractor agrees to either—

(i) Accept payment by check or some other mutually agreeable method of payment; or

(ii) Request the Government to extend the payment due date until such time as the Government can make payment by EFT (but see paragraph (d) of this clause).

(b) *Contractor's EFT information.* The Government shall make payment to the Contractor using the EFT information contained in the Central Contractor Registration (CCR) database. In the event that the EFT information changes, the Contractor shall be responsible for providing the updated information to the CCR database.

(c) *Mechanisms for EFT payment.* The Government may make payment by EFT through either the Automated Clearing House (ACH) network, subject to the rules of the National Automated Clearing House Association, or the Fedwire Transfer System. The rules governing Federal payments through the ACH are contained in 31 CFR part 210.

(d) *Suspension of payment.* If the Contractor's EFT information in the CCR database is incorrect, then the Government need not make payment to the Contractor under this contract until correct EFT information is entered into the CCR database; and any invoice or contract financing request shall be deemed not to be a proper invoice for the purpose of prompt payment under this contract. The prompt payment terms of the contract regarding notice of an improper invoice and delays in accrual of interest penalties apply.

(e) *Contractor EFT arrangements.* If the Contractor has identified multiple payment receiving points (*i.e.*, more than one remittance address and/or EFT information set) in the CCR database, and the Contractor has not notified the Government of the payment receiving point applicable to this contract, the Government shall make payment to the first payment receiving point (EFT information set or remittance address as applicable) listed in the CCR database.

(f) *Liability for uncompleted or erroneous transfers.* (1) If an uncompleted or erroneous transfer occurs because the Government used the Contractor's EFT information incorrectly, the Government remains responsible for—

(i) Making a correct payment;

(ii) Paying any prompt payment penalty due; and

(iii) Recovering any erroneously directed funds.

(2) If an uncompleted or erroneous transfer occurs because the Contractor's EFT information was incorrect, or was revised within 30 days of Government release of the EFT payment transaction instruction to the Federal Reserve System, and—

(i) If the funds are no longer under the control of the payment office, the Government is deemed to have made payment and the Contractor is responsible for recovery of any erroneously directed funds; or

(ii) If the funds remain under the control of the payment office, the Government shall not make payment, and the provisions of paragraph (d) of this clause shall apply.

(g) *EFT and prompt payment.* A payment shall be deemed to have been made in a timely manner in accordance with the prompt payment terms of this contract if, in the EFT payment transaction instruction released to the Federal Reserve System, the date specified for settlement of the payment is on or before the prompt payment due date, provided the specified payment date is a valid date under the rules of the Federal Reserve System.

(h) *EFT and assignment of claims.* If the Contractor assigns the proceeds of this contract as provided for in the assignment of claims terms of this contract, the Contractor shall require as a condition of any such assignment, that the assignee shall register in the CCR database and shall be paid by EFT in accordance with the terms of this clause. In all respects, the requirements of this clause shall apply to the assignee as if it were the Contractor. EFT information that shows the ultimate recipient of the transfer to be other than the Contractor, in the absence of a proper assignment of claims acceptable to the Government, is incorrect EFT information within the meaning of paragraph (d) of this clause.

(i) *Liability for change of EFT information by financial agent.* The Government is not liable for errors resulting from changes to EFT information made by the Contractor's financial agent.

(j) *Payment information.* The payment or disbursing office shall forward to the Contractor available payment information that is suitable for transmission as of the date of release of the EFT instruction to the Federal Reserve System. The Government may request the Contractor to designate a desired format and method(s) for delivery of payment information from a list of formats and methods the payment office is capable of executing. However, the Government does not guarantee that any particular format or method of delivery is available at any particular payment office and retains the latitude to use the format and delivery method most convenient to the Government. If the Government makes payment by check in accordance with paragraph (a) of this clause, the Government shall mail the payment information to the remittance address contained in the CCR database.

(End of Clause)

52.232–34 Payment by Electronic Funds Transfer—Other than Central Contractor Registration.

As prescribed in 32.1110(a)(2), insert the following clause:

Payment by Electronic Funds Transfer—Other Than Central Contractor Registration (May 1999)

(a) *Method of payment.* (1) All payments by the Government under this contract shall be made by electronic funds transfer (EFT) except as provided in paragraph (a)(2) of this clause. As used in this clause, the term ''EFT'' refers to the funds transfer and may also include the payment information transfer.

(2) In the event the Government is unable to release one or more payments by EFT, the Contractor agrees to either—

(i) Accept payment by check or some other mutually agreeable method of payment; or

(ii) Request the Government to extend payment due dates until such time as the Government makes payment by EFT (but see paragraph (d) of this clause).

(b) *Mandatory submission of Contractor's EFT information.* (1) The Contractor is required to provide the Government with the information required to make payment by EFT (see paragraph (j) of this clause). The Contractor shall provide this information directly to the office designated in this contract to receive that information (hereafter: ''designated office'') by _____ [*the Contracting Officer shall insert date, days after award, days before first request, the date specified for receipt of offers if the provision at 52.232–38 is utilized, or ''concurrent with first request'' as prescribed by the head of the agency; if not prescribed, insert ''no later than 15 days prior to submission of the first request for payment''*]. If not otherwise specified in this contract, the payment office is the designated office for receipt of the Contractor's EFT information. If more than one designated office is named for the contract, the Contractor shall provide a separate notice to each office. In the event that the EFT information changes, the Contractor shall be responsible for providing the updated information to the designated office(s).

(2) If the Contractor provides EFT information applicable to multiple contracts, the Contractor shall specifically state the applicability of this EFT information in terms acceptable to the designated office. However, EFT information supplied to a designated office shall be applicable only to contracts that identify that designated office as the office to receive EFT information for that contract.

(c) *Mechanisms for EFT payment.* The Government may make payment by EFT through either the Automated Clearing House (ACH) network, subject to the rules of the National Automated Clearing House Association, or the Fedwire Transfer System. The rules governing Federal payments through the ACH are contained in 31 CFR part 210.

(d) *Suspension of payment.* (1) The Government is not required to make any payment under this contract until after receipt, by the designated office, of the correct EFT payment information from the Contractor. Until receipt of the correct EFT information, any invoice or contract financing request shall be deemed not to be a proper invoice for the purpose of prompt payment under this contract. The prompt payment terms of the contract regarding notice of an improper invoice and delays in accrual of interest penalties apply.

(2) If the EFT information changes after submission of correct EFT information, the Government shall begin using the changed EFT information no later than 30 days after its receipt by the designated office to the extent payment is made by EFT. However, the Contractor may request that no further payments be made until the updated EFT information is implemented by the payment office. If such suspension would result in a late payment under the prompt payment terms of this contract, the Contractor's request for suspension shall extend the due date for payment by the number of days of the suspension.

(e) *Liability for uncompleted or erroneous transfers.* (1) If an uncompleted or erroneous transfer occurs because the Government used the Contractor's EFT information incorrectly, the Government remains responsible for—

(i) Making a correct payment;

(ii) Paying any prompt payment penalty due; and

(iii) Recovering any erroneously directed funds.

(2) If an uncompleted or erroneous transfer occurs because the Contractor's EFT information was incorrect, or was revised within 30 days of Government release of the EFT payment transaction instruction to the Federal Reserve System, and—

(i) If the funds are no longer under the control of the payment office, the Government is deemed to have made payment and the Contractor is responsible for recovery of any erroneously directed funds; or

(ii) If the funds remain under the control of the payment office, the Government shall not make payment and the provisions of paragraph (d) shall apply.

(f) *EFT and prompt payment.* A payment shall be deemed to have been made in a timely manner in accordance with the prompt payment terms of this contract if, in the EFT payment transaction instruction released to the Federal Reserve System, the date specified for settlement of the payment is on or before the prompt payment due date, provided the specified payment date is a valid date under the rules of the Federal Reserve System.

(g) *EFT and assignment of claims.* If the Contractor assigns the proceeds of this contract as provided for in the assignment of claims terms of this contract, the Contractor shall require as a condition of any such assignment, that the assignee shall provide the EFT information required by paragraph (j) of this clause to the designated office, and shall be paid by EFT in accordance with the terms of this clause. In all respects, the requirements of this clause shall apply to the assignee as if it were the Contractor. EFT information that shows the ultimate recipient of the transfer to be other than the Contractor, in the absence of a proper assignment of claims acceptable to the Government, is incorrect EFT information within the meaning of paragraph (d) of this clause.

(h) *Liability for change of EFT information by financial agent.* The Government is not liable for errors resulting from changes to EFT information provided by the Contractor's financial agent.

(i) *Payment information.* The payment or disbursing office shall forward to the Contractor available payment information that is suitable for transmission as of the date of release of the EFT instruction to the Federal Reserve System. The Government may request the Contractor to designate a desired format and method(s) for delivery of payment information from a list of formats and methods the payment office is capable of executing. However, the Government does not guarantee that any particular format or method of delivery is available at any particular payment office and retains the latitude to use the format and delivery method most convenient to the Government. If the Government makes payment by check in accordance with paragraph (a) of this clause, the Government shall mail the payment information to the remittance address in the contract.

(j) *EFT information.* The Contractor shall provide the following information to the designated office. The Contractor may supply this data for this or multiple contracts (see paragraph (b) of this clause). The Contractor shall designate a single financial agent per contract capable of receiving and processing the EFT information using the EFT methods described in paragraph (c) of this clause.

(1) The contract number (or other procurement identification number).

(2) The Contractor's name and remittance address, as stated in the contract(s).

(3) The signature (manual or electronic, as appropriate), title, and telephone number of the Contractor official authorized to provide this information.

(4) The name, address, and 9-digit Routing Transit Number of the Contractor's financial agent.

(5) The Contractor's account number and the type of account (checking, saving, or lockbox).

(6) If applicable, the Fedwire Transfer System telegraphic abbreviation of the Contractor's financial agent.

(7) If applicable, the Contractor shall also provide the name, address, telegraphic abbreviation, and 9-digit Routing Transit Number of the correspondent financial institution receiving the wire transfer payment if the Contractor's financial agent is not directly on-line to the Fedwire Transfer System; and, therefore, not the receiver of the wire transfer payment.

(End of clause)

12. Sections 52.232–35, 52.232–36, 52.232–37, and 52.232–38 are added to read as follows:

52.232–35 Designation of Office for Government Receipt of Electronic Funds Transfer Information.

As prescribed in 32.1110(c), insert the following clause:

Designation of Office for Government Receipt of Electronic Funds Transfer Information (May 1999)

(a) As provided in paragraph (b) of the clause at 52.232–34, Payment by Electronic Funds Transfer—Other than Central Contractor Registration, the Government has designated the office cited in paragraph (c) of this clause as the office to receive the Contractor's electronic funds transfer (EFT) information, in lieu of the payment office of this contract.

(b) The Contractor shall send all EFT information, and any changes to EFT information to the office designated in paragraph (c) of this clause. The Contractor shall not send EFT information to the payment office, or any other office than that designated in paragraph (c). The Government need not use any EFT information sent to any office other than that designated in paragraph (c).

(c) Designated Office:

Name:

_____

_____

Mailing Address:

_____

_____

_____

Telephone Number:

_____

Person to Contact:

_____

Electronic Address:

_____

(End of clause)

52.232–36 Payment by Third Party.

As prescribed in 32.1110(d), insert the following clause:

Payment by Third Party (May 1999)

(a) *General.* The Contractor agrees to accept payments due under this contract, through payment by a third party in lieu of payment directly from the Government, in accordance with the terms of this clause. The third party and, if applicable, the particular Governmentwide commercial purchase card to be used are identified elsewhere in this contract.

(b) *Contractor payment request.* In accordance with those clauses of this contract that authorize the Contractor to submit invoices, contract financing requests, other payment requests, or as provided in other clauses providing for payment to the Contractor, the Contractor shall make such payment requests through a charge to the Government account with the third party, at the time and for the amount due in accordance with the terms of this contract.

(c) *Payment.* The Contractor and the third party shall agree that payments due under this contract shall be made upon submittal of payment requests to the third party in accordance with the terms and conditions of an agreement between the Contractor, the Contractor's financial agent (if any), and the third party and its agents (if any). No payment shall be due the Contractor until such agreement is made. Payments made or due by the third party under this clause are not payments made by the Government and are not subject to the Prompt Payment Act or any implementation thereof in this contract.

(d) *Documentation.* Documentation of each charge against the Government's account shall be provided to the Contracting Officer upon request.

(e) *Assignment of claims.* Notwithstanding any other provision of this contract, if any payment is made under this clause, then no payment under this contract shall be assigned under the provisions of the assignment of claims terms of this contract or the Assignment of Claims Act of 1940, as amended, 31 U.S.C. 3727, 41 U.S.C. 15.

(f) *Other payment terms.* The other payment terms of this contract shall govern the content and submission of payment requests. If any clause requires information or documents in or with the payment request, that is not provided in the third party agreement referenced in paragraph (c) of this clause, the Contractor shall obtain instructions from the Contracting Officer before submitting such a payment request.

(End of clause)

52.232–37 Multiple Payment Arrangements.

As prescribed in 32.1110(e), insert the following clause:

Multiple Payment Arrangements (May 1999)

This contract or agreement provides for payments to the Contractor through several alternative methods. The applicability of specific methods of payment and the designation of the payment office(s) are either stated—

(a) Elsewhere in this contract or agreement; or

(b) In individual orders placed under this contract or agreement.

(End of clause)

52.232–38 Submission of Electronic Funds Transfer Information with Offer.

As prescribed in 32.1110(g), insert the following provision:

Submission of Electronic Funds Transfer Information With Offer (May 1999)

The offeror shall provide, with its offer, the following information that is required to make payment by electronic funds transfer (EFT) under any contract that results from this solicitation. This submission satisfies the requirement to provide EFT information under paragraphs (b)(1) and (j) of the clause at 52.232–34, Payment by Electronic Funds Transfer—Other than Central Contractor Registration.

(1) The solicitation number (or other procurement identification number).

(2) The offeror's name and remittance address, as stated in the offer.

(3) The signature (manual or electronic, as appropriate), title, and telephone number of the offeror's official authorized to provide this information.

(4) The name, address, and 9-digit Routing Transit Number of the offeror's financial agent.

(5) The offeror's account number and the type of account (checking, savings, or lockbox).

(6) If applicable, the Fedwire Transfer System telegraphic abbreviation of the offeror's financial agent.

(7) If applicable, the offeror shall also provide the name, address, telegraphic abbreviation, and 9-digit Routing Transit Number of the correspondent financial institution receiving the wire transfer payment if the offeror's financial agent is not directly on-line to the Fedwire and, therefore, not the receiver of the wire transfer payment.

(End of provision)

[FR Doc. 99–5206 Filed 3–3–99; 8:45 am]

BILLING CODE 6820–EP–P

DEPARTMENT OF DEFENSE

GENERAL SERVICES ADMINISTRATION

NATIONAL AERONAUTICS AND SPACE ADMINISTRATION

48 CFR Part 15

[FAC 97–11; FAR Case 98–302; Item V]

RIN 9000–AI31

Federal Acquisition Regulation; Waiver of Cost or Pricing Data for Subcontracts

AGENCIES: Department of Defense (DoD), General Services Administration (GSA), and National Aeronautics and Space Administration (NASA).

ACTION: Final rule.

SUMMARY: The Civilian Agency Acquisition Council and the Defense Acquisition Regulations Council have agreed on a final rule amending the Federal Acquisition Regulation (FAR) to implement Section 805 of the Strom Thurmond National Defense Authorization Act for Fiscal Year 1999 (Pub. L. 105–261).

EFFECTIVE DATE: May 3, 1999.

FOR FURTHER INFORMATION CONTACT: The FAR Secretariat, Room 4035, GS

Building, Washington, DC 20405, (202) 501–4755, for information pertaining to status or publication schedules. For clarification of content, contact Mr. Ralph De Stefano, Procurement Analyst, at (202) 501–1758. Please cite FAC 97–11, FAR case 98–302.

SUPPLEMENTARY INFORMATION:

A. Background

Section 805 of Public Law 105–261 clarifies that waivers of requirements for submittal of prime contractor cost or pricing data do not automatically waive requirements for subcontractors to submit cost or pricing data. Although this is consistent with the current requirements of FAR 15.403–1(c)(4), the final rule clarifies the requirement to provide rationale supporting any waiver of subcontracts.

Pursuant to the House of Representatives Conference Report (H.R. Conf. Rep. No. 736, 105th Cong., 2nd Sess. 1998) which addresses Section 805, the executive branch is working to clarify situations in which an exceptional circumstance waiver of requirements for submission of certified cost or pricing data may be granted. This will be the subject of an independent FAR case.

This regulatory action was not subject to Office of Management and Budget review under Executive Order 12866, dated September 30, 1993, and is not a major rule under 5 U.S.C. 804.

B. Regulatory Flexibility Act

The final rule does not constitute a significant FAR revision within the meaning of FAR 1.501 and Public Law 98–577, and publication for public comments is not required. However, comments from small entities concerning the affected FAR subpart will be considered in accordance with 5 U.S.C. 610. Such comments must be submitted separately and should cite 5 U.S.C. 601, *et seq.* (FAC 97–11, FAR case 98–302), in correspondence.

C. Paperwork Reduction Act

The Paperwork Reduction Act does not apply because the changes to the FAR do not impose information collection requirements that require the approval of the Office of Management and Budget under 44 U.S.C. 3501, *et seq.*

List of Subjects in 48 CFR Part 15

Government procurement.

Dated: February 25, 1999.

Edward C. Loeb,

Director, Federal Acquisition Policy Division.

Therefore, 48 CFR Part 15 is amended as set forth below:

PART 15—CONTRACTING BY NEGOTIATION

1. The authority citation for 48 CFR Part 15 continues to read as follows:

Authority: 40 U.S.C. 486(c); 10 U.S.C. chapter 137; and 42 U.S.C. 2473(c).

2. Section 15.403–1 is amended by revising paragraph (c)(4) to read as follows:

15.403–1 Prohibition on obtaining cost or pricing data (10 U.S.C. 2306a and 41 U.S.C. 254b).

* * * * *

(c) * * *

(4) *Waivers.* The head of the contracting activity (HCA) may, without power of delegation, waive the requirement for submission of cost or pricing data in exceptional cases. The authorization for the waiver and the supporting rationale shall be in writing. The HCA may consider waiving the requirement if the price can be determined to be fair and reasonable without submission of cost or pricing data. For example, if cost or pricing data were furnished on previous production buys and the contracting officer determines such data are sufficient, when combined with updated information, a waiver may be granted. If the HCA has waived the requirement for submission of cost or pricing data, the contractor or higher-tier subcontractor to whom the waiver relates shall be considered as having been required to provide cost or pricing data. Consequently, award of any lower-tier subcontract expected to exceed the cost or pricing data threshold requires the submission of cost or pricing data unless—

(i) An exception otherwise applies to the subcontract; or

(ii) The waiver specifically includes the subcontract and the rationale supporting the waiver for that subcontract.

[FR Doc. 99–5207 Filed 3–3–99; 8:45 am]

BILLING CODE 6820–EP–P

DEPARTMENT OF DEFENSE

GENERAL SERVICES ADMINISTRATION

NATIONAL AERONAUTICS AND SPACE ADMINISTRATION

48 CFR Parts 22 and 52

[FAC 97–11; FAR Case 94–610; Item VI]

RIN 9000–AH62

Federal Acquisition Regulation; Executive Order 12933, Nondisplacement of Qualified Workers Under Certain Contracts

AGENCIES: Department of Defense (DoD), General Services Administration (GSA), and National Aeronautics and Space Administration (NASA).

ACTION: Final rule.

SUMMARY: The Civilian Agency Acquisition Council and the Defense Acquisition Regulations Council have agreed on a final rule amending the Federal Acquisition Regulation (FAR) to implement Executive Order 12933, Nondisplacement of Qualified Workers under Certain Contracts, signed by the President on October 20, 1994 (59 FR 53559, October 24, 1994). The Executive Order requires that workers on certain building service contracts be given the right of first refusal for employment with the successor contractor, if the workers would otherwise lose their jobs as a result of the termination of the contract.

An interim rule for this FAR case was published in the **Federal Register** at 62 FR 44823, August 22, 1997, as Item XII of Federal Acquisition Circular 97–01. This final rule amends the definition of ''building service contract'' in FAR 22.1202, and provides guidance regarding the quality of work performed on predecessor contracts and disputes resolution in the clause at 52.222–50.

EFFECTIVE DATE: May 3, 1999.

FOR FURTHER INFORMATION CONTACT: The FAR Secretariat, Room 4035, GS Building, Washington, DC, 20405, (202) 501–4755, for information pertaining to status or publication schedules. For clarification of content, contact Mr. Jack O'Neill, Procurement Analyst, at (202) 501–3856. Please cite FAC 97–11, FAR case 94–610.

SUPPLEMENTARY INFORMATION:

A. Background

Executive Order 12933 was signed October 20, 1994, by President Clinton and published in the **Federal Register** on October 24, 1994 (59 FR 53559). To obtain public input and assist in the

development of implementing regulations, the Department of Labor (DoL) invited comment through a notice of proposed rulemaking in the **Federal Register** on July 18, 1995 (60 FR 36756). The final DoL rule was published in the **Federal Register** on May 22, 1997 (62 FR 28175). An interim rule for this FAR case was published in the **Federal Register** at 62 FR 44823, August 22, 1997, as Item XII of Federal Acquisition Circular 97–01. This final rule makes further changes to FAR part 22, and the clause at 52.222–50, that are the result of resolution of public comments received in response to publication of the interim rule in the **Federal Register.**

The definition of ''building service contract'' at FAR 22.1202 is amended by deleting concessions other than food services or laundry services from the definition. The clause at FAR 52.222–50, Nondisplacement of Qualified Workers, is amended by inserting a cross-reference to performance standards in 29 CFR 9.8, and inserting the concept of presumption of satisfactory performance by employees on predecessor contracts.

This regulatory action was not subject to Office of Management and Budget review under Executive Order 12866, dated September 30, 1993, and is not a major rule under 5 U.S.C. 804.

B. Regulatory Flexibility Act

The Department of Defense, the General Services Administration, and the National Aeronautics and Space Administration certify that this final rule will 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.*, because the rule and the Executive order mandate a practice that is already followed in most cases. This rule implements the requirements of the Executive order, as implemented by the DoL in its final rule of May 22, 1997 (62 FR 28175). The DoL certified that its final rule will not have a significant economic impact on a substantial number of small entities. In those cases where the practice was not followed before the Executive order, the impact would be a result of the Executive order and the DoL regulation; it would not be a result of the FAR implementation.

C. Paperwork Reduction Act

This final rule will not impose any additional paperwork burdens beyond the information collection and recordkeeping requirements required under sections 9.6(c), 9.9(b), and 9.11 of the Department of Labor Regulations, 29 CFR part 9, and approved under DoL Office of Management and Budget Control 1215–0190.

List of Subjects in 48 CFR Parts 22 and 52

Government procurement.

Dated: February 25, 1999.

Edward C. Loeb,

Director, Federal Acquisition Policy Division.

Therefore, 48 CFR Parts 22 and 52 are amended as set forth below:

1. The authority citation for 48 CFR Parts 22 and 52 continues to read as follows:

Authority: 40 U.S.C. 486(c); 10 U.S.C. chapter 137; and 42 U.S.C. 2473(c).

PART 22—APPLICATION OF LABOR LAWS TO GOVERNMENT ACQUISITIONS

22.1200 [Amended]

2. Section 22.1200 is amended by adding ''(E.O.)'' after ''Order''.

22.1201 [Amended]

3. Section 22.1201 is amended in the first sentence by removing ''Federal''; and in the last sentence by removing ''Executive Order'' and adding ''E.O.''.

22.1202 [Amended]

4. Section 22.1202 is amended—

A. In the third sentence of the definition ''Building service contract'' by removing ''Executive Order'' and adding ''E.O.'';

B. At the end of paragraph (1) of the definition by adding ''and'' after the semicolon;

C. In paragraph (2) by removing ''; or'' and adding a period; and by removing paragraph (3);

D. In paragraph (2) introductory text of the definition ''Public building'' by removing the colon and adding ''—''.

22.1203–1 [Amended]

5. Section 22.1203–1 is amended in the first sentence of paragraph (b)(1) by revising ''non-covered'' to read ''noncovered'', and by revising ''non-service'' to read ''nonservice''.

PART 52—SOLICITATION PROVISIONS AND CONTRACT CLAUSES

6. Section 52.222–50 is amended by revising the date of the clause; by revising paragraph (c); and by revising the second sentence of paragraph (j). The new text reads as follows:

52.222–50 Nondisplacement of Qualified Workers.

* * * * *

Nondisplacement of Qualified Workers (May 1999)

* * * * *

(c) Notwithstanding the Contractor's obligation under paragraph (b) of this clause, the Contractor—

(1) May employ on the contract any employee who has worked for the Contractor for at least 3 months immediately preceding the commencement of this contract and who would otherwise face layoff or discharge;

(2) Is not required to offer a right of first refusal to any employee(s) of the predecessor contractor who are not service employees; and

(3) Is not required to offer a right of first refusal to any employee(s) of the predecessor contractor who the Contractor reasonably believes, based on the particular employee's past performance, has failed to perform suitably on the job (see 29 CFR 9.8).

(4) Must presume, unless demonstrated otherwise, that all employees working on the predecessor contract in the last month of performance performed suitable work on the contract. Offers of employment are governed by the following:

(i) The offer shall state the time within which the employee must accept such offer, but in no case shall the period for acceptance be less than 10 days.

(ii) The offer may be made by separate written notice to each employee, or orally at a meeting attended by a group of the predecessor contractor's employees.

(iii) An offer need not be to a position similar to that which the employee previously held, but the employee must be qualified for the position.

(iv) An offer to a position providing lower pay or benefits than the employee held with the predecessor contractor will be considered *bona fide* if the Contractor shows valid business reasons.

(v) To ensure that an offer is effectively communicated, the Contractor should take reasonable efforts to make the offer in a language that each worker understands; for example, by having a coworker or other person fluent in the worker's language at the meeting to translate or otherwise assist an employee who is not fluent in English.

* * * * *

(j) * * * Such disputes shall be resolved in accordance with the procedures of the Department of Labor set forth in 29 CFR part 9. * * *

[FR Doc. 99–5208 Filed 3–3–99; 8:45 am]

BILLING CODE 6820–EP–P

DEPARTMENT OF DEFENSE

GENERAL SERVICES ADMINISTRATION

NATIONAL AERONAUTICS AND SPACE ADMINISTRATION

48 CFR Part 31

[FAC 97–11; FAR Case 98–001; Item VII]

RIN 9000–AI06

Federal Acquisition Regulation; Recruitment Costs Principle

AGENCIES: Department of Defense (DoD), General Services Administration (GSA), and National Aeronautics and Space Administration (NASA).

ACTION: Final rule.

SUMMARY: The Civilian Agency Acquisition Council and the Defense Acquisition Regulations Council have agreed on a final rule amending the Federal Acquisition Regulation (FAR) to revise the ''recruitment costs'' and the ''public relations and advertising cost'' cost principles for streamlining purposes.

EFFECTIVE DATE: May 3, 1999.

FOR FURTHER INFORMATION CONTACT: The FAR Secretariat, Room 4035, GS Building, Washington, DC, 20405, (202) 501–4755, for information pertaining to status or publication schedules. For clarification of content, contact Ms. Linda Nelson, Procurement Analyst, at (202) 501–1900. Please cite FAC 97–11, FAR case 98–001.

SUPPLEMENTARY INFORMATION:

A. Background

A proposed FAR rule was published in the **Federal Register** on August 12, 1998 (63 FR 43238). The final rule differs from the proposed rule by deleting the following phrase from FAR 31.205–34(a): ''and provided that the size of the staff recruited and maintained is in keeping with the workload requirements.'' This phrase is unnecessary as the criteria, including reasonableness, discussed in FAR part 31 are sufficient to govern the acceptability of this type of cost.

Public comments were received from six sources. All comments were considered in developing the final rule.

This regulatory action was not subject to Office of Management and Budget review under Executive Order 12866, dated September 30, 1993, and is not a major rule under 5 U.S.C. 804.

B. Regulatory Flexibility Act

The Department of Defense, the General Services Administration, and the National Aeronautics and Space Administration certify that this final rule will 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.*, because most contracts awarded to small entities use simplified acquisition procedures or are awarded on a competitive, fixed-price basis, and do not require application of the cost principles contained in this rule.

C. Paperwork Reduction Act

The Paperwork Reduction Act does not apply because the changes to the FAR do not impose information collection requirements that require the approval of the Office of Management and Budget under 44 U.S.C. 3501, *et seq.*

List of Subjects in 48 CFR Part 31

Government procurement.

Dated: February 25, 1999.

Edward C. Loeb,

Director, Federal Acquisition Policy Division.

Therefore, 48 CFR Part 31 is amended as set forth below:

PART 31—CONTRACT COST PRINCIPLES AND PROCEDURES

1. The authority citation for 48 CFR Part 31 continues to read as follows:

Authority: 40 U.S.C. 486(c); 10 U.S.C. chapter 137; and 42 U.S.C. 2473(c).

2. Section 31.205–1 is amended by revising paragraph (d) to read as follows:

31.205–1 Public relations and advertising costs.

* * * * *

(d) The only allowable advertising costs are those that are—

(1) Specifically required by contract, or that arise from requirements of Government contracts, and that are exclusively for—

(i) Acquiring scarce items for contract performance; or

(ii) Disposing of scrap or surplus materials acquired for contract performance;

(2) Costs of activities to promote sales of products normally sold to the U.S. Government, including trade shows, which contain a significant effort to promote exports from the United States. Such costs are allowable, notwithstanding paragraphs (f)(1), (f)(3), (f)(4)(ii), and (f)(5) of this subsection. However, such costs do not include the costs of memorabilia (*e.g.*, models, gifts, and souvenirs), alcoholic beverages, entertainment, and physical facilities that are used primarily for entertainment rather than product promotion; or

(3) Allowable in accordance with 31.205–34.

* * * * *

3. Section 31.205–34 is amended by revising paragraph (a) introductory text; by revising paragraph (b); and by removing paragraph (c) to read as follows:

31.205–34 Recruitment costs.

(a) Subject to paragraph (b) of this subsection, the following costs are allowable:

* * * * *

(b) Help-wanted advertising costs are unallowable if the advertising—

(1) Does not describe specific positions or classes of positions; or

(2) Includes material that is not relevant for recruitment purposes, such as extensive illustrations or descriptions of the company's products or capabilities.

[FR Doc. 99–5209 Filed 3–3–99; 8:45 am]

BILLING CODE 6820–EP–P

DEPARTMENT OF DEFENSE

GENERAL SERVICES ADMINISTRATION

NATIONAL AERONAUTICS AND SPACE ADMINISTRATION

48 CFR Part 31

[FAC 97–11; FAR Case 98–301; Item VIII]

RIN 9000–AI32

Federal Acquisition Regulation; Compensation for Senior Executives

AGENCIES: Department of Defense (DoD), General Services Administration (GSA), and National Aeronautics and Space Administration (NASA).

ACTION: Interim rule with request for comments.

SUMMARY: The Civilian Agency Acquisition Council and the Defense Acquisition Regulations Council have agreed on an interim rule amending the Federal Acquisition Regulation (FAR) to implement Section 804 of the Strom Thurmond National Defense Authorization Act for Fiscal Year 1999 (Pub. L. 105–261). Section 804 revises the definition of ''senior executive'' at 10 U.S.C. 2324(1)(5) and at 41 U.S.C. 256(m)(2).

EFFECTIVE DATE: March 4, 1999.

Applicability Date: This policy applies to costs of compensation incurred under Government contracts

after January 1, 1999, regardless of the date of contract award.

Comment Date: Comments should be submitted to the FAR Secretariat at the address shown below on or before May 3, 1999 to be considered in the formulation of a final rule.

ADDRESSES: Interested parties should submit written comments to: General Services Administration, FAR Secretariat (MVR), 1800 F Street, NW, Room 4035, Attn: Ms. Laurie Duarte, Washington, DC 20405. E-Mail comments submitted over the Internet should be addressed to: farcase.98–301@gsa.gov

Please cite FAC 97–11, FAR case 98–301 in all correspondence related to this case.

FOR FURTHER INFORMATION CONTACT: The FAR Secretariat, Room 4035, GS Building, Washington, DC 20405, (202) 501–4755, for information pertaining to status or publication schedules. For clarification of content, contact Ms. Linda Nelson, Procurement Analyst, at (202) 501–1900. Please cite FAC 97–11, FAR case 98–301.

SUPPLEMENTARY INFORMATION:

A. Background

Section 808 of the National Defense Authorization Act for Fiscal Year 1998 (Pub. L. 105–85) revised 10 U.S.C. 2324 and 41 U.S.C. 256 to limit allowable compensation costs for senior executives of contractors for a fiscal year to the benchmark compensation amount determined applicable for each fiscal year by the Administrator for Federal Procurement Policy. Section 808 defined ''senior executive'' as—

''(A) The chief executive officer of the contractor or any individual acting in a similar capacity for the contractor;

(B) The four most highly compensated employees in management positions of the contractor other than the chief executive officer; and

(C) In the case of a contractor that has components which report directly to the contractor's headquarters, the five most highly compensated employees in management positions at each such components.''

Section 804 of the Strom Thurmond National Defense Authorization Act for Fiscal Year 1999 (Pub. L. 105–261) revises the definition of ''senior executive'' at 10 U.S.C. 2324(1)(5) and 41 U.S.C. 256(m)(2). Section 804 defines ''senior executives'' as ''the five most highly compensated employees in management positions at each home office and each segment of the contractor'' whether or not the home office or segment reports directly to the contractor's headquarters.

This interim rule revises the definition of ''senior executive'' at FAR 31.205–6(p) to implement Section 804 of Pub. L. 105–261. This change applies to costs of compensation incurred after January 1, 1999, regardless of the date of contract award.

This regulatory action was not subject to Office of Management and Budget review under Executive Order 12866, dated September 30, 1993, and is not a major rule under 5 U.S.C. 804.

B. Regulatory Flexibility Act

The interim rule is not expected to have a significant economic impact on a substantial number of small entities within the meaning of the Regulatory Flexibility Act, 5 U.S.C. 601, *et seq.*, because most contracts awarded to small entities use simplified acquisition procedures or are awarded on a competitive, fixed-price basis, and do not require application of the cost principle contained in this rule. An Initial Regulatory Flexibility Analysis has, therefore, not been performed. Comments from small entities concerning the affected FAR subpart will be considered in accordance with 5 U.S.C. 610. Such comments must be submitted separately and should cite 5 U.S.C 601, *et seq.* (FAR Case 98–301), in correspondence.

C. Paperwork Reduction Act

The Paperwork Reduction Act does not apply because the changes to the FAR do not impose information collection requirements that require the approval of OMB under 44 U.S.C. 3501, *et seq.*

D. Determination to Issue an Interim Rule

A determination has been made under the authority of the Secretary of Defense (DoD), the Administrator of General Services (GSA), and the Administrator of the National Aeronautics and Space Administration (NASA) that urgent and compelling reasons exist to promulgate this interim rule without prior opportunity for public comment. This action is necessary because this rule implements Section 804 of the Strom Thurmond National Defense Authorization Act for Fiscal Year 1999 (Pub. L. 105–621) and applies to costs of compensation incurred after January 1, 1999, regardless of the date of contract award. However, pursuant to Public Law 98–577 and FAR 1.501, public comments received in response to this interim rule will be considered in the formation of the final rule.

List of Subjects in 48 CFR Part 31:

Government procurement.

Dated: February 25, 1999.

Edward C. Loeb,

Director, Federal Acquisition Policy Division.

Therefore, 48 CFR Part 31 is amended as set forth below:

PART 31—CONTRACT COST PRINCIPLES AND PROCEDURES

1. The authority citation for 48 CFR Part 31 continues to read as follows:

Authority: 40 U.S.C. 486(c); 10 U.S.C. chapter 137; and 42 U.S.C. 2473(c).

2. Section 31.205–6 is amended in paragraph (p) introductory text by adding a sentence after the heading; by redesignating paragraphs (p)(2)(ii)(A) through (p)(2)(ii)(C) as (p)(2)(ii)(A)(*1*) through (p)(2)(ii)(A)(*3*), respectively; and by adding new paragraphs (p)(2)(ii)(A) introductory text and (p)(2)(ii)(B) to read as follows:

31.205–6 Compensation for personal services.

* * * * *

(p) * * * (Note that pursuant to Section 804 of Pub. L. 105–261, the definition of ''senior executive'' in (p)(2)(ii) has been changed for compensation costs incurred after January 1, 1999.)

* * * * *

(2) * * *

(ii) * * *

(A) Prior to January 2, 1999—

* * * * *

(B) Effective January 2, 1999, the five most highly compensated employees in management positions at each home office and each segment of the contractor, whether or not the home office or segment reports directly to the contractor's headquarters.

* * * * *

[FR Doc. 99–5210 Filed 3–3–99; 8:45 am]

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DEPARTMENT OF DEFENSE

GENERAL SERVICES ADMINISTRATION

NATIONAL AERONAUTICS AND SPACE ADMINISTRATION

48 CFR Parts 1, 25, 52, and 53

[FAC 97–11; Item IX]

Federal Acquisition Regulation; Technical Amendments

AGENCIES: Department of Defense (DoD), General Services Administration (GSA), and National Aeronautics and Space Administration (NASA).

ACTION: Technical amendments.

SUMMARY: This document makes amendments to the Federal Acquisition Regulation in order to update references and make editorial changes.

EFFECTIVE DATE: March 4, 1999.

FOR FURTHER INFORMATION CONTACT: The FAR Secretariat, Room 4035, GS Building, Washington, DC 20405, (202) 501–4755.

List of Subjects in 48 CFR Parts 1, 25, 52, and 53

Government procurement.

Dated: February 25, 1999.

Edward C. Loeb,

Director, Federal Acquisition Policy Division.

Therefore, 48 CFR Parts 1, 25, 52, and 53 are amended as set forth below:

1. The authority citation for 48 CFR Parts 1, 25, 52, and 53 continues to read as follows:

Authority: 40 U.S.C. 486(c); 10 U.S.C. chapter 137; and 42 U.S.C. 2473(c).

PART 1—FEDERAL ACQUISITION REGULATIONS SYSTEM

2. In section 1.106 the table following the introductory paragraph is amended by revising the entry for ''SF 1418'' to read as follows:

1.106 OMB approval under the Paperwork Reduction Act.

* * * * *

FAR segment	OMB control No.
* * * * *	
SF 1418	9000–0045
* * * * *	

PART 25—FOREIGN ACQUISITION

3. Section 25.402 is amended in paragraph (b) by revising the last two sentences to read as follows:

25.402 Policy.

* * * * *

(b) * * * This determination is effective until September 30, 1999, except that, for products of Panama, this determination is effective until September 30, 2000. These dates may be extended by the U.S. Trade Representative by means of a notice in the **Federal Register**.

* * * * *

PART 52—SOLICITATION PROVISIONS AND CONTRACT CLAUSES

52.219–8 [Amended]

4. Section 52.219–8 is amended by revising the title of the clause to read ''Utilization of Small Business Concerns''.

PART 53—FORMS

5. Section 53.228 is amended by revising paragraph (n) to read as follows:

53.228 Bonds and insurance.

* * * * *

(n) *SF 1418 (Rev. 2/99) Performance Bond For Other Than Construction Contracts.* (See 28.106–1(n).) SF 1418 is authorized for local reproduction and a copy is furnished for this purpose in Part 53 of the looseleaf edition of the FAR.

* * * * *

6. Section 53.301–1418 is revised to read as follows:

53.301–1418 Performance bond for other than construction contracts.

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PERFORMANCE BOND FOR OTHER THAN CONSTRUCTION CONTRACTS *(See instructions on reverse)*	DATE BOND EXECUTED *(Must be same or later than date of contract)*	OMB No.: 9000-0045

Public reporting burden for this collection of information is estimated to average 25 minutes per response, including the time for reviewing instructions, searching existing data sources, gathering and maintaining the data needed, and completing and reviewing the collection of information. Send comments regarding this burden estimate or any other aspect of this collection of information, including suggestions for reducing this burden, to the FAR Secretariat (MVR), Federal Acquisition Policy Division, GSA, Washington, DC 20405

PRINCIPAL *(Legal name and business address)*	TYPE OF ORGANIZATION *("X" one)* ☐ INDIVIDUAL ☐ PARTNERSHIP ☐ JOINT VENTURE ☐ CORPORATION
	STATE OF INCORPORATION
SURETY(IES) *(Name(s) and business address(es)*	PENAL SUM OF BOND: MILLION(S) / THOUSAND(S) / HUNDRED(S) / CENTS
	CONTRACT DATE / CONTRACT NO.
	OPTION DATE / OPTION NO.

OBLIGATION:

We, the Principal and Surety(ies), are firmly bound to the United States of America (hereinafter called the Government) in the above penal sum. For payment of the penal sum, we bind ourselves, our heirs, executors, administrators, and successors, jointly and severally. However, where the Sureties are corporations acting as co-sureties, we, the Sureties, bind ourselves in such sum "jointly and severally" as well as "severally" only for the purpose of allowing a joint action or actions against any or all of us. For all other purposes, each Surety binds itself, jointly and severally with the Principal, for the payment of the sum shown opposite the name of the Surety. If no limit of liability is indicated, the limit of liability is the full amount of the penal sum.

CONDITIONS:

The Principal has entered into the contract identified above.

THEREFORE:

The above obligation is void if the Principal: (1) Performs and fulfills all the undertakings, covenants, terms, conditions, and agreements of the contract during either the base term or an optional term of the contract and any extensions thereof that are granted by the Government, with or without notice to the Surety(ies), and during the life of any guaranty required under the contract, and (2) performs and fulfills all the undertakings, covenants, terms, conditions, and agreements of any and all duly authorized modifications of the contract that hereafter are made. Notice of those modifications to the Surety(ies) is waived.

The guaranty for a base term covers the initial period of performance of the contract and any extensions thereof excluding any options. The guaranty for an option term covers the period of performance for the option being exercised and any extensions thereof.

The failure of a surety to renew a bond for any option term shall not result in a default of any bond previously furnished covering any base or option term.

WITNESS:

The Principal and Surety(ies) executed this performance bond and affixed their seals on the above date.

PRINCIPAL

SIGNATURE(S)	1. (Seal)	2. (Seal)	Corporate Seal
NAME(S) & TITLE(S) *(Typed)*	1.	2.	

INDIVIDUAL SURETY(IES)

SIGNATURE(S)	1. (Seal)	2. (Seal)
NAME(S) *(Typed)*	1.	2.

CORPORATE SURETY(IES)

SURETY A	NAME & ADDRESS		STATE OF INC.	LIABILITY LIMIT $	Corporate Seal
	SIGNATURE(S)	1.	2.		
	NAME(S) & TITLE(S) *(Typed)*	1.	2.		

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STANDARD FORM 1418 (REV. 2-99)
Prescribed by GSA-FAR (48 CFR) 53.228(b)

SURETY B	NAME & ADDRESS		STATE OF INC.	LIABILITY LIMIT $	Corporate Seal
	SIGNATURE(S)	1.	2.		
	NAME(S) & TITLE(S) *(Typed)*	1.	2.		
SURETY C	NAME & ADDRESS		STATE OF INC.	LIABILITY LIMIT $	Corporate Seal
	SIGNATURE(S)	1.	2.		
	NAME(S) & TITLE(S) *(Typed)*	1.	2.		
SURETY D	NAME & ADDRESS		STATE OF INC.	LIABILITY LIMIT $	Corporate Seal
	SIGNATURE(S)	1.	2.		
	NAME(S) & TITLE(S) *(Typed)*	1.	2.		
SURETY E	NAME & ADDRESS		STATE OF INC.	LIABILITY LIMIT $	Corporate Seal
	SIGNATURE(S)	1.	2.		
	NAME(S) & TITLE(S) *(Typed)*	1.	2.		
SURETY F	NAME & ADDRESS		STATE OF INC.	LIABILITY LIMIT $	Corporate Seal
	SIGNATURE(S)	1.	2.		
	NAME(S) & TITLE(S) *(Typed)*	1.	2.		
SURETY G	NAME & ADDRESS		STATE OF INC.	LIABILITY LIMIT $	Corporate Seal
	SIGNATURE(S)	1.	2.		
	NAME(S) & TITLE(S) *(Typed)*	1.	2.		

BOND PREMIUM	RATE PER THOUSAND ($)	TOTAL ($)

INSTRUCTIONS

1. This form is authorized for use in connection with Government contracts. Any deviation from this form will require the written approval of the Administrator of General Services.

2. Insert the full legal name and business address of the Principal in the space designated "Principal" on the face of the form. An authorized person shall sign the bond. Any person signing in a representative capacity (e.g., an attorney-in-fact) must furnish evidence of authority if that representative is not a member of the firm, partnership, or joint venture, or an officer of the coporation involved.

3. (a) Corporations executing the bond as sureties must appear on the Department of the Treasury's list of approved sureties and must act within the limitation listed therein. Where more than one corporate surety is involved, their names and addresses shall appear in the spaces (Surety A, Surety B, etc.) headed "CORPORATE SURETY(IES)." In the space designated "SURETY(IES)" on the face of the form, insert only the letter identification of the sureties.

(b) Where individual sureties are involved, a completed Affidavit of Individual Surety (Standard Form 28) for each individual surety, shall accompany the bond. The Government may require the surety to furnish additional substantiating information concerning their financial capability.

4. Corporations executing the bond shall affix their corporate seals. Individuals shall execute the bond opposite the word "Corporate Seal", and shall affix an adhesive seal if executed in Maine, New Hampshire, or any other jurisdiction requiring adhesive seals.

5. Type the name and title of each person signing this bond in the space provided.

6. Unless otherwise specified, the bond shall be submitted to the contracting office that awarded the contract.

STANDARD FORM 1418 (REV. 2-99) **BACK**

[FR Doc. 99–5211 Filed 3–3–99; 8:45 am]
BILLING CODE 6820–EP–C

DEPARTMENT OF DEFENSE

GENERAL SERVICES ADMINISTRATION

NATIONAL AERONAUTICS AND SPACE ADMINISTRATION

48 CFR Chapter 1

Federal Acquisition Regulation; Small Entity Compliance Guide

AGENCIES: Department of Defense (DoD), General Services Administration (GSA), and National Aeronautics and Space Administration (NASA).

ACTION: Small Entity Compliance Guide.

SUMMARY: This document is issued under the joint authority of the Secretary of Defense, the Administrator of General Services and the Administrator for the National Aeronautics and Space Administration. This *Small Entity Compliance Guide* has been prepared in accordance with Section 212 of the Small Business Regulatory Enforcement Fairness Act of 1996 (Public Law 104–121). It consists of a summary of rules appearing in Federal Acquisition Circular (FAC) 97–11 which amend the FAR. The rules marked with an asterisk (*) are those for which a regulatory flexibility analysis has been prepared in accordance with 5 U.S.C. 604. Further information regarding these rules may be obtained by referring to FAC 97–11 which precedes this document. This document may be obtained from the Internet at http://www.arnet.gov/far.

FOR FURTHER INFORMATION CONTACT: Laurie Duarte, FAR Secretariat, (202) 501–4225.

LIST OF RULES IN FAC 97–11

Item	Subject	FAR case	Analyst
I	Review of FAR Representations	96–013	Linfield.
II	Very Small Business Concerns (Interim)	98–013	Moss.
III	Variation in Quantity	98–612	Moss.
IV	*Electronic Funds Transfer	91–118	Olson.
V	Waiver of Cost or Pricing Data for Subcontracts	98–302	De Stefano.
VI	Executive Order 12933, Nondisplacement of Qualified Workers Under Certain Contracts	94–610	O'Neill.
VII	Recruitment Costs Principle	98–001	Nelson.
VIII	Compensation for Senior Executives (Interim)	98–301	Nelson.

Item I—Review of FAR Representations (FAR Case 96–013)

This final rule amends FAR parts 1, 4, 12, 14, 26, 27, 32, 41, and 52 to reduce certain contractual requirements for representations or other affirmations that place an unnecessary burden on offerors or contractors.

Item II—Very Small Business Concerns (FAR Case 98–013)

This interim rule amends the Federal Acquisition Regulation (FAR) Parts 5, 8, 12, 19, and 52 to implement the Small Business Administration's Very Small Business Pilot Program (13 CFR parts 121 and 125). The rule provides for the set-aside of certain acquisitions between $2,500 and $50,000 for very small business (VSB) concerns. The pilot VSB program is limited to buying activities and VSBs located in 10 geographic regions specified by the Small Business Administration and will run through September 30, 2000.

Item III—Variation in Quantity (FAR Case 98–612)

This final rule revises the prescription in 11.703(a) for the clause at 52.211–16, Variation in Quantity, to require use of the clause only in solicitations and contracts where a variation in quantity is authorized. This change makes the clause prescription consistent with language in FAR 11.701(a).

Item IV—Electronic Funds Transfer (FAR Case 91–118)

This final rule amends FAR Parts 13, 16, 32, and 52 to address the use of electronic funds transfer (EFT) for Federal contract payments, and to facilitate implementation of Public Law 104–134 which mandates payment by EFT in most situations. The final rule mainly differs from the interim rule by removing references to the ''phase one'' time period, which ended on January 1, 1999; by implementing applicable provisions of the Department of the Treasury's final rule at 31 CFR part 208 which addresses the ''phase two'' time period beginning January 2, 1999; by addressing the situation where contractors furnish EFT information by registering in the Central Contractor Registration database; and by permitting agencies to collect EFT banking information at various time periods ranging from prior to award (as a condition of award) to after award (concurrent with the initial invoice).

Item V—Waiver of Cost or Pricing Data for Subcontracts (FAR Case 98–302)

Section 805 of Public Law 105–261 clarifies that waivers of requirements for submittal of prime contractor cost or pricing data do not automatically waive requirements for subcontractors to submit cost or pricing data. Although this is consistent with the current requirements of FAR 15.403–1(c)(4), the final rule clarifies the requirement to provide rationale supporting any waiver of subcontracts.

Item VI—Executive Order 12933, Nondisplacement of Qualified Workers Under Certain Contracts (FAR Case 94–610)

The interim rule published as Item III in FAC 97–01 is converted to a final rule with minor changes. The final rule makes changes to the definition of ''building service contract'' at FAR 22.1202, and paragraphs (c) and (j) of the clause at 52.222–50, Nondisplacement of Qualified Workers.

Item VII—Recruitment Costs Principle (FAR Case 98–001)

This final rule amends FAR 31.205–1, Public relations and advertising costs, and FAR 31.205–34, Recruitment costs, to remove excessive wording and details for streamlining purposes.

Item VIII—Compensation for Senior Executives (FAR Case 98–301)

This interim rule revises FAR section 31.205–6(p) to implement Section 804 of the Strom Thurmond National Defense Authorization Act for Fiscal Year 1999 (Pub. L. 105–261). Section

804 revises the definition of ''senior executive'' at 10 U.S.C. 2324(1)(5) and at 41 U.S.C. 256(m)(2) to be ''the five most highly compensated employees in management positions at each home office and each segment of the contractor.'' This change applies to costs of compensation incurred after January 1, 1999, regardless of the date of contract award.

Dated: February 25, 1999.

Edward C. Loeb,

Director, Federal Acquisition Policy Division.

[FR Doc. 99–5212 Filed 3–3–99; 8:45 am]

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